# 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 1

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 CALIFORINA WATERFIX PROJECT, dated October 30, 2015

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

#### **Protestant:**

County of Sacramento
Michael Peterson, Director of Department of Water Resources
827 7<sup>th</sup> Street, Room 301
Sacramento, CA 95814
Petersonmi@saccounty.net
916-874-6851

Authorized Agent: Somach Simmons & Dunn, PC

Daniel Kelly, Esq.

Aaron A. Ferguson, Esq. 500 Capitol Mall, Suite 1000 Sacramento, CA 95814 dkelly@somachlaw.com aferguson@somachlaw.com

(916) 446-7979

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 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 3

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

Signed: Aaron A. Ferguson
Authorized Representative

All protests must be served on the petitioner. Provide the date served and method of service used: see Attachment 4

# ATTACHMENTS TO COUNTY OF SACRAMENTO'S PROTEST TO WATER RIGHTS CHANGE PETITION OF DWR AND RECLAMATION FOR CALIFORNIA WATERFIX PROJECT

### **Attachment 1 (Petitioners' Permits)**

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

<u>Reclamation</u>: 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)

#### **ATTACHMENT 2**

# (Facts Supporting Protest Based on Applicable Law, Environmental, Public Interest Considerations)

The County of Sacramento (County) hereby protests the Petition for Change (Petition) filed with the State Water Resources Control Board (the SWRCB) by the California Department of Water Resources and the United States Bureau of Reclamation (collectively, Petitioners) to add three new points of diversion and rediversion to water right permits (Permits) for the State Water Project (SWP) and the Central Valley Project (CVP). Petitioners propose to add points of diversion and rediversion to allow Petitioners to move water through the intakes identified by Alternative 4A (California WaterFix Project, hereinafter "Project") of the Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS).

The County protests because the Project would be contrary to law, not best serve the public interest, have adverse environmental impacts, and the Petitioners have failed to meet their burden required for approval of the Petition. The Petition does not discuss, address, or resolve any of the issues or evidence presented in the October 30, 2015 "Sacramento County Comments on the Bay Delta Conservation Plan/California WaterFix Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement" (County October 2015 Comments), or the July 28, 2014 "Sacramento County Comments on the Draft Bay Delta Conservation Plan (BDCP), EIR/EIS, and Implementing Agreement" (County July 2014 Comments). The County October 2015 Comments and County July 2014 Comments are hereafter referred to collectively as the "County Comments," And are incorporated herein by reference.

The County intends to present testimony and evidence during Part II of the SWRCB's evidentiary hearing process demonstrating that Petitioners have not met their burden of proof required for the SWRCB to approve the Petition. Consequently, the County respectfully requests that the SWRCB reject the Petition with prejudice.

# I. Commencing SWRCB Proceedings on the Incomplete and Scientifically and Technically Flawed RDEIR/SDEIS is a Due Process Violation

The Petition relies almost entirely on the detail and description of the Project and its effects presented by the heavily criticized Bay Delta Conservation Plan Draft Environmental Impact Report Environmental Impact Statements (DEIR/DEIS) and the RDEIR/SDEIS. (These analyses combined are hereinafter referred to as the "Environmental Documents.") Various groups and entities have repeatedly identified that the Environmental Documents fail to adequately address or answer basic questions regarding short- and long-term protection, enhancement, and mitigation for the loss of the many values and resources unique to the Sacramento River Delta (e.g., agriculture, recreational, and cultural/tourism).

Further, the Environmental Documents are based on flawed hydrologic modeling and erroneous and biased scientific analysis. Significant errors in the underlying model, from which all effects were analyzed, call into question the analyses and conclusions throughout the Environmental Documents. Repeated comments, including reports and analysis from qualified experts (including, but not limited to, the Delta Independent Science Board (ISB), MBK Engineers, Dave Vogel and Robert Latour) have provided substantial evidence demonstrating why and how the hydrologic modeling and fisheries analyses are flawed and inadequate to support the analysis, impact determinations, public participation or agency decision making. These comments provided by subject matter experts raise significant issues regarding the fundamental assumptions, data and methodology used as to merit discussion within the RDEIR/SDEIS. These significant flaws and errors were not addressed, and are apparently being deferred for consideration in the Final EIR/EIS and/or Biological Opinions. In doing so, and with the SWRCB commencing these proceedings prior to public participation on the most important scientific and technical aspects of the Environmental Documents, the County is systemically precluded from offering evidence and expert testimony rebutting the Petitioners' required proffer forming the basis of the SWRCB's decision on the Petition for all the required findings. This is a fundamental due process violation that can only be rightly addressed by the SWRCB deferring the "public interest" part of these proceedings until after the protestors are offered a reasonable period to evaluate the science and technical information that must be expected from the Final EIR/EIS and Biological Opinions.

### II. The Petition Fails to Establish that the Proposed Changes will Not Cause Unreasonable Adverse Effects on Fish and Wildlife

Petitioners have not met their burden of establishing that the proposed changes to the Petitioners' Permits will not cause unreasonable adverse effects on fish and wildlife. The current Environmental Documents contain significant errors in their underlying hydrologic modeling and fisheries analyses. As articulated above, the County and SCWA, independently and through their regional partners and associations, have provided reports and analysis from qualified experts (including, but not limited to, the Delta ISB, MBK Engineers, Dave Vogel and Robert Latour) showing why and how existing modeling and analyses are flawed and inadequate.

