

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 (See Attachment Item 1.) LICENSE _____

of the California Department Of Water Resources ("DWR") and the
United States Department Of The Interior, Bureau Of Reclamation ("Reclamation")

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:

Name (Print): COUNTY OF COLUSA
Mailing Address: Marcos Kropf, County Counsel
1213 Market Street
Colusa, CA 95932

Phone Number: (530) 458-8229 Fax Number: _____

E-mail: MKropf@countyofcolusa.com

Supplemental sheets are attached. To simplify this form, all references herein are to
protests and protestants although this 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 2.

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 3.

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows:

See Attachment Item 4.

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 (identify type of right protestant claims, such as permit, license, pre-1914 appropriative or riparian right):

See Attachment Item 5.

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).

See Attachment Item 5.

Where is your diversion point located? See Attachment Item 5.

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion?

See Attachment Item 5.

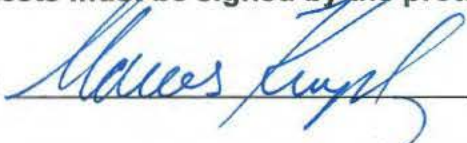
The extent of present and past use of water by protestant or his predecessors in interest is as follows:

- a. Source See Attachment Item 5.
- b. Approximate date first use made See Attachment Item 5.
- c. Amount used (list units) See Attachment Item 5.
- d. Diversion season See Attachment Item 5.
- e. Purpose(s) of use See Attachment Item 5.

Under what conditions may this protest be disregarded and dismissed?

See Attachment Item 3.

All protests must be signed by the protestant or authorized representative:

Signed:  Date: 1/5/2016

All protests must be served on the petitioner. Provide the date served and method of service used.

Electronic Service on January 5, 2016

**ATTACHMENT TO COUNTY OF COLUSA'S PROTEST TO WATER RIGHTS
CHANGE PETITION OF DWR AND RECLAMATION FOR CALIFORNIA WATERFIX
PROJECT**

Introduction

The County of Colusa ("County") holds a water service contract to receive water from the federal Central Valley Project ("CVP"). The County is located within the service area of the Tehama-Colusa Canal Authority ("TCCA"), which is a joint exercise of powers agency of water entities that receive water from CVP. The TCCA service area is 150,000 acres of irrigated farmland located along the west side of the Sacramento Valley in the counties of Yolo, Colusa, Glenn and Tehama. TCCA was formed in part to secure a reliable water supply that would meet the needs of its member agencies, as well as exercising their rights to water originating in the Sacramento Valley. TCCA has previously prepared and submitted detailed comments on the Bay-Delta Conservation Plan Draft EIR/EIS (DEIR/EIS), and the California WaterFix Recirculated DEIR/Supplemental DEIS (RDEIR/SDEIS). In addition, TCCA has incorporated and joined comments on these documents of the North State Water Alliance ("NSWA"). The County will coordinate with TCCA and other NSWA parties to present a consolidated case-in-chief during the State Water Resources Control Board's ("SWRCB's") hearing on certain common issues, including issues regarding whether the requested changes would operate to the injury of any legal user of the water involved and whether the requested changes would unreasonably affect fish and wildlife. Consistent with this approach, the County, TCCA and the other NSWA parties have identified in their respective Notices of Intent to Appear both witnesses who will be providing testimony to support their individual protests and witnesses who will be providing testimony on certain common issues.

Item 1 (Petitioners' Permits)

DWR: Permits 16478, 16479, 16481 and 16482 (Applications 5630, 14443, 14445A, 17512)

Reclamation: Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722 and 12723 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 17376, 5626, 9363 and 9364)

Item 2 (Facts Supporting Protest Based on Environmental or Public Interest Considerations)

Water Code section 1701.2(c), requires a water rights change petition to include “all information reasonably available to the petitioner, or that can be obtained from the Department of Fish and [Wildlife] concerning the extent, if any, to which fish and wildlife would be affected by the change, and a statement of any measures proposed to be taken for the protection of fish and wildlife in connection with the change.”

Although the supplement to the California Department of Water Resources’ (“DWR’s”) and the federal Bureau of Reclamation’s (“Reclamation”) August 25, 2015 Petition (the “Petition”) contains general statements about the California WaterFix Project’s alleged benefits to fish and wildlife (see Petition Supplement, pp. 14-15), the Petition does not contain sufficient information to satisfy the requirements of section 1701.2(c). Moreover, none of the documents required for compliance with the Endangered Species Act have been completed or released for public review in connection with the Petition. This additional information and analysis could significantly impact project operations and must be disclosed before the Petition is granted.

