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January 4, 2016

**Via Email to CWFhearing@waterboards.ca.gov
and First Class Mail**

State Water Resources Control Board
Division of Water Rights
Attn: California WaterFix Hearing Staff
P.O. Box 2000
Sacramento, CA 95812-2000

**Re: San Joaquin River Exchange Contractors Water Authority's Protest and
Notice of Intent to Appear - California WaterFix Petition for Change
Hearing**

Dear California WaterFix Hearing Staff:

Protestant San Joaquin River Exchange Contractors Water Authority hereby submits the enclosed Protest, and accompanying Notice of Intent to Appear, related to the Department of Water Resources' and the United States Bureau of Reclamation's water rights change petition for the California WaterFix Project.

As explained in the enclosed Protest, Protestant has previously prepared and submitted detailed comments on the Bay-Delta Conservation Plan Draft EIR/EIS (DEIR/EIS), and the California Water Fix Recirculated DEIR/Supplemental DEIS (RDEIR/SDEIS). The San Joaquin River Exchange Contractors Water Authority will similarly be coordinating with other parties to present a consolidated case-in-chief during the 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.

Other parties with concerns similar to those of the San Joaquin River Exchange Contractors may adopt in whole or in part these expert witnesses' testimony to support their respective protests. For this reason, these experts also may be listed on those other parties' Notices of Intent to Appear.

SWRCB California WaterFix Hearing Staff

January 4, 2016

Re: **San Joaquin River Exchange Contractors Water Authority's Protest and Notice of Intent to Appear - California WaterFix Petition for Change Hearing**

Page 2.

If you have any questions regarding the enclosed Protest or Notice of Intent to Appear, please do not hesitate to contact the undersigned.

Very truly yours,

MINASIAN, MEITH,
SOARES, SEXTON & COOPER, LLP

By:



PAUL R. MINASIAN

PRM:dd

Enclosures

cc w/enclosures: San Joaquin River Exchange Contractors Water Authority

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 _____
(see Attachment, Section 1 and Section 5)

**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:

Protestant:

San Joaquin River Exchange Contractors Water Authority
Steve Chedester, Executive Director
P.O. Box 2115, Los Banos, CA 93635
(209) 827-8616 Fax (209) 827-9703
E-mail: schedester@sjrecwa.net

Authorized Representative:

Minasian, Meith, Soares, Sexton & Cooper LLP
Paul R. Minasian
1681 Bird Street, Oroville, CA 95969
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E-mail: pminasian@minasianlaw.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 would not best serve the public interest
- the proposed action would be contrary to law
- the proposed action would have adverse environmental impacts

State facts which support the foregoing allegations: **see Attachment Section 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 Section 3**

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer would result in injury as follows: **see Attachment Section 4**

Protestant claims a right to the use of water from the source from which petitioners are diverting, or propose to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative right or riparian right): **see Attachment Section 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 Section 5**

Where is your diversion point located? **see Attachment Section 5**

If new point of diversion is being requested, is your point of diversion downstream from petitioners' proposed point of diversion? **see Attachment Section 5**

The extent of present and past use of water by protestant or its predecessors in interest is as follows: **see Attachment Section 5**

Under what conditions may this protest be disregarded and dismissed? **see Attachment Section 3**

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

Signed:  Date: 1/4/10

All protests must be served on the petitioner. Provide the date served and method of service used: **see Attachment Section 6**

**ATTACHMENT TO SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER
AUTHORITY'S PROTEST TO WATER RIGHTS CHANGE PETITION OF DWR AND
RECLAMATION FOR CALIFORNIA WATERFIX PROJECT**

Introduction

Protestant has previously coordinated and collaborated with other parties in preparing and submitting detailed comments on the Bay Delta Conservation Plan Draft EIR/EIS (DEIR/EIS) and the California WaterFix Recirculated DEIR/Supplemental DEIS (RDEIR/SDEIS). Protestant will similarly be coordinating with other parties to present a consolidated case-in-chief during the 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 and whether the requested changes will unreasonably affect fish and wildlife. Consistent with this approach, Protestant has identified in its Notice of Intent to Appear the expert witnesses that will be providing testimony to support their respective protests and witnesses who will be providing testimony on certain common issues. Because of the uncertainty engendered by the phasing, the lack of a specific operating plan and financing plan for the facilities and Delta channel facilities proposed, and proposed changes in WQCP conditions, inadequate notice is provided and further witnesses may need to be identified and called directly or by subpoena. Protestant reserves the right to do so.