### III. Petitioners' Proposed Changes Are Not in the Public Interest

In light of the adverse impacts to the physical, social, and historic fabric of the County and the Delta, balanced against the uncertain water supply, quality and reliability benefits, the requested changes to the Permits are not in the public interest.

### A. Required Scope of a Public Interest Evaluation

In determining whether a project is in the public interest, the State Water Board must weigh the benefits of the project against the negative impacts and balance the two through permit terms and conditions. (State Water Board, Water Right Decision 1643 (D-1643), p. 61.) "The State Water Board has broad authority over the administration of

previously issued water rights, including authority to control and condition water use to protect the public interest and to ensure utilization of water consistent with the public interest ...." (In the Matter of the Petition to Change the Effective Date of the Long-Term Instream Flow Requirements Established in Revised Water Right Decision 1644 (Permits 15026, 15027, and 15030; Applications 5632, 15204, and 15574, Order No. 2006-0009, p. 7; See Environmental Defense Fund, Inc. v. East Bay Municipal Utility District, et al. (1980) 26 Cal.3d 183, 198.) In evaluating the State Water Board's issuance of a permit for appropriation and storage of water on islands in the Sacramento-San Joaquin River Delta, the Third District Court of Appeal stated that "[i]n determining whether an appropriation is in the public interest, the Water Board may examine a number of concerns that relate to the construction and impact of the reservoir, the means by which the water is appropriated." (Delta Wetlands Properties v. County of San Joaquin (2004) 121 Cal.App.4th 128, 144.) The Court, in Delta Wetlands, determined that "the Water Board considered the feasibility of proposed levee construction activities, seepage impacts to neighboring islands, damage to neighboring property, and impacts on fish and wildlife", and went so far as to incorporate mitigation measures from the relevant environmental analyses into the terms and conditions of the water right permit to protect adjacent property owners (Id. at p. 144; see D-1643 at pp. 48-62.)

On this authority, the SWRCB must evaluate and balance the County's concerns relating to the construction and operation of the proposed diversion and conveyance facilities because these facilities are the means by which Petitioners will appropriate water. (See *Delta Wetlands Properties, supra*, 121 Cal.App.4th at p. 144.) If the SWRCB were to approve the Petition, it must impose permit conditions for the Project impacts the County has carefully identified in its comments on the Environmental Documents and in this Protest.

### B. Local Water Supply and Water Management Impacts

### 1. Construction-Related Depletion of Groundwater Supplies

The Project is likely to substantially deplete municipal and agricultural water supplies within the Delta construction area, from construction area dewatering as well as construction-induced liquefaction and settlement (such as from pile driving, tunnel boring and operation of other heavy equipment), which could adversely affect groundwater levels, and operation and integrity of wells. The Environmental Documents gloss over these serious effects by characterizing them as "temporary," even though construction will take place for 10 years or more. (See discussion of Impact GW-1, RDEIR/SDEIS, pp. 7-10—7-12; DEIR/EIS, pp. 7-46 – 7-48.)

The Environmental Documents make no effort to estimate the quantity of water that the Project would make unavailable for existing uses. As mitigation, Petitioners propose to offset domestic losses attributable to dewatering (but not losses or adverse effects attributable to diminished groundwater quality, or from losses caused by construction-induced liquefaction and settlement). Measures proposed to achieve this

objective include installing sheet piles to depths below groundwater elevations, deepening or modifying wells used for domestic purposes to maintain water supplies at preconstruction levels, or securing potable water supplies from offsite sources. (Mitigation Measure GW-1, RDEIR/SDEIS, pp. 7-4—7-5, 7-12; DEIR/EIS, pp. 7-47 – 7-48.) No analysis or evidence is provided to quantify the extent of the potential impact (including the amount of water supply that could be lost due to construction) or to demonstrate that such mitigation measures are capable of avoiding significant effects to groundwater levels, wells, and water supply. Further, it is not clear whether the Environmental Documents evaluated the secondary impacts associated with well deepening, including increased energy use and air quality impacts from the additional pumping that will be required to obtain water from deeper wells.

Moreover, these mitigation measures are inadequate because they require Delta water users to agree to physical alterations of their property (which are not likely to be given to facilitate construction of the intake and tunnel facilities) and/or to accept a substitute water supply, of unknown quantity and quality. This type of mitigation has been held to be illegal under CEQA. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.) Even if provision of a substitute supply were legal, particularly with respect to agricultural water supply losses, the practical feasibility of securing "a temporary alternative water supply" is dubious at best.

