

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

PROTEST – (Petitions)

BASED ON INJURY TO VESTED RIGHTS

Protests based on Environmental or Public Interest Considerations should be completed on other side of this form

APPLICATION _____ PERMIT 16478 etc. LICENSE _____

I, (We,) Central Delta Water Agency, South Delta Water Agency, and
Lafayette Ranch ^{11315 etc.}
Name of protestant

of See Attached have read carefully
Post Office address of protestant

a notice relative to a petition for change or extension of time.

under APPLICATION _____ of DWR and USBR
State name of petitioner

to appropriate water from SEE ATTACHED.
Name of source

It is desired to protest against the approval thereof because to the best of _____ information and belief the
proposed change will result in injury to _____ as follows: _____
my or our
me or us State the injury which will result to you (see NOTE below)

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on: _____
Prior to application, notice posted, use begun prior to 12/19/14, riparian claim, or other right

Please provide application, permit or license numbers or statement of diversion and use numbers, which cover your use of water, or state 'none' _____. The extent of present and past use of water by protestant or his predecessors in interest from this source is as follows: _____
State approximate date first use made, amount used, time of year when diversion made, the use to which water is put

Where is YOUR DIVERSION POINT located? _____ ¼ of _____ ¼ of Section _____
Describe location with sufficient accuracy that position thereof relative to that of petitioner may be determined.

T. _____, R. _____, _____ B. & M. Is this point downstream from petitioner's point of diversion? YES NO
If Yes, explain: _____

Under what conditions may this protest be disregarded and dismissed? _____
State conditions which will relieve protest, or if none, so state.

A true copy of this protest has been served upon the petitioner _____
personally or by mail

Date: 4/13/09
Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

(NOTE: Attach supplemental sheets as necessary)

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Attorney for Protestants
13 SOUTH DELTA WATER AGENCY,
CENTRAL DELTA WATER AGENCY
14 and LAFAYETTE RANCH
15
16

17 STATE OF CALIFORNIA

18 STATE WATER RESOURCES CONTROL BOARD

19 In the matter of DWR and USBR
Petition to Consolidate Certain
20 Places of Use

PROTEST OF PETITION

21 The CENTRAL DELTA WATER AGENCY, a body politic and corporate of the State of
22 California, SOUTH DELTA WATER AGENCY, a body politic and corporate of the State of
23 California, and LAFAYETTE RANCH, a California corporation, herein protest the above-named
24 Petition Requesting Change in Place of Use for Certain Water Rights of the Department of Water
25 Resources and the Bureau of Reclamation and in support of this Protest respectfully allege and state
26 as follows:

27 **BACKGROUND**

28 Protestant SOUTH DELTA WATER AGENCY (hereinafter referred to as SDWA") is a body

1 politic and corporate of the State of California created by Chapter 1089 of the Statutes of 1973 of
2 the State of California (South Delta Water Agency Act). The boundaries of SDWA are described
3 in Section 9.1 of the South Delta Water Agency Act (Stats. 1973, c. 1089). The area included within
4 SDWA is located within the Sacramento-San Joaquin Delta as defined in California Water Code
5 Section 12220 and is generally referred to as the southern Delta. The purposes and powers of the
6 SDWA are set forth in Article 4 of the South Delta Water Agency Act. The principal purposes of
7 SDWA are to protect the water supply of the lands within its boundaries against intrusion of ocean
8 salinity and to assure those lands a dependable in-channel supply of water of suitable quality
9 sufficient to meet present and future needs.

10 Regarding the areas within its boundaries, SDWA is a partial successor in interest of the
11 Delta Water Agency, a body politic and corporate of the State of California.

12 The area within the boundaries of SDWA is approximately 148,000 acres in size, is primarily
13 devoted to agriculture and is dependent on the in-channel water supply in the southern Delta for
14 irrigation water and other beneficial uses. The in-channel water supply in the southern Delta is
15 principally dependent upon the inflow of the San Joaquin and Sacramento River systems to the Delta
16 for its source of water.