Section 1 (Petitioners' Permits)

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

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

Section 2 (facts supporting protest based on environmental or public interest considerations)

Water Code section 1701.2, subdivision (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 Game, 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 DWR’s and Reclamation’s August 25, 2015 Petition (the “Petition”) contains some 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 Water Code section 1701.2, subdivision (c), in that the specific operating conditions which will be imposed as Reasonable and Prudent Measures to prevent injury to Federal and State listed threatened and endangered species have not been established in and as a result of the a consultation process, which is necessary in order to judge whether the operating criteria for the Cross-Channel Gates, the use of the WaterFix facilities, and the pumping regimes for the CVP and SWP will allow for continued or even enhanced operations of cross-Delta water conveyance capacity. It cannot be known without completion of the ESA and CESA processes whether the projected new facilities will be operable to provide more or less water for use south of the Delta and the effects of various operation scenarios of those facilities upon those fish and wildlife species. Without that information, if an attempt is made to approve the Petition with general operation terms to require those operations to conform to certain undefined and specified future Biological Opinion conditions or RPA’s, the harm, if any, to fish and wildlife species will not be known, and general conditions of this nature may in fact cause harm both to other species and to legal users of water in terms of their reliable supplies.

The San Joaquin River Exchange Contractors provides for the delivery of substantial CVP water to the Grasslands Water District and Federal and State Refuges utilized for waterfowl and other avian and terrestrial species within the Central Valley. The EIR/EIS is so indefinite in terms of the joint operations of the proposed WaterFix facilities and the existing cross-Delta conveyance facilities that it is impossible to establish conditions for dismissal of this Protest, if the Petition should be granted, which would reasonably assure capacity to deliver water from and through the Delta to the Exchange Contractors and to the waterfowl and other species habitat the Exchange Contractors serve. The uncertainty is such that the WaterFix facilities and their operation could in fact worsen conditions for waterfowl and other species in these areas by restricting capacity for water delivery and limiting the organizational and financial resources to maintain and then rehabilitate levees and repair breaches or failures in the parallel delivery system through the Delta channels to the CVP and SWP pumps, which facilities are essential for delivery of flows to these areas, essential for the maintenance of populations of Delta native species, essential for migration of anadromous fish through the Delta, and essential to performance of elements of the WQCP.

Section 3 (conditions under which this protest may be dismissed)

Protestant is working in collaboration with other agencies to develop proposed conditions for DWR's and Reclamation's water right permits that would be sufficient to allow protestant to dismiss its protest. Protestant and other parties plan to submit those proposed conditions for 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 SWP and CVP in a manner that would eliminate the potential impacts described in Sections 2 and 4 of this Protest and reduce or eliminate the risk that water will not be supplied by the CVP to the SJREC under the terms of the Exchange Contract for irrigation of SJREC's service area and to permit wheeling of CVP water to waterfowl habitat areas served by SJREC, while preserving to the extent consistent with those conditions reasonable amounts of San Joaquin River water for use by the CVP to serve

its Friant Project customers and SJREC when the Second Amended Exchange Contract requires that source to be utilized. In accordance with Water Code section 1703.4, Protestant will also consult with Petitioners and undertake a good faith effort to resolve the protest.