Compensating farmers for production losses attributable to a reduction in available groundwater supplies, as proposed by the Petitioners (See RDEIR/SDEIS, p. 7-12), is inadequate because it does not "maintain water supplies" and thus fails to meet the performance criteria set forth by the Petitioners. Moreover, the affected area includes many permanent crops, including fruit trees. These crops are an essential part of the Delta economy, as well as a defining aspect of its visual and historic character. If agricultural water supply and groundwater levels are significantly affected for up to 10 years of construction, plus an unknown period of time following construction for supplies to recharge and recover, it is reasonable to assume that these permanent crops will be lost, which will have secondary impacts to agriculture, wildlife, and the aesthetics, economy and essential character of the Delta communities. For the SWRCB to ultimately conclude that the Project is in the public interest, Petitioners must actually analyze the extent of impacts to local water supply, including evidence and analysis relating to the availability, adequacy and means of providing any "temporary alternative water supply" to both municipal and agricultural uses, as well as the attendant secondary impacts that will likely result if water supply is significantly depleted for an extended period of time.

### 2. Sacramento County Water Agency's Conjunctive Use Program

The Environmental Documents discuss the potential for the Project to result in "minor decreases in water supply availability to CVP water users in the Sacramento Valley . . ." (See Analysis of Groundwater Conditions in Areas that Use SWP/CVP Water Supplies, DEIR-EIS, p.7-32, lines 30-40.) The estimated decrease in supply is 50,000 AFY. Petitioners conclude that "[a] 2% increase in groundwater use in the

Sacramento Valley to make up for any shortfalls in surface water supply is not anticipated to substantially impact the groundwater resources as long as the additional pumping is not concentrated in a particular area of the valley." This claim requires additional analysis to determine the Sacramento Valley CVP contractors that will be affected, their distribution, and the quantity of their diminished supply.

As noted above, a primary concern for the County is how growth that is already planned (whether in the Delta or north of the Delta) will be impacted by the Project. The Environmental Documents indicate the Project will have a negative impact on certain unidentified groundwater supplies. The ability to accommodate projected and planned growth within the area of SCWA Zone 40 and the ability to support sustainable groundwater management objectives in the South American groundwater basin relies on the availability of specific groundwater and surface water supplies. SCWA has a defined conjunctive use plan for providing water to its Zone 40 service area that includes the use of both surface water and groundwater. Other purveyors who use the same groundwater basin also employ a conjunctive use program. These plans have a defined amount of the resource that is or will be used to meet current and future customer needs. In considering the 2% increase in groundwater use, one must assume that the increase is not applied uniformly over the entire Sacramento Valley. No information is provided as to where additional pumping will take place, whether it will it interfere with existing conjunctive use programs, or whether it will exacerbate existing groundwater overdraft or cause groundwater overdraft in locations where that condition does not presently exist.

The Environmental Documents state that additional pumping will not be concentrated in a particular area of the valley, but don't describe the criteria that will be used to make that decision or how that decision may impact current and future users of the groundwater basin. The Environmental Documents do not provide enough information for the County to assess whether Project implementation will jeopardize planned Zone 40 water supplies. In this respect, Petitioners have not met their burden of showing that the Project is in the public interest.

### C. Impacts to Agriculture

Protection of existing agricultural resources and operations and promoting long-term agricultural sustainability in the Delta are especially important issues for Sacramento County. The Delta is home to thousands of acres of "prime" designated farmland. This fertile farmland allows for the growing and processing of crops that result in over \$1B in revenues while providing roughly 9,700 jobs. The 10-12 year construction schedule associated with the Project will all but destroy this regional and State-wide economic engine. *Temporary and short-term* construction of facilities would convert approximately 1,495 acres of Important Farmland and 1,132 acres of land subject to Williamson Act contracts or in Farmland Security Zones, to other uses. Physical structures would also *permanently* convert approximately 3,909 acres of Important Farmland, including 3,283 acres of Prime Farmland, 123 acres of Farmland of Statewide Importance, 294 acres of Unique Farmland, and 209 acres of Farmland of

Local Importance and 2,035 acres of land subject to Williamson Act contracts or in Farmland Security Zones to other uses. (RDEIR/SDEIS, pp. 14-2—14-3.)

Petitioners have evaluated the effects on agriculture associated with an anticipated change in salinity (as Electrical Conductivity [EC]), but there is no discussion of EC increases other than at Emmaton and the San Joaquin River. This results in unevaluated EC increases in the Sacramento County Delta community areas, and unknown adverse effects to agricultural intakes near the Project intakes. (See RDEIR/SDEIS, pp. 14-17-14-19.) Without proper evaluation, the County is unable to identify the extent of impacts to local public interests.

### D. Impacts to Socioeconomics

Petitioners' impact analysis, as set forth in the Environmental Documents, is incorrect or omits important evidence indicating the Project will have more severe adverse socioeconomic effects than cited. Petitioners also omit, or use inadequate evidence, to establish the baseline for impact analysis on issues of locally vital socioeconomic concerns to the Delta. Specifically, the Environmental Documents do not provide adequate evidence related to recreation spending, total Delta agricultural revenue, temporary and permanent loss of Delta agricultural production during construction, operation and maintenance of the isolated conveyance facility, long-term loss to the recreation economy from the construction and operation of the isolated conveyance facility, and the negative impact of the Project on community character in the Delta. This has the effect of minimizing the Project's true impacts.

