

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**

**PROTEST AGAINST PETITION FOR CHANGE ON**

**APPLICATION(S) 5630, 14443, 14445A, 17512,<sup>1</sup> PERMIT(S) 16478, 16479, 16481, and  
16482 and LICENSE \_\_\_\_\_<sup>1</sup>**

### **OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE UNITED STATES BUREAU OF RECLAMATION**

I, Colin Bailey, J.D., 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, and Notice of public hearing and pre-hearing conference to consider the above petition and, as a duly authorized representative of The Environmental Justice Coalition for Water (EJCW), do, hereby, submit this Protest Against the Petition on behalf of EJCW, its members, and people living in environmental justice communities throughout California, including and most especially those located in and around the San Francisco Bay Delta.

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

Mailing address: PO Box 188911, Sacramento, CA 95818-8911

Physical address: 909 12<sup>th</sup> Street, Suite 200, Sacramento, CA 95814

E-mail address: colin@ejcw.org

Phone number: (916) 432-EJCW (3529)

*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**

- The petition does not best serve the public interest
- The petition would be contrary to law
- The petition would have an adverse environmental impact

*State facts which support the foregoing allegations:*

**The proposed petition does not best serve the public interest** because:

- Other reasonable alternatives were not considered by the petitioners as part of the proposed project's environmental review. For example, alternatives that significantly reduce

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<sup>1</sup> Petition for diversion and rediversion submitted by DWR and the Bureau applies to Permits 16478, 16479, 16481, and 16482 and 16483 (Applications 5630, 14443, 14445A, and 17512, respectively) of the Department of Water Resources for the State Water Project; and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722, 12723, respectively) of the United States Bureau of Reclamation for the Central Valley Project.

reliance on Delta exports were not adequately considered, nor was an alternative considered that significantly reduces exports by placing fish and other public trust resource beneficial uses first in priority for river flows and Delta water quality relative to export uses.

- The cost to ratepayers and the public of the proposed project far exceeds the cost of reasonable alternatives that could achieve sustainable outcomes that are comparable and superior to the proposed project.
- Delta water exports the Tunnels would provide would continue irrigating agriculture in the western San Joaquin Valley that is not sustainable due to toxic runoff and drainage back to the San Joaquin River and the Delta.

**The change petition would be contrary to law** because:

- Tunnels construction would take 14 years according to the latest RDEIR/SDEIS and would dramatically harm the Delta as a unique place into a near-permanent construction zone, in violation of the Delta Reform Act of 2009.
- Tunnels operation would privilege water supply reliability over Delta ecosystem protection and enhancement, in violation of the coequal goals of the Delta Reform Act of 2009 (Water Code Section 85054).
- Tunnels construction and operation would violate beneficial uses and water quality objectives contrary to the federal Clean Water Act, which requires protection of the most sensitive beneficial uses as the standard by which all beneficial uses are protected.
- Tunnels operation would violate statewide policy mandating reduced reliance on the Delta for California's future water needs (Water Code Section 85021).
- Tunnels operation would violate the Endangered Species Act by reducing through-Delta survival rates of listed winter-run and spring-run Chinook salmon, creating jeopardy conditions while failing to contribute to the species recovery.
- The recirculated draft environmental impact report and supplemental environmental impact statement, as well as the change petition's previously released Bay Delta Conservation Plan draft environmental impact report/statement are inadequate and violate the California Environmental Quality Act and the National Environmental Policy Act.
- The three new diversions along the lower Sacramento River in the north Delta would reduce Delta inflow to an extent that is contrary to the Delta Protection Act of 1959 (Water Code Section 12200-12205).

**The petition would have an adverse environmental impact** because:

- Tunnels construction would create in-channel impacts on critical habitat of listed fish species like Delta smelt, longfin smelt, winter-run Chinook salmon, spring-run Chinook salmon, and green sturgeon through de-watering, installation of coffer dams, disturbance of channel sediments that may contain toxics, and other impacts identified in the RDEIR/SDEIS.
- Tunnels construction would have significant and unavoidable impacts on air quality and greenhouse gas emissions from the Delta during lasting at least 14 years, harming adjacent communities and public health, including respiratory problems of children.
- Tunnels construction and operation would have significant and unavoidable adverse impacts on environmental justice communities in and adjacent to the Delta due to the unacceptable impacts of the project on opportunities for safe and healthful subsistence fishing, contact recreation beneficial uses such as boating and swimming, residential drinking water quality (including cost of fresh water treatment), and loss of agricultural productivity and job opportunities resulting from poorer irrigation water quality and crop yields.

- Tunnels operation would decrease flows year-round into and through the lower Sacramento River and contribute to higher residence times of water remaining in the Delta and greater presence of more polluted San Joaquin River water in the Delta. This radical transformation in Delta hydrodynamics would have dramatic water quality impacts on the Delta, including increased salinity concentrations in agricultural and residential drinking water supplies, greater concentrations of pesticides, increased boron, nitrate, mercury, and selenium concentrations, as well as dissolved organic carbon and other adverse long-term impacts.
- The same water quality impacts in the Delta would occur in designated critical habitat of Delta smelt, longfin smelt, winter-run and spring-run Chinook salmon, and green sturgeon, all of which are listed under the federal Endangered Species Act, or the California Endangered Species Act.

**Protest based on based on INJURY TO A LEGAL USER OF WATER**

- The petition causes injury to a legal user of water

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: an injury to a legal user of water can occur through water quality impacts; it is the policy of the State of California that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes”. (Water Code section 106.3.)

**The change petition would cause an injury to water utility district customers** because:

- As stated above, the change petition would degrade water quality in the Delta, thereby, either degrading the quality of the water received by water utility district customers or increasing the cost of service to receive water to the household, adequate for human consumption, cooking, and sanitary purposes, or both.

**The change petition would cause an injury to domestic well owners and users** because:

- As stated above, the change petition would degrade water quality in the Delta, thereby, degrading the quality of the water produced by wells used for domestic purposes in the Delta and either increasing the cost of treatment to be adequate for human consumption, cooking, and sanitary purposes or the cost of securing alternative water sources or both.

**The change petition would cause an injury to subsistence fishers** because:

- As stated above, the change petition would degrade water quality in the Delta, thereby, increasing exposure to public health hazards vis-à-vis direct exposure of the body to degraded waters and consumption of contaminated fish by subsistence fishers in the San Francisco Bay-Delta, most of whom are low-income, people of color, including California Indian tribal members.

*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.)*

This protest may be disregarded and dismissed when the subject change petition described above is withdrawn from consideration before the State Water Resources Control Board.

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

Signed:  \_\_\_\_\_ Date: January 5, 2016

**All protests must be served on the petitioner.** Provide the date served and method of service used: Served on January 5, 2016, by electronic mail, as follows:

Attn: California WaterFix Hearing Staff	State Water Resources Control Board, Division of Water Rights	<a href="mailto:@waterboards.ca.gov">@waterboards.ca.gov</a>
James Mizell	California Department of Water Resources	<a href="mailto:.Mizell@water.ca.gov">.Mizell@water.ca.gov</a>
Amy Aufdemberge	US Department of Interior, Office of Regional Solicitor, Pacific Southwest Region	<a href="mailto:.Aufdemberge@sol.doi.gov">.Aufdemberge@sol.doi.gov</a>