The Petition does not discuss any of the evidence presented in TCCA’s July 29, 2014 comments on the DEIR/EIS or in TCCA’s October 30, 2015 comments on the RDEIR/SDEIS. The Petition also does not discuss any of the evidence presented in NSWA’s July 28, 2014 comments on the DEIR/EIS or in NSWA’s October 30, 2015 comments on the RDEIR/SDEIS, both of which were incorporated in full into TCCA’s own comments. That evidence describes in great detail the adverse effects that the proposed California WaterFix Project would have on fish and wildlife.

Among other things, these previously submitted comments include detailed comments by fisheries expert Dave Vogel, which concluded that the California WaterFix Project would cause catastrophic adverse impacts on anadromous salmonids. Most notably, because of the proposed Project intakes’ specific locations on the Sacramento River, there would be insufficient sweeping velocities to avoid impingement of fish against the intake screens and associated injuries. The estimated fish exposure times in front of the proposed intakes (which is a measure of the threat to migrating salmonids) are very long, especially in comparison to exposure times for other fish screens in California.

The comments also include expert analysis by Professor Robert Latour, which describes how operation of the proposed new California WaterFix diversion facilities would adversely impact Delta smelt life stages, including survival, growth, maturation schedules, and reproductive success over short, medium and long time periods. The Petition does not discuss any of this information and instead simply states that the proposed new points of diversion would be located outside of the primary habitat of Delta smelt and longfin smelt. (Petition Supp., at pp. 7-8.)

Finally, the previously submitted comments also state that operation of the California WaterFix Project's proposed north Delta diversion could adversely affect Sacramento Valley waterfowl and the Pacific Flyway by reducing diversions of water in the Sacramento Valley that support avian habitat values on both irrigated cropland and wetlands. Mark Petrie of Ducks Unlimited described these impacts in detail in his comments submitted to the SWRCB in 2012. (See http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments111312/mark_petrie.pdf.)

Item 3 (Conditions Under Which This Protest May Be Dismissed)

The County is working with TCCA, other NSWA parties and other CVP water service contractors to develop proposed conditions for DWR's and Reclamation's water right permits that would be sufficient to allow the County to dismiss its protest. The County plans to submit those proposed conditions before or during the SWRCB's hearing on DWR's and Reclamation's Petition. In general, those conditions would require DWR and Reclamation to operate the State Water Project and the Central Valley Project in a manner that would eliminate the potential impacts described in Items 2 and 4 of this protest and assure an allocation of project water to CVP water service contractors in accordance with hydrologic conditions and the rights of such contractors under the Watershed Protection Act (Section 11460 *et seq.*).¹

¹ The Watershed Protection Act (§11460 *et seq.*) provides a means to obtain an alternative water supply through a contract with Reclamation or DWR. The statute reserves a priority for the beneficial use of water within its area of origin that can be asserted by someone who has or seeks a contract with Reclamation or DWR for the use of that water. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 758.)

Item 4 (Facts Supporting Protest Based on Injury to Prior Rights)

The County diverts and uses water under its water service contract with Reclamation. CVP water service contractors are "legal users of water" within the meaning of Water Code section 1702. (See SWRCB Cases (2006) 136 Cal.App.4th 674, 804.) The County's specific rights are described in Attachment Item 5.

Although the Petition purports to seek only a change in point of diversion, the requested change will result in what would amount to a complete re-operation of the State Water Project ("SWP") and CVP. If the SWRCB were to grant DWR's and Reclamation's water rights change petition, and if DWR and Reclamation then were to operate the SWP and the CVP to divert and re-divert water at the proposed new points of diversion, then the County could be injured in several ways, including the following: (a) the new operations of the SWP and CVP could result in lower SWP and CVP settlement contract and water service contract water supplies being available for diversion and use by the County than would occur without the California WaterFix project; (b) these new operations could change the amounts of storage in SWP and CVP reservoirs and the flows in rivers controlled by the SWP and CVP, and could result in physical limitations on the abilities of the County to divert water under its CVP contract, Warren Act and other contracts or its water rights; (c) the new Delta flow criteria required by section 85086, subdivision (c)(2) could be incorporated into a revised Bay/Delta Water Quality Control Plan, and the County could be required to contribute to the implementation of those new requirements; and (d) new operations of the SWP and CVP could result in increased costs to water service contractors (i.e. costs associated with CVP water delivered to south of delta refuges), including the County that is not a project beneficiary.² If the SWRCB issues an order approving DWR's and Reclamation's petition, then the order should include sufficient conditions on the operation of the SWP and CVP to assure that such potential injuries to the County will not occur.