Petitioners have not adequately addressed effects on regional economics in the Delta. (See RDEIR/SDEIS, Impact ECON-1, pp. 16-26-29; DEIR/EIS, Impact ECON-1, p. 16-54.) The existing analysis does not use the best available evidence to evaluate Project impacts, and displays bias by quantifying and emphasizing favorable effects while relegating large unfavorable effects to short, qualitative discussions (See Comments on the BDCP EIR/EIS Socioeconomic Analysis prepared for Sacramento County by Dr. Jeffrey Michael, May 16, 2014 (Michael Report), attached as Exhibit H to County's July 2014 Comments). For example, Petitioners neither use nor differentiate the praised and peer-reviewed Economic Sustainability Plan (ESP) generated by the Delta Protection Commission for any of its data or project impact analysis. The ESP is merely referenced and summarily dismissed even though in some areas, like agricultural productivity data, the ESP is more current and accurate than that used in the Environmental Documents. Petitioners' failure to rely on the best available science to consider regional economic impacts is contrary to the public interest.

### E. Impacts to Aesthetics

As stated in the County's comments on Petitioners' analysis of land use impacts, the size and scale of the proposed conveyance and water operation facility, including the intakes, forebay, surge towers, and transmission line corridors, are massive and will alter the physical landscape of the Delta, substantially degrading its unique scenic

qualities and values in perpetuity. Invasive impacts also will occur from the extensive lighting required during both construction and operation of the completed conveyance facility. (See DEIR/DEIS, pp. 3-83, 17-75.)

### F. Impacts to Air Quality and Greenhouse Gases

Petitioners have identified numerous adverse health effects caused by exposure to pollutants that will be emitted during construction and operation of the Project, including adverse effects from particulate matter, ozone, NO2 and CO. (See DEIR/EIS pp. 22-4-6.) Petitioners have stated that, "Construction activities would generate emissions of ozone precursors (ROG and NOX), CO, PM10, PM2.5, and SO2." (RDEIR/SDEIS, p. 283; DEIR/EIS, p. 22-224, lines 35-36.) The DEIR/EIS further states that emissions of a number of these pollutants will exceed air quality standards and that the highest levels of dangerous emissions will occur in Sacramento County communities where the intake and pumping plant and forebay sites will be built. (See Impact AQ-1: Generation of Criteria Pollutants in Excess of the SMAQMD Thresholds during Construction of the Proposed Water Conveyance Facility, RDEIR/SDEIS, pp. 22-288-22-289; See Impact AQ-2: Generation of Criteria Pollutants in Excess of the SMAQMD Thresholds during Construction of the Proposed Water Conveyance Facility DEIR/EIS, p. 22-229, lines 6-10, 22-29.)

Despite the acknowledged potential for adverse effects from pollutants such as ozone, NOx, CO and others, the Project's assessment of adverse health effects appears to have been limited to an evaluation of risks from particulate matter exposure, including diesel particulate matter (DPM). (See RDEIR/SDEIS, p. 22-6, lines 11-24 and AQ-14 Exposure of Sensitive Receptors to Health Hazards from Diesel Particulate Matter in Excess of SMAQMD's Chronic Non-Cancer and Cancer Risk Assessment Thresholds, pp. 22-309—22-310; DEIR/EIS, pp. 22-35, lines 10-11 and Impact AQ-11: Exposure of Sensitive Receptors to Health Threats in Excess of SMAQMD's Health-Risk Assessment Thresholds, DEIR/EIS, pp. 22-249-250 (failing to evaluate health effects of BDCP emissions for any pollutants other than particulate matter).) Petitioners have not evaluated or explained whether the Project's emissions of pollutants other than particulate matter would have adverse health effects on Sacramento County residents.

The Project will create substantial amounts of fugitive dust, in exceedance of regulatory thresholds. Project construction will occur in and around areas of high value agricultural production. The Petitioners have not evaluated the potential for Project-related fugitive dust emissions to adversely affect agricultural uses, including the potential for reduced crop yield.

### G. Impacts to Cultural Resources

Petitioners fail to clearly identify the methodology used to evaluate cultural resource impacts, and have not evaluated the full range of potential impacts to cultural resources within Sacramento County. Petitioners also do not accurately describe the Section 106 consultation process. This inadequate analysis leaves the County in a

position of being unable to evaluate the true impact of the Project on cultural resources. Without this analysis, the SWRCB cannot properly conclude that the Project is in the public interest.

### 1. Incomplete Discussion of Regulatory Setting

Petitioners have not provided regulatory information regarding the following Special Planning and Neighborhood Preservation Areas, as identified in the Zoning Code of Sacramento County, Title V: Courtland (504-500); Locke (504-400); Walnut Grove (504-20). (See DEIR/EIS, Section 18.2.3.6, p. 18-38 and RDEIR/SDEIS, pp. 18-3—18-4.) Petitioners should provide regulatory information regarding these areas, which are subject to additional protective measures because of their unique historic and cultural resources.