Section 4 (facts supporting protest based on injury to prior rights)

The SJREC parties divert and use water under pre-1914 appropriative and riparian rights, and contracts with PG&E, Southern California Edison and Reclamation. Protestant's specific rights are described in Attachment 5. Although the San Joaquin River Exchange Contractors Water Authority and its members, Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District and Columbia Canal Company, do not hold water rights for Delta flows with diversion points located within the Sacramento/San Joaquin Delta, they are nevertheless legal users of water pursuant to Water Code Section 1702. As explained in *the State Water Resources Control Board* cases at 136 Cal.App.4th 674 (2006) at pages 801-805, a legal user of water includes parties who are by the terms of a contract provided the right to receive water from the CVP through Delta diversions by the CVP, and the "no-injury" rule is to be examined and determined in regard to their contract rights to receive water available from that source. Unlike Westlands and other Bureau contractors addressed in the *SWRCB* case at page 805, *et seq*, the San Joaquin River Exchange Contractors are entitled to receive specific amounts of water from either the Delta delivery system or from the San Joaquin River flows (or a combination of those sources) and thus, injury occurs or will occur if delivery reductions to the SJREC exists in the operations of facilities or uncertainty in the amount of water availability from the Delta delivery system of the CVP are not resolved. Petitioners' showing that the California WaterFix facilities and their operation will have no detrimental effects and will not reduce the amounts and timing of water deliveries by the CVP...whether through the WaterFix facilities or the cross-Delta conveyance system and practices presently employed...is essential to granting the requested Change Petitions.

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 State Water Project ("SWP") and Central Valley Project ("CVP") to divert and re-divert water at the proposed new points of diversion, then SJREC parties could be injured in several ways, including but not limited to: (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; (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 as a result, could create physical limitations on the abilities of parties, including SJREC parties, to divert water under their CVP contracts or their water rights; (c) the new Delta flow criteria requirements of Water Code section 85086, subdivision (c)(2) could be incorporated into a revised Bay/Delta Water Quality Control Plan which could reduce the amounts of water available for delivery to SJREC required to contribute to the implementation of those new requirements¹. If the SWRCB issues an order approving DWR's and Reclamation's petition, then the order should include sufficient conditions on DWR's and Reclamation's operations of the SWP and CVP to assure that such potential injuries will not occur; and (d) the very general specification of the proposed operation of the new point of diversion and facilities and the presently used cross-Delta channel and gate system contemplates continued maintenance, repair and reconstruction of levees, channels, islands and other features, yet provides no means of financing, organizing and preserving those levee and channel functions. It is inherent in a project plan such as this where during emergency conditions in which the new diversion and tunnel facilities fail or the existing Delta channel facilities fail, that there must be a coordinated plan requiring the SWP and CVP to contribute with the local reclamation and levee districts to the funding, maintenance and functioning of the two independent delivery systems. Without a properly maintained Delta channel system, or the WQCP flows required to control salinity or protect species, the amounts

¹ Water Code section 85086, subdivision (c)(2) provides that any SWRCB order approving the California WaterFix petition "shall include appropriate Delta flow criteria". Water Code 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 will need to address the issue of ensuring that the appropriate flow criteria contained in any SWRCB order on the petition are capable of being implemented without injury to other legal users of water, and without causing any unreasonable effects on fish and wildlife.

of water required to meet water quality standards and any flow requirements of Section 85086 could be multiples of the quantities required in Decision 1641.

Further, without a condition in the Petition proposed by the CVP and SWP that priority and seniority of water rights will be abided by as to the water transported through the WaterFix facilities and a financial plan confirming that assurance for the initial construction cost and maintenance costs thereafter, the Petition is so indefinite as to be illusory and impossible to judge as to its ability to avoid injury to legal water users.

The EIR/EIS, including the recirculated document, fails to address this requisite of a properly described and examined Project under CEQA and NEPA, but equally important, it provides for no means of preventing attempts to maintain two independent systems as dissipating the available funding to provide for one or a composite of facilities which are properly maintained and protect reasonable and beneficial use of water supplies. The lack of a defined plan nearly assures that coordination of the efforts to protect the existing levee and channel system for water delivery will be dissipated by the new project. If the SWRCB order proposes to approve the Petition, conditions requiring the accumulation of funding, and the clear obligation of the CVP and SWP project not only to maintain the new facilities but to provide with local Delta agencies for funding of routine maintenance, inspection, rehabilitation and reconstruction of a levee system and channel system which is claimed to be threatened with destruction in order to implement the WQCP and deliveries of CVP and SWP water is essential. The conditions should include funding in advance of the reasonable estimates of those costs, including the costs of remedying levee failures, clear assignment of responsibility for using those monies in a timely fashion, and a means of preventing additional water supplies being dissipated because they are required to repel salinity and provide flows no longer channelized and conserved by failed levees or channels.