Water Code section 1702 provides that, before the SWRCB may issue an order granting a water rights change petition, "the petitioner must establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved." To meet the requirements in section 1702 that apply to petitioners, and to assist the SWRCB in meeting its obligations under Water Code section 1702, the SWRCB's regulations, California Administrative Code, title 23, section 794, subdivision (a), require each water rights change petition to provide various types of information, including the following:

² Water Code section 85086, subdivision (c)(2), provides that any SWRCB order approving the California WaterFix petition "shall include appropriate Delta flow criteria." Section 85086, subdivision (c)(1) provides that these criteria "shall include the volume, quality, and timing of water necessary for the Delta ecosystem under different conditions." Parts I and II of the SWRCB's hearing on the California WaterFix petition should address whether the Petitioners can implement the appropriate flow criteria contained in any SWRCB order on the petition without causing injury to other legal users of water and without causing any unreasonable effects on fish and wildlife.

- (1) The amount(s) of water which would have been diverted, consumptively used, or stored under the water right in the absence of the proposed change(s), (a) during the period for which the change is requested, or (b) in a maximum year if the change is permanent;
- (2) The amount(s) of water proposed for change, transfer or exchange;

...

- (6) The existing and the proposed diversion, release and return flow schedules if stored water is involved or if the streamflow regime will be changed.

...

- (9) Information identifying any effects of the proposed change(s) on other known users of water, including identification in quantitative terms of any projected change in water quantity, water quality, timing of diversion or use, consumptive use of the water, reduction in return flows, or reduction in the availability of water within the streams affected by the proposed change(s).

DWR's and Reclamation's Petition for the project does not contain this required information. Instead, the Petition simply states that it is "limited in scope" and "proposes only to add points of diversion and rediversion" and not to change "any other aspect of existing SWP/CVP permits." (Petition Supp., at p. 1.)

The Petition goes on to state that "operations both now and in the future will not impact the quantity of water available for water users in the watershed because these demands are accounted for prior to diversions to storage or export." (Petition Supp., at p. 19.) The Petition, however, does not demonstrate that the proposed changes would not operate to the injury of any legal user of the water involved, and specifically to the County because: (i) the Petition does not describe any definite operation plan for the CVP and the SWP with the proposed new points of diversion, (ii) the modeling conducted by DWR and Reclamation during the CEQA/NEPA process was flawed (see TCCA's July 29, 2014 and October 30, 2014 comments incorporating NSWA's July 28, 2014 comments on the DEIR/EIS and NSWA's Oct. 30, 2015 comments on the RDEIR/SDEIS), and (iii) there is no analysis of the potential effects of the proposed project on the Coordinated Operations Agreement. As discussed in the MBK Engineers technical memoranda that were included in NSWA's comments, the modeling that DWR and Reclamation conducted for the DEIR/EIS and RDEIR/SDEIS has the following flaws:

1. The incorporation of climate change into the model improperly relies on only one climate change projection when many climate change scenarios are possible, and improperly ignores reasonably foreseeable adaptation measures.
2. The model was built on a benchmark study that had numerous inaccuracies.

3. The model coding and data issues significantly skew the analysis and conflict with actual real-time operational objectives and constraints.
4. The “high outflow scenario” is not sufficiently defined for analysis.
5. Delta Cross-Channel operational assumptions overestimate October outflow.
6. San Luis Reservoir operational assumptions produce results inconsistent with real-world operations.

The Petition refers to the analysis of Alternative 4A in the RDEIR/SDEIS. (Petition Supp., at pp. 12, 13.) However, neither the Petition nor the RDEIR/SDEIS contains sufficient information regarding the details of how the CVP and SWP would operate if the SWRCB were to grant the Petition, particularly with respect to the amounts of spring outflow and the quantity and timing of water diverted at the proposed new points of diversion and re-diversion. For example, the RDEIR/SDEIS and the Petition state that additional outflow may be required in order to meet the needs of threatened and endangered fish species (RDEIR/SDEIS at p. 4.1-13; Petition Supp., at p. 13), but neither the Petition nor the RDEIR/SDEIS describes the quantity, the timing or the source of water for this additional outflow. In addition, the Petition does not state when water would be diverted at each of the various existing and proposed points of diversion or what the quantities of diversions at each point of diversion would be. The Petition does not even state how DWR and Reclamation would make the decisions about where and when to divert water. As a result, neither TCCA nor the SWRCB can evaluate the potential effect of proposed Project operations.