### 2. Failure to Identify Scope of Cultural Resource Impact Evaluation

With respect to cultural resources, Petitioners have stated, "As necessary, additional site-specific studies and analyses will be conducted pursuant to CEQA, NEPA, and Section 106 of the National Historic Preservation Act (NHPA) as part of the second tier environmental review [emphasis added] for the program-level components of the selected alternative pursuant to mitigation measures identified in this chapter." (DEIR/EIS, p.18-1, lines 9-12, emphasis added.) Petitioners need to clearly state at what level cultural resources have been evaluated and how future studies and analyses will proceed.

### 3. Incomplete Discussion of Impacts to Historic Districts

Petitioners have failed to evaluate the full range of potential impacts to historic districts. Impacts to historic districts should include impacts to the district and to the contributing resources that make up that district. For example, potential impacts should be identified for both the Locke National Historic Landmark District and to the 53 contributing resources within the district. The Walnut Grove Japanese American Historic District contains 22 contributing resources and the Walnut Grove Commercial/Residential Historic District contains 18. Petitioners should also evaluate potential impacts to the proposed Delta National Heritage Area.

Petitioners have failed to provide information regarding National Historic Landmark (NHL) Districts and National Heritage Areas. Petitioners should provide information regarding the National Historic Landmarks Program and note that Locke was listed as an NHL on 12/14/1990. Petitioners should also prepare a discussion regarding National Heritage Areas. In doing so, Petitioners should consider the Delta Protection Commission's Feasibility Study for a Sacramento-San Joaquin Delta National Heritage Area (July 2012) in its analysis of impacts on cultural resources.

### 4. Consultation with Native American Organizations

Petitioners have indicated that Native American organizations have been notified of the Project; however, it is not clear whether consultation has occurred under Section 106 of the National Historic Preservation Act.

### 5. Inadequate Information and Analysis of Section 106 Process

Petitioners have not adequately introduced, defined, or discussed the Section 106 process they intend to follow. According to 36 Code of Federal Regulations section 800.1, "[t]he section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings though *consultation* among the agency official and other parties with an interest in the effects of the undertakings on historic properties, commencing at the early stages of project planning. Petitioners have not adequately summarized the Section 106 consultation conducted to date, nor specified whether the findings and mitigation measures outlined in the Environmental Documents were developed through the Section 106 process.

### H. Impacts to Environmental Justice

Petitioners have acknowledged the fact that census blocks with a meaningfully greater minority population and block groups with low-income populations exist throughout the study area and specifically along the modified pipeline/tunnel alignment associated with the preferred alternative. Largely because of this fact, the Project will result in disproportionate effects on minority and low-income communities and the Petitioners' state that even with mitigation, these effects would remain disproportionate and adverse.

The environmental justice analysis in the Environmental Documents lacks any discussion of alternatives that could avoid or minimize the disproportionate effects on environmental justice populations and the reasons why such alternatives were not chosen. Additionally, there is no explanation as to why it is infeasible to relocate the planned structures outside areas where high concentrations of environmental justice populations live or why the proposed facilities need to be located where they are. The County requests that the SWRCB appropriately condition the Permits to ensure that the Project not disproportionately affect environmental justice populations.

#### 1. Land Use – Removal/Relocation of Permanent Structures

As mitigation for the removal/relocation of permanent structures, Petitioners propose to compensate "property owners." The proposed mitigation does not necessarily address the effects of this impact on environmental justice populations. It is reasonable to assume that the minority and low-income communities that constitute the environmental justice populations of concern are renters rather than property owners. Petitioners should reevaluate this impact and additional mitigation specific to alleviating the effect on environmental justice populations should be proposed.

### 2. Land Use – Physical Structures Around and Through Existing Communities

The Project would negatively affect the community of Hood in Sacramento County by substantially altering the setting of that community. (RDEIR/SDEIS, pp. 28-64—28-65.) Additionally, permanent structures associated with the Project would substantially alter Hood's surroundings.

Petitioners have identified mitigation measures to address the effects of these impacts. Yet, these measures only address the environmental impacts associated with increased traffic resulting from the Project. The proposed mitigation does not address the effects on environmental justice populations. Admittedly, the only way to mitigate these impacts would be to select a different alternative or approach that is not located near environmental justice populations.

#### 3. Socioeconomics

Construction and operation of the Project would reduce agricultural land under cultivation resulting in the direct and indirect loss of a varying number of agricultural jobs each year. (See RDEIR/SDEIS, Impact ECON-7, pp. 28-3—28-4.) Petitioners admit that this impact will have a disproportionate effect on minority and low-income populations, yet the true effect of this impact is not clear. Petitioners should consider the number of years over which the expected job losses will occur, and analyze the effect that these job losses will have on Sacramento County resources associated with unemployment, child support, and other financial assistance programs.

The County is obligated by state law to support all incompetent, poor indigent persons that are County residents not otherwise supported or relieved by family, friends, their own means, or state institutions. Job loss and unemployment created by the Project's impacts may result in unmitigated strain on the County programs like its child support collection and enforcement program, its General Assistance program (funded entirely by the County's general fund), and medical support programs for the indigent. Petitioners have not proposed mitigation for these losses and strains on County programs.