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:

- (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 California WaterFix 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 re-diversion” 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.) However, the Petition does not demonstrate that the proposed changes would

not operate to the injury of any legal user of the water involved because: (i) the Petition does not describe any definite operation plan for the CVP and the SWP with the proposed new points of diversion, and (ii) the modeling conducted by DWR and Reclamation during the CEQA/NEPA process was flawed (see comments on DEIR/EIS and RDEIR/SDEIS). As discussed in the MBK Engineers technical memoranda that were included in those 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 California WaterFix 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 be operated 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 interested parties nor the SWRCB can evaluate the potential effect of proposed Project operations.

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 State Water Resources Control Board 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.

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 North of the Delta 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 would be.

Operations of the SWP and CVP using the proposed points of diversion and re-diversion must preserve water right priorities. (*El Dorado Irrigation Dist. v. State Water Resources Control Board* (2006) 142 Cal. App. 4th 937, 966; *Westlands Water District v. Firebaugh* (1993, 9th Circuit) 10 F.3d 667.) Petitioners must demonstrate – but have

not demonstrated -- how future operations of the CVP and SWP would avoid requiring upstream senior diverters and CVP and SWP contractors such as Protestant SJREC from being required to forego diversions so that the CVP and SWP can meet other operational requirements which would not exist but for the SWRCB's approval of the new points of diversion and facilities and attempts to operate those facilities.

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 temperature at Shasta Dam, nor salinity requirements, and have had to file several temporary urgency change petitions which asked the 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, the CVP and SWP would need some new source of water, but no new source of water is described in the Petition. No proposal is made to set new lesser Delta flow and salinity standards for existing cross-Delta deliveries through channels or through the new facilities contemplated in the Petitions during dry conditions. Without establishing and conducting a revision of the WQCP temperature operating conditions at Shasta Dam before determining if changes in diversion and conduct of water across the Delta are reasonable and can be performed without injury and without determining if new water supplies will be available, this proceeding and the proposed Petition serve only to give the appearance of progress.

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 proposed California WaterFix Project would not injure other legal users of water. 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.

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 area of origin demands in the future. Protestants divert and use water within areas where water currently being exported originates. California law expressly recognizes the prior right of communities 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 counties of origin is expected to increase in the future and the likelihood that less water will be available for export is reasonably foreseeable.

The San Joaquin River Exchange Contractors are located within the County of Origins and Areas of Origin of the San Joaquin River. Although the Petition requests no authority to divert San Joaquin River water, if granted, the Petition may potentially damage the ability of the CVP to meet the County of Origin and Area of Origin requirements through substitution of water diverted from the Sacramento/San Joaquin Delta to the Exchange Contractors. Such a reduction in Delta diversions would require the delivery of increased amounts of San Joaquin River water to the Exchange Contractors under their water rights as described in Section 5. This will have the effect of reducing the amounts of San Joaquin River water available for use within the County of Origin and Area of Origin of Friant's CVP service area. Unless the Permits can be granted with assurance that no further reduction of supplies available to the Exchange Contractors from the Delta sources will occur, the County of Origin and Area of Origin laws will be violated by the Board's orders.

Section 5 (specific information regarding Protestant's water rights)

Protestant claims a right to the use of water from the source from which petitioners are diverting, or propose to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative right or riparian right):

Pre-1914 appropriative rights, riparian rights, and the Second Amended Exchange Contract No. 11R-1144 between the United States and the SJREC members.