17 Protestant SDWA's boundaries encompass some municipal use, but mostly agricultural
18 diversions. These diversions represent both riparian and appropriative rights. The United States
19 Bureau of Reclamation, California Department of Water Resources, and the State Water Resources
20 Control Board have all previously assumed that all lands within the Delta lowlands are riparian to
21 the channels of the Delta (see Central Valley Project California, Delta Lowlands Service Area
22 Investigations January 1964). Attached hereto is a 1964 USBR listing of then current permit holders
23 indicating that virtually all land within the South Delta has appropriative water rights. The
24 SWRCB's records contain the current information. The Agency's authorizing statutes in
25 combination with Delta Protection Act (Water Code § 12200 et seq.) require that sufficient water
26 of sufficient quality be maintained in the Delta channels to support current and future beneficial uses.

27 Protestant CENTRAL DELTA WATER AGENCY ("CDWA") is a political subdivision of
28 the State of California created by the California Legislature under the Central Delta Water Agency

1 Act, chapter 1133 of the statutes of 1972. The CDWE came into existence under this act in 1974.
2 The CDWA encompasses approximately 120,000 acres in within the San Joaquin County, all of
3 which is within the Sacramento-San Joaquin Delta, also known as the "San Francisco Bay-Delta
4 Estuary" or the "Bay Delta" (the "Delta"). The lands within the CDWA jurisdiction ate primarily
5 agricultural but also contain recreational developments and significant wildlife habitat areas. The
6 lands within the CDWA jurisdiction are dependent upon the water supply in the channel of the Delta
7 ("in-channel" water supply) for irrigation and other beneficial uses. The CDWA's in-channel water
8 supply is dependent upon the flow and quality of both the Sacramento and San Joaquin River
9 systems, which are the principle focus of the BDCP process, as explained below. All of the lands
10 within the CDWA are contiguous to the channels within the CDWA and/or to the underground flow
11 of water of those channels. The water rights pertaining to those lands are riparian. In some
12 instances, however, the water rights are also covered by permits and licenses for appropriation.
13 There may be some instances of pre-1914 filings. The water rights of those lands in every case
14 known to Plaintiffs are considered "prior vested" water rights in relationship to the water rights of
15 the United States Bureau of Reclamation and Department of Water Resources. CDWA is
16 empowered to assist landowners to protect and assure a dependable supply of water of suitable
17 quality sufficient to meet personal and future needs.

18 Protestant LAFAYETTE RANCH is a California corporation which owns approximately 340
19 acres on Union Island in San Joaquin County. This acreage abuts Middle River and is located within
20 Sections 35 of Township 1 North, Range 5 East, Mount Diablo Base and Meridian. Protestant
21 LAFAYETTE RANCH farms said property which has in the past included row crops and alfalfa.
22 Such land is riparian to Middle River, and Protestant also has appropriative rights under license 3677
23 (Application #11694). The land has been under irrigation for most of the past century. Protestant
24 is already being damaged by reduced water flows and quality from the San Joaquin River and may
25 suffer further injury in reduced crop values and impaired land as further alleged herein if the Petition
26 is granted.

27 The Protestants have read the notice of the Petition to Change and may be contacted at the
28 address listed on Protest form.

1 cost of operating irrigation pumps is increased.

2 **CURRENT STATUS OF UPSTREAM WATERSHEDS**

3 The operation of the Friant Unit of the Central Valley Project (“CVP”) severs the hydraulic
4 connection between the upper San Joaquin River and the lower San Joaquin River and Sacramento-
5 San Joaquin Delta (“Delta”) for much of the year. The Friant Unit stores and diverts water from the
6 upper San Joaquin River for delivery to places such as Kern County which is outside the watershed
7 of the San Joaquin River.