### 4. Groundwater

Petitioners claim that Project effects on local groundwater resources would not result in a disproportionate effect on environmental justice populations because local groundwater changes and effects on wells adjacent to dewatering areas would be mitigated. (DEIR/EIS, p. 28-22, lines 8-11.) As discussed in comments regarding Groundwater (above), the mitigation proposed for impacts to local wells is not adequate. The affected areas all have disproportionately high minority and/or low-income populations.

### I. Impacts to Land Use

### 1. Impact on Delta Communities

Implementation of the BDCP will result in a lengthy list of significant and unavoidable land use impacts. Sacramento County is particularly hard hit. Specifically, the proposed water export facility construction and operations will cause long-term and irreversible land use compatibility impacts, along with significant disruption (and likely permanent destruction) of the existing rural and agricultural land use pattern, along with future land uses contemplated under Sacramento County's 2030 General Plan.

According to Petitioners, permanent surface features associated with the Project that would fall within Sacramento County include three water intakes (with associated sedimentation basins and other features), realignment of Highway 160, an intermediate forebay, shaft locations, tunnel muck storage areas, and transmission lines. (RDEIR/SDEIS, p. 13-8.) These industrial uses would be sited on land designated as Agricultural Cropland, Agricultural-Residential, Low Density Residential, Medium Density Residential, Natural Preserve, and Recreation. (*Id.*) The Project would require the removal of at least 85 permanent structures within Sacramento County, including 19 homes and 7 recreational facilities (RDEIR/SDEIS, Table 13-12, p. 13-12) and be incompatible with existing land uses covering about 2,000 acres. (RDEIR/SDEIS, Table 13-11, p. 13-4.) These substantial impacts on Delta communities are contrary to the public interest.

### J. Impacts to Public Services

# 1. Effects on Law Enforcement, Fire Protection and Emergency Response Services

Petitioners acknowledge that existing demand for local law enforcement protection in Sacramento County already exceeds the supply of resources. (See DEIR/EIS, p. 20-17, lines 20-23.) Growing demand and a relatively slower growing resource base leads to an inability to maintain historic levels of service. The County disagrees with Petitioners' determination that the Project will not have a significant impact on public service demands. (RDEIR/SDEIS, p. 20-10.)

Projected employment estimates are roughly 2,300 or more workers over the length of the 9 to 12 year project. (RDEIR/SDEIS, p. 20-8.) Petitioners indicate that the workforce population would primarily come from within the existing five-county labor force already served by law enforcement and only specialty positions would be hired from outside. An increase in workforce population moving to the area of this size would likely increase the demand on law enforcement.

The scale and duration of the construction required also could result in increased demand on law enforcement, especially near major construction sites. (RDEIR/SDEIS, p. 20-8—20-9.) The mitigation offered would provide 24-hour onsite private security to ensure no adverse effect on local law enforcement. According to the Sacramento

County Sheriff's Department, private security may offer limited deterrent to potential thefts; however, it does not negate the need for law enforcement to respond to crimes that do occur. Additionally, the Project is highly contentious and continues to draw significant criticism and opposition from political and ecological groups. A threat assessment has been completed by the California Central Intelligence Center indicating an elevated threat for destructive acts both during construction and upon completion. The high profile and controversial nature of the Project, which puts it at an unusually high risk for criminal behavior, only increases the potential burden on law enforcement and the risk to the safety of Delta residents.

# 2. Failure to Analyze Impacts of Wastewater Treatment and Disposal

Project tunnel boring activities will generate "substantial" amounts of contaminant-laden wastewater, in rural areas, that will require treatment and disposal. (RDEIR/SDEIS, p. 20-12—20-13.) The Petitioners state that wastewater treatment services required for the preferred alternative "would be provided by temporary facilities and treated onsite. Construction of [the Project] would not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities. This effect would not be adverse." (*Id.*) Petitioners have not provided evidence or analysis to support the determination that impacts from the treatment and disposal of a substantial amount of wastewater would not be adverse.

Although the volume of wastewater is characterized as "substantial" (RDEIR/SDEIS, pp. 20-12—20-13.), the total amount of wastewater is not quantified, and the type of treatment that is proposed and impacts of such treatment are not specified. Because no information is provided about this potential impact, the County is unable to assess the actual scope of impacts or any necessary mitigation.

### 3. Lack of Water Supply Analysis for CM-1 Activities

The Project would require massive amounts of water for workers, operations, and concrete batch plants. Petitioners cite a total potable water demand of 177.8 million gallons of water over the nine-year construction period. (RDEIR/SDEIS, Table 20-3, p. 20-3.) This is the equivalent amount of water required to serve 200 or more homes, under average potable water consumption rates in the Sacramento area. Petitioners simply conclude that this supply could be met by non-municipal sources without any new water supply entitlements, or the construction of new facilities. (RDEIR/SDEIS, p. 20-13.) Similarly, Petitioners also claim that wastewater can be managed with temporary facilities and without construction of new facilities. (*Id.*)

No evidence or analysis supports the determination that the Project's construction or operational water demands can be met from available entitlements and supplies or what the impacts of supplying water would be. If water is proposed to be pumped from local groundwater wells, more information is needed about well locations and capacities, and aquifer capacity, as well as pumping-related impacts, including

potential interference with other area wells, aquifer depletion, subsidence, and potential surface water depletion impacts to the Sacramento or San Joaquin Rivers.