Moreover, the modeling runs used for the environmental analysis in the RDEIR/SDEIS: (i) do not comport with the proposed flows in Alternative 4A, and (ii) overestimate Delta outflow and underestimate exports by several hundred thousand acre-feet per year. For example, the model calculates compliance with salinity water quality objectives mandated by SWRCB Revised Decision 1641 (“RD-1641”) at Three Mile Slough. In contrast, Alternative 4A contemplates compliance with the same salinity requirement at Emmaton, which is located substantially downstream from Three Mile Slough. Compliance with this requirement at Three Mile Slough would require less outflow than would be required for compliance with the same requirement at Emmaton. Because the modeling analysis assumed compliance with this requirement would occur at Three Mile Slough while the proposed Alternative 4A now contemplates compliance with this requirement at Emmaton, the estimates of the outflows needed to meet salinity standards that were used in the modeling are too low.

Moreover, the flawed modeling that was used for the DEIR/S and not corrected in the RDEIR/SDEIS overestimated Delta outflows by about 200,000 acre-feet/year and underestimated exports to the CVP South of Delta and SWP contractors by about the same amount. That flawed modeling further underestimated diversions at the North Delta Diversion by about 500,000 acre-feet/year, thereby overestimating flows into the

Delta and concluding that Project operations in the Delta would be much more benign than they actually would be.

Operations of the SWP and CVP using the proposed points of diversion and rediversion must preserve water right priorities. (*El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal. App. 4th 937, 966.) In addition, DWR and Reclamation must demonstrate that the future CVP and SWP operations with the proposed changes in points of diversion would not injure the ability of users within the area of origin to meet their demands in the future. The County diverts and uses water within areas where water currently being exported originates. California law expressly recognizes the prior right of users in these areas of origin to the water that is currently being exported, to the extent that water will be needed in the future to adequately supply the beneficial needs of those areas. (Water Code §§ 10505, 10505.5, 11460, 11463, and 11128; see also §§ 12200-12220.) Demand for water in the County's service area has exceeded existing water service contract amounts and is expected to increase in the future. Petitioners must demonstrate how future operations of the CVP and SWP would avoid requiring upstream senior and area-of-origin diverters and CVP and SWP contractors, none of whom would be benefitted by the proposed changes, to forego diversions so that the CVP and SWP can meet their operational requirements.

For example, in dry years such as those experienced in the last two years, DWR and Reclamation have not been able to meet the D-1641 flow and salinity requirements. They filed several temporary urgency change petitions, which asked to SWRCB to reduce these requirements. Meeting existing flow and salinity requirements therefore could require additional flows in the interior Delta during future dry years. However, the proposed new diversion of water north of the Delta would reduce freshwater inflows into the Delta. To meet even existing standards while reducing Delta inflows without adverse impacts to upstream legal users of water, the CVP and SWP would need some new source of water, but no new source of water is described in the Petition.

The RDEIR/SDEIS states that such water would be obtained through water transfers, project reoperation or other sources. (RDEIR/SDEIS at 4.1-6.) However, this general statement does not meet the requirement that the petitioners demonstrate that the project would not injure other legal users of water. Indeed, the petitioners have not shown that transfers would be physically or legally possible or that any willing sellers would be available to effectuate a transfer. Petitioners must submit sufficient evidence and an adequate operational plan to establish that they would not operate facilities at the proposed points of diversion and re-diversion in a manner that would injure other legal users of water.

Item 5 (Specific Information Regarding Protestant's Water Rights)

The County of Colusa has a contractual right to an allocation of Central Valley Project water, as well as the right to renew that contract. The County also has the right to acquire a contractual right to an allocation of Central Valley Project water. The County intends to exercise the full extent of those rights, notwithstanding any previous constraints by Reclamation's allocations in dry years.

County of Colusa	
USBR Contract No.	<u>14-06-200-8310A-LTR1</u>
Points of Diversion (Upstream of proposed change):	Red Bluff Pumping Plant
Source:	Sacramento River
Approx. date first use made:	November 18, 1975
Acre-Feet authorized Under Contract	About 900, to be confirmed by the Bureau of Reclamation
Extent of Past Use:	County of Colusa has exercised its contract rights in previous years to the extent that water has been made available by Reclamation, including by assignment of its contract rights to entities in the TCCA service area.
Extent of Present Use:	County of Colusa intends to use all of the water available under its right to the extent such water can be put to reasonable and beneficial use.
Diversion Season:	March through February
Purpose of Use:	Irrigation; M&I