8 These diversions and deliveries reduce the average annual flow into the Delta by
9 approximately 544-943 TAF, with reductions in April-September of 347-526 TAF. This decrease
10 in flow deprives downstream riparian and senior appropriators of water at times when there is
11 inadequate supply, quality, and level for their beneficial needs.

12 In addition, the Friant Unit makes no downstream releases towards meeting Water Quality
13 Objectives for Agricultural Beneficial Uses on the San Joaquin River or in the Delta as set forth in
14 the 1995 Water Quality Control Plan. This results in the burden of meeting such Objectives being
15 shifted to New Melones Dam/Reservoir which is incapable of meeting those Objectives on a regular
16 and sustained basis.

17 Further, the operation of the Friant Unit deprives the San Joaquin River below Friant Dam
18 of sufficient flow to sustain indigenous fisheries, including anadromous fish, especially that portion
19 of the river above the Mendota pool.

20 The operation of the CVP causes other adverse effects in the South Delta. The operation of
21 the CVP export pumps in the Delta substantially decreases the height of the water levels, especially
22 the low tide level to the point where local syphons and pumps are sometimes incapable of operating.
23 Although other factors affect channel morphology, only the export pumps decrease the height of the
24 water.

25 The operation of the CVP and State Water Project (“SWP”) export pumps also alter the flow
26 in the channels creating reverse flows and stagnant zones. This results in insufficient flushing of
27 Delta waters and the concentration of all constituents, including municipal effluent and salts from
28 upstream return flows.

1 addition, the Bureau has refused to continue settlement negotiations with SDWA regarding the issue
2 of San Joaquin River flows. [Issues of flows, quality, channel levels, reverse flows, etc., were raised
3 in the suit SDWA brought in 1982 against USBR & DWR.] Thus, the prior vested rights of SDWA
4 members are not fully protected. In addition, said change and additional use by Petitioners may at
5 times be made when there is no net downstream flow in the channels of the southern Delta or when
6 there is subsurface but not surface hydraulic continuity between the point of diversion and the
7 Protestants, thus further damaging and violating prior vested rights or Protestants. Reservation of
8 Board jurisdiction over said Petition would not prevent present and immediate damage to prior
9 vested rights by said proposed changes of use.

10 Although the tidal barrier program in the southern Delta can address some of the harm caused
11 by the State and Federal projects, those barriers are not allowed to operate at all times needed. The
12 barrier project is also subject to State and Federal funding.

13 The system is currently over-committed and unable to provide all legal users with the amount
14 of water desired or needed, and granting the Petition will decrease the supply. This will necessarily
15 cause harm to other legal users. Pursuant to the requirements of the Water Code, the Petition cannot
16 be granted if such harm will occur.

17 The continued flows of the San Joaquin River System and the Sacramento River System, and
18 their respective tributaries, uninterrupted and without diminution by the proposed diversions for
19 which the above Petition has been made, is essential to the continued prosperity and welfare of the
20 owners and operations of land in the San Joaquin and Sacramento River Delta Area, and to the
21 individual Protestants.

22 **PROTEST AGAINST PETITION**

23 The Protestants, being convinced of injury to themselves and others owners of land lying
24 within the Delta Area if the proposed changes are granted due to injury to the water supply of the
25 lands within its boundaries, protest the granting of the same upon the following grounds, to-wit:

- 26 (a) The proposed changes will result in the Petitioners increasing the amount of water
27 they will use as they propose to capture, store, and later use or release for
28 downstream use an amount of water greater than they would have absent the change.

