

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.waterboards.ca.gov/waterrights>

PROTEST- PETITION

This form may also be used for objections

PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE OR TRANSFER ON

APPLICATION _____ PERMIT _____ LICENSE _____

OF *Permits 16478, 16479, 16481 and 16482 of Department of
Water Resources for State Water Project; and
*Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364,
12721, 12722, and 12723 of Bureau of Reclamation for the Central Valley Project

I (We) have carefully read the NOTICE OF PETITION, REQUESTING CHANGES IN WATER RIGHTS OF THE DEPARTMENT OF WATER RESOURCES AND U.S. BUREAU OF RECLAMATION FOR THE CALIFORNIA WATERFIX PROJECT, dated October 30, 2015

Address, email address and phone number of protestant or authorized agent:

DOWNEY BRAND LLP David Aladjem/Kevin O'Brien
621 Capitol Mall, 18th Fl. daladjem@downeybrand.com/kobrien@downeybrand.com
Sacramento, CA 95814 TEL (916) 444-1000

ON BEHALF OF: Brannan-Andrus Levee Maintenance District; Reclamation District 407;
Reclamation District 2067; Reclamation District 317; Reclamation District 551; Reclamation
District 563; Reclamation District 150; Reclamation District 2098

Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):

- the proposed action will not be within the State Water Resources Control Board's jurisdiction
- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations:

See Attachment Item 1

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)

See Attachment Item 2

STATE OF CALIFORNIA
GENERAL INVESTIGATIVE
DIVISION

2016 JAN -5 AM 11:05

STATE WATER RIGHTS
SACRAMENTO

ATTACHMENT TO PROTEST TO WATER RIGHTS CHANGE PETITION OF DWR AND RECLAMATION FOR CALIFORNIA WATERFIX PROJECT

Item 1

Protestants believe that the California WaterFix Project (Project) would have significant and adverse impacts on the environment, would not best serve the public interest and would be contrary to law in the following ways:

1. The SWRCB Cannot Rely on the RDEIR/SDEIS During the Hearing. The hydrologic modeling that was done in connection with Alternative 4A (Cal WaterFix) was fundamentally flawed, as described in Technical Comments on the Bay Delta Conservation Plan/California Water Fix Partially Recirculated Draft EIR/Supplemental Draft EIS, dated October 28, 2015 by MBK Engineers, one of the most respected engineering firms in California, which has extensively analyzed operations of the CVP and SWP. Based on that analysis, which is incorporated herein by reference, Cal WaterFix modeling suffers from the following flaws:
 - a. The incorporation of climate change into the modeling ignores reasonably foreseeable adaptation measures.
 - b. The model was built on a benchmark study with numerous inaccuracies.
 - c. The model coding and data issues significantly skew the analysis and conflict with actual real-time operational objectives and constraints.
 - d. The "high outflow scenario" is not sufficiently defined for analysis.
 - e. Delta Cross-Channel operational assumptions overestimate October outflow.
 - f. San Luis Reservoir operational assumptions produce results inconsistent with real-world operations.

These omissions and flaws make it impossible for the SWRCB or any party to this proceeding to draw any conclusions about how the proposed change might alter the operations of the CVP and SWP, or to analyze how the environment would be impacted. Thus, the Petition fails to satisfy the requirements of the SWRCB regulations and should be summarily dismissed.

2. Adverse Impacts on Fisheries. As described in the comments submitted by the North State Water Alliance on the Bay-Delta Conservation Plan Draft EIR/S in July 2014 and on the Project's RDEIR/SDEIS in October 2015, which are hereby incorporated by reference, the Project would have a very significant adverse effect on anadromous and pelagic fish in the Delta, potentially to the point of extirpation.

3. Adverse Impacts to Water Quality. As described in the comments submitted by the North State Water Alliance on the Bay-Delta Conservation Plan Draft EIR/S in July 2014 and on the Project's RDEIR/SDEIS in October 2015, which are hereby incorporated by reference, the Project would have a significant adverse effect on water quality in the Delta, potentially failing to satisfy applicable water quality standards in the Delta. In addition, those adverse impacts on water quality create conditions in the Delta that are most hospitable to invasive species, which place further stresses on native species and further degrade water quality.