Without this information, there is no evidence to support the Petitioner's determination that there are adequate supplies of water to serve the Project, and that the Project would not require or result in the construction of new water or wastewater treatment facilities. Lacking information regarding wastewater, water supply and solid waste impacts throughout the County, the SWRCB cannot conclude that the Project is in the public interest.

### 4. Solid Waste Impacts Associated with Project Operation

The Project will generate nearly 300,000 cubic yards of dry solids requiring land disposal. Petitioners state, "[a]s designed, it is anticipated that a portion of the solids would be stored and reused at alternative facilities and some portion would be transported for offsite disposal." (RDEIR/SDEIS, p. 20-21—20-22.) The analysis does not address issues such as alternative facilities for storage, the area required, design of the facilities, and transportation to such facilities.

### K. Impacts to Recreation

A key question of importance to Sacramento County is the Project's effects on river flows and river levels, as changes in river levels have the potential to have a significant impact on river-dependent recreational uses, including marinas and riverside parks. The Environmental Documents contain no analysis of the Project's effects on river levels and the resulting effect on river-dependent recreational uses. The Environmental Documents state: "CALSIM modeling results indicate that effects, if any, to river flows are so minor as to have no effect and are not discussed further." (DEIR/EIS, p. 15-64, lines 1-2.) This statement is not supported by any analysis or evidence demonstrating that flow effects on river levels will not adversely affect recreational uses. Other evidence in the record shows that the Project will affect flows in the Sacramento River and possibly American River as well. (See DEIR/DEIS, Figures 6-10 and 6-11.)

Changes in flows, and river levels, may have a significant adverse effect on recreational uses along both these rivers, including adjacent parks. Impacts to marinas and recreation depend on how the intakes are operated. Without an operating plan, the County is unable to identify the marinas or other recreation amenities that may be adversely affected by the Project. The lack of detailed information about Project operations, and information about changes in flows and water levels in the vicinity of specific recreational areas that may be adversely affected, makes it impossible for the SWRCB to know whether the Project's impacts on recreational facilities are in the pubic interest.

### 1. Methods for Analysis

The determination of effects (DEIR/EIS, Section, 15.3.2, p. 15-62, line 21) attempts to identify a "substantial impact" by using 82 years of simulations (Section C of the modeling results). Using 82 years of simulations minimizes the peak and low flow impacts by spreading them out over a period that is longer than the Project life. If the appropriate baseline were used, recreation impacts likely would be substantial. Moreover, to the extent the analysis focuses on reservoir levels, it fails to consider flow-related recreational impacts, including impacts to marinas and recreational areas along the Sacramento and American Rivers.

In assessing overall recreation impacts in the Environmental Documents, the Petitioners emphasize the comparison of project effects with the No Action Alternative as opposed to the existing conditions. (See Impact REC-6 - Cause a Change in Reservoir or Lake Elevations Resulting in Substantial Reductions in Water-Based Recreation Opportunities and Experiences at North- and South-of-Delta Reservoirs and discussion at RDEIR/SDEIS, pp. 15-33—15-34.) Petitioners assume sea level rise at a specific rate over 50 years and build sea level rise into the No Action Alternative. Using the future baseline conditions of the No Action Alternative as the vardstick for measuring project impacts minimizes the Project's actual recreation impacts on reservoirs and rivers. Impacts to the river will occur immediately when Project diversions commence, whereas the modeled No Action baseline conditions will not occur for decades into the future. By comparing impacts against the No Action Alternative, instead of existing conditions, the Petitioners fail to evaluate and disclose significant impacts to recreation uses that are likely to occur in the years immediately following commencement of operations and into the future unless and until the predicted future climatic influences actually occur.

### 2. Construction Impacts to Cosumnes River Preserve

Although Petitioners conclude that impacts to recreation from construction will be significant, the Petitioners (Impact REC-2 – Result in Long-Term Reduction of Recreation Opportunities and Experiences as a Result of Constructing the Proposed Water Conveyance Facilities, RDEIR/SDEIS, pp. 15-12--15-13) improperly minimize the severity and extent of significant impacts to the Cosumnes River Preserve recreation area and recreation experience that will occur for five years or more as a result of Project construction by discussing purported beneficial effects of proposed conservation measures that are uncertain to occur.

### 3. Impacts to American River Parkway Upstream of Discovery Park

Petitioners refer to goals and policies of the American River Parkway Plan, including policies specific to the Discovery Park Land Use area. (DEIR/EIS, p. 15-47.) Petitioners recognize impacts to Discovery Park but fail to look at the 23 miles of river upstream from Discovery Park on the American River and how BDCP-related flows will

impact recreation on the river. A change in flow standards will impact access to recreation on the river, parking, and trails and may cause scouring of river banks, trails, and access areas near the American River. Petitioners should evaluate the Project's effect on American River flows upstream of Discovery Park and attendant recreation impacts.