- 1 (b) The proposed changes have not been subject to any adequate CEQA review and thus
2 cannot be granted.
- 3 (c) The Petitioners' analysis does not accurately evaluate the actual changes in
4 downstream flows because the operations used in the analysis do not reflect actual
5 or likely Petitioner operations.
- 6 (d) The proposed changes will decrease flows at times of the year when downstream
7 riparians and senior right holders have insufficient water to divert. In addition, those
8 decreased flows will adversely affect the flushing of salts from Delta lands at times
9 when there is sufficient water for diversion needs.
- 10 (e) The analysis of the proposed changes fails to examine the project as a whole, rather
11 it sets forth a piecemeal analysis which masks the effects.
- 12 (f) The analysis of the proposed changes does not address the SWRCB's conclusions in
13 D-1641 regarding how changes in operations can adversely affect legal users.
- 14 (g) The Proposed changes constitute a violation of Water Code §§ 1392 or 1629, which
15 adversely affect the availability of water for the environment and other potential
16 water users.
- 17 (h) That the proposed changes or additional diversion, if permitted, will contribute to
18 reducing and altering the direction of the natural flows in the rivers, channels, canals
19 and sloughs in the Delta Area, thereby reducing the quantity of irrigation water
20 available and adversely affecting the distribution of good quality water available in
21 the Delta and tributary area.
- 22 (k) The proposed changes or additional diversion, by reducing the water supply in the
23 channels, rivers, canals, and sloughs in the Delta Area will endanger the remaining
24 water supply by (i) permitting the incursion of salt water from San Francisco Bay,
25 and (ii) by permitting a deterioration in the quality of the water in the rivers,
26 channels, canals, and sloughs in the Delta Area and upstream as a result of the
27 drainage from lands upstream to the Delta Area and the lack of adequate downstream
28 flow to dilute and flush those drainage salts.

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- (l) The proposed changes or additional diversion, if permitted, will constitute an infringement upon and a violation of water and property rights of the individual Protestant and of owners and operators of lands in the SDWA and of lands lying generally within the Delta Area.
- (m) The approval of the proposed changes or additional diversion and increased consumptive use would violate sections 12230 through 12232, sections 12200-12205, and 1200, et seq. of the Water Code.
- (n) The proposed changes or additional diversion and resulting increase in consumptive use would reduce the downstream flow of the San Joaquin River into the Delta and at times prevent downstream flow through Delta channels and past lands of the individual protestant, and lands within the Agency.
- (o) The approval of the change or additional diversion and resulting increase in consumptive use would be detrimental to the public interest, be in violation of and detrimental to the uses protected by the public trust, and cause damage to the environment.

WHEREFORE, Protestants pray that the Petition be denied unless and until comprehensive conditions to protect downstream beneficial uses are adopted:

Respectfully submitted,

Dated: April 13, 2009



JOHN HERRICK, Attorney for Protestants

1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3) ss.
4 County of San Joaquin)

5 I am a citizen of the United States and a resident of the County of San Joaquin. My
6 business address is 4255 Pacific Avenue, Suite 2, Stockton, California 95207. I am over the
7 age of eighteen years and not a party to the within entitled action. I am readily familiar with
8 the practice of the Law Office of John Herrick for collection and processing of
9 correspondence for mailing with the United States Postal Service. In the ordinary course of
10 business of the Law Office of John Herrick, correspondence is deposited with the United
11 States Postal Service the same day as it is collected and processed.

12 On Aril 13, 2009, I served the within **PROTEST OF PETITION** on the interested
13 parties in said action, by placing a true copy thereof enclosed in a sealed envelope with
14 postage thereon fully prepaid, and placed for collection and mailing on said date to be
15 deposited with the United States Postal Service following ordinary business practices at
16 Stockton, California, addressed as follows:

17 **Department of Water Resources**
18 **c/o Robert B. Cooke, Chief**
19 **State Water Project Analysis Office**
20 **P. O. Box 942836**
21 **Sacramento, CA 94236-0001**

22 **United States Bureau of Reclamation**
23 **c/o Ron Milliegan, Operations Manager**
24 **Central Valley Operations Offide**
25 **3310 El Camino Avenue, Suite 300**
26 **Sacramento, CA 95825**

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct.

EXECUTED on April 13, 2009. at Stockton, California.

29 
30 Dayle Daniels