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

Columbia Canal Company	Statement S001073
Central California Irrigation District	Statement S000477
Firebaugh Canal Water District	Statement S001098
San Luis Canal Company	Statement S001074

Where is your diversion point located? (See table below)

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

The extent of present and past use of water by protestant or its predecessors in interest is as follows (See table below):

(The following list is not in any way intended to be an exhaustive list of all of the Protestant's water rights, but only includes primary water rights that would be subject to injury by the actions protested herein.)

Riparian Claims – Supporting Documents

The Decisions and Findings in the Haines Decrees, Fresno County Action Numbers 25729, 25730 and 2573, determine all issues in regard to the riparian claims of lands within the service area of the reporting party that were presented to the Court and are binding upon both parties to the action and all other persons. The Decision and Findings include determinations of the effectiveness of language contained in deeds for

land in which the land would be otherwise severed from rivers, sloughs or other means of providing for water delivery from the riparian water body or its tributaries and provide for determinations as to the preservation of those riparian rights and their administration by mutual water companies which were the predecessors of the reporting party or public utilities that preceded the reporting parties. Further, riparian rights are not terminated automatically by severance or loss of contiguity in circumstances where there is a plan or design for continued irrigation use. See *Rancho Santa Margarita v. Vail* (1938) 11 C.2d 50, *Miller and Lux v. James* (1918) 179 Cal. 689 and *Strong v. Baldwin* (1908) 154 Cal. 150. The real property descriptions of properties declared to be riparian are found in Schedules attached to the Decision and Findings of Judge Haines, as well as a map showing the lands served by the Protestant, are within the library of the SWRCB offices.

Pre-1914 Claims – Supporting Documents

1. Appropriation Notice, Aliso Canal, March 5, 1899, Madera County
2. 1872 priority, Chowchilla Canal, Haines Decree, page 39
3. 1872 priority, Columbia Canal, Haines Decree, page 40
4. 1875 priority, Lone Willow Slough, Aliso Slough, Brown Slough,
Haines Decree, pg. 41
5. 1873 priority, Temple Slough, Haines Decree, pages 41-43
6. 1872 priority, San Joaquin & Kings River Canal Irrigation Company,
pages 43-44
7. 1886 priority, Mowry Canal, Haines Decree, page 44
8. 1899 priority, Borland Ranch, Haines Decree, pages 44-45
9. 1878 priority, Pick Anderson system, Haines Decree, pages 45-46
10. 1878 priority, East Side land, Haines Decree
11. Orestimba Grant, Reservation of Rights, Haines Decree

The pre-1914 appropriative rights of the Exchange Contractors include at least the above determinations and filings. In addition, substantial riparian and appropriative rights of the Exchange Contractors upon the Kings River flows were moved and

substitute supplies were provided pursuant to the terms of Water Code Section 1706 to be satisfied from San Joaquin River flows and stored water of the San Joaquin River pursuant to the USBR rights granted pursuant to Decision 935 in exchange for foregoance of those Kings River flows.

In addition to the above materials, there are a number of California Court Decisions related to the Exchange Contractors' or their predecessors' interests and right to water, including the flows of the Kings River, determining the extent and character of those pre-1914 rights, which are too numerous to include in this attachment by citation but are incorporated by way of this response.

Section 6 (proof of service)

PROOF OF SERVICE

I, DENISE DEHART, declare:

I am employed by the law firm of MINASIAN, MEITH, SOARES, SEXTON & COOPER, LLP. My business address is 1681 Bird Street, Post Office Box 1679, Oroville, California 95965-1679. I am over the age of 18 years and not a party to this action.

On January 4, 2016, I served the following document(s) set forth below in the manner indicated:

(X) **Electronic Transmission on Service Date:** By electronically mailing to the person named below, at the email address indicated below. No return transmission was received this date indicating that the email transmission did not transmit properly to the recipient.

(X) **Service by Mail (Collection):** By enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on January 4, 2016, at Oroville, California, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Documents Served: **SAN JOAQUIN RIVER EXCHANGE CONTRACTORS' PROTEST – PETITION and NOTICE OF INTENT TO APPEAR, California WaterFix**

Persons Served:

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 declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on January 4, 2016, at Oroville, California.



DENISE DEHART