### 4. Impacts to Staten Island

In addition to tunneling through the Staten Island nature preserve, the Project would build two tunnel shafts with permanent access roads on the island. (RDEIR/SDEIS, Table 15-9.) The Petitioners downplay the significant adverse effect this construction will have on recreational opportunities and the visitor experience at Staten Island. Staten Island receives significant numbers of visitors – over 3,000 per year according to staff at the Nature Conservancy, which manages conservation easements on the island. Not only would recreation use be substantially diminished during the years of construction, but the placement of shaft locations and a permanent access roads would cause permanent surface impacts and would permanently displace portions of the preserve that are used by recreationists. The Project would result in the permanent loss of a substantial portion of the preserve. The fact that the preserve as a whole would not be permanently lost or closed does not mean the significant diminishment of the quality of the island as a nature preserve.

### L. Impacts to Transportation

#### 1. General Comments

The Sacramento County Department of Transportation (DOT) anticipates that the Project will significantly change the nature of travel in the Delta. Heavy construction traffic will be introduced for many years into a setting that is accustomed to a rural way of life. Not only will people be affected by traveling with a heavy increase in construction traffic, but pavement conditions in the Delta will deteriorate to a point of disrepair. Much of the Delta's early roadway network was built over old trails that ran along the tops of levees. Roadways were built with the structural standards of that time, and they no longer meet the present structural standards. Construction impacts to roadways will be significant, and roadways may need to be reconstructed to current structural standards. Close coordination with Sacramento County on the nature and extent of mitigation will be required.

Sacramento County roads Hood Franklin, Lambert, Twin Cities, Sutter Slough, River, Walnut Grove, Isleton, and Race Track will all experience significant hourly volume increases during construction. (*See, e.g.,* RDEIR/SDEIS, Table 19-25, pp.19-108—19-121.) The Project will result in some of the roads operating unacceptably in Sacramento County when construction traffic is added.

While roadway capacity is one measure of operations on a roadway, the nature of the construction traffic for the Project will consist of significant amounts of heavy

equipment on roads that do not normally experience this type of traffic. Residences and activities that occur along these roadways will experience a difference in roadway operations for a significant length of time. The length of construction and nature of traffic (heavy vehicles) should also be taken into consideration in assessing the nature and extent of the Project's impacts.

Of significant concern to the County is the Project's impact on the safety of Delta citizens from an increase in roadway safety hazards, including interference with emergency routes during construction on already heavily congested roadways including I-5, I-80, SR 50, SR 99, SR 160, Lambert Road, Grant Line Road, Hood Franklin Road & River Road. (See DEIR/EIS, Impact TRANS-3 – Increased Safety Hazards and Interference with Emergency Routes, pp. 19-134—19-135.) The impact discussion indicates that mitigation measure TRANS-1c will not reduce the severity of the impact to a less than significant level. (See RDEIR/SDEIS, p. 19-135, lines 22-25.) This is unacceptable and will adversely affect law enforcement response and community safety for a period of 9 to 12 years.

### 2. Mitigation for Capacity-Related Traffic Impacts

### i. Mitigation Measures TRANS 1-b

Petitioners, in the Environmental Documents, propose mitigation measure TRANS-1b, which calls for limiting construction activities so that construction traffic remains at acceptable Levels of Service (LOS) on roadways. (RDEIR/SDEIS, p. 19-124.) In the County's experience, more than likely it will not be efficient or feasible for construction-related traffic to be confined to designated or approved routes. Moreover, it is almost impossible to enforce. These mitigation measures should require that the transportation management plan specify short- and long-term roadway use and include enforcement provisions.

### ii. Mitigation Measure TRANS-1c

This mitigation measure calls for making good faith efforts to enter into mitigation agreements to enhance capacity on congested roadway segments. (RDEIR/SDEIS, pp. 19-125—19-126.) More information is needed about the specific capacity enhancement projects that will be required to mitigate impacts. Any needed capacity or improvement work needed to ensure that roads will be in a condition to survive the construction activity that will occur should be performed by the Petitioners prior to Project construction.

### 3. Impacts to Physical Condition of Roadways

Petitioners appropriately recognize that BDCP construction traffic is likely to substantially degrade Delta roads. However, Petitioners' analysis of construction impacts does not address the full scope of the Project's impacts to County roads, and proposed mitigation is not adequate to avoid or substantially lessen significant impacts.

### i. Impacts to Side Roads

The Petitioners identify roadway segments for impact study based on the likelihood that they would be utilized for construction-related activities. (See DEIR/EIS, Table 19-1, p. 19-5.) The analysis does not evaluate the impacts to side roadways that may be used during construction. An evaluation of current goods movement operations in the Delta has revealed that a large percentage of sub-contract haulers do not adhere to prescribed hauling routes, primarily due to limited oversight and enforcement. Specifically, Herzog Road, Vorden Road, Russell Road, and Terminous Road will be negatively affected. Degradation of these and all roadway segments must be adequately mitigated to the satisfaction of Sacramento County DOT.

### 4. Impact TRANS-2

The Petitioners suggest that the only roadway segments that will be damaged by the project are those identified as being in presently unacceptable condition (as in RDEIR/SDEIS, Table 19-26). Mitigation is limited to impacts to road segments with currently unacceptable road conditions that have traffic added to them. This approach fails to account for impacts to presently acceptable roadways that will substantially deteriorate as