4. Adverse Impacts on Flood Control Facilities. As documented in both the Bay-Delta Conservation Plan Draft EIR/S and the RDEIR/SDEIS, construction of the Project would have a variety of adverse effects on flood control facilities located in the Delta. Depending on the location of each of the Protestants, those effects involve the following:

- a. Impacts on Levees. In areas that would serve as haul routes or other construction corridors, the Project would require tens of thousands, if not hundreds of thousands, of truck trips over the period of construction. Delta levees – while adequate to prevent flooding for local areas – were never constructed to bear the tremendous loads associated with such construction. If the obligation to maintain these levees falls on local reclamation districts, those districts lack the resources to maintain levees given the burden of construction. The Project proponents have not indicated that they will upgrade levees to meet the necessary standards at their own cost. Thus, the likely result of Project construction is to

increase the likelihood of levee failures. It is noteworthy that the Project proponents use the likelihood of levee failure as a selling point for the Project (i.e., the levees in the Delta are so sub-standard that the Project is required) but then rely on those very same levees for one of the largest construction projects in history.

b. **Impacts on Drainage.** One important element of the Project will be the disposal of many thousands of tons of drilling "muck," which is a combination of soil and various contaminants needed for the operation of the drilling rigs. The Project proposes to dispose of muck in a series of muck piles tens of feet tall across the Delta. In the areas where those muck piles will be located, it is likely that the deposition of large amounts of earth will dramatically and irreversibly change historical drainage patterns within Delta islands. Depending on the location, these changes could cause internal flooding, additional subsidence of Delta soils, and the disruption of farming activity. All of those effects would be contrary to the public interest and are adverse effects on the environment.

c. **Impacts on Land Values.** The Project's effects on flood control levees, on drainage and water quality, and on adequate water quantity and quality to serve existing water demands within the Delta, among others, are likely to limit the crops that can be grown within the Delta and/or the yields of those crops. In either case, a reduction in cropping revenue means that there will be, over time, a reduction in land values and in the ability of local agencies to impose assessments to fund flood control works, drainage and other necessary infrastructure. If local agencies are unable to meet these needs, there is an increased likelihood of flooding, of further reductions in cropping revenues, etc. Thus, the Project is likely to have a very significant adverse effect on local agencies in the Delta, which is contrary to the public interest.

5. **Violation of the "Delta as Place" Requirement in the Delta Plan.** The Delta Reform Act, in Water Code section 85301, requires the Delta Stewardship Commission to adopt the Delta Plan, which serves as a blueprint to coordinate the activities of local, state and federal agencies in the Delta. One of the most important innovations of the Delta Plan was to recognize the unique character of the Delta and seek to preserve the "Delta as Place" despite the many challenges (manmade and natural) to the Delta. Because the Project would have all of the adverse effects described above, though, the Project would have an extremely detrimental effect on the natural environment and the human communities in the Delta. In those ways, the Project is not consistent with the Delta Plan's requirement that any conveyance facilities preserve the Delta as a place where people may live, work and recreate.

Item 2

Protestants are willing to dismiss this protest on the following terms and conditions:

Petitioners agree to meet the terms of all settlement agreements for water quality or water deliveries within the Delta, such as the North Delta Water Agency agreement or the East Contra Costa Irrigation District contract.

Petitioners will maintain water quality in the Delta at levels that are no more saline (during equivalent year types) than conditions prior to the Project.

Petitioners will meet water quality standards contained in Decision No. 1641 or any subsequent water right decision in perpetuity.

Petitioners will obtain approval from appropriate local agencies for the deposition of muck.

Petitioners will fund any additional costs that may be incurred by local flood control agencies to operate and maintain levees used as part of the construction of the Project.

Petitioners will establish a mitigation fund to compensate growers, local businesses and local agencies for lost revenues during the period of Project construction.

DOWNEY BRAND LLP

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 621 Capitol Mall, 18th Floor, Sacramento, California, 95814-4731. On January 5, 2016, I served the within document(s):

PROTEST – PETITION (Brannan-Andrus Levee Maintenance District, RD 407, RD 2067, RD 317, RD 551, RD 563, RD 150, RD 2098)

NOTICE OF INTENT TO APPEAR (Brannan-Andrus Levee Maintenance District, RD 407, RD 2067, RD 317, RD 551, RD 563, RD 150, RD 2098)

- BY E-MAIL:** by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

California Department of Water Resources
c/o James Mizell
1416 Ninth Street, Room 1104
Sacramento, CA 95818
James.Mizell@water.ca.gov

U.S. Bureau of Reclamation
c/o Amy Aufdemberge
U.S. Department of Interior
Office of Regional Solicitor, Pacific
Southwest Region
2800 Cottage Way
Sacramento, CA 95825-1898
Amy.Aufdemberge@sol.doi.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on January 5, 2016, at Sacramento, California.


Catharine F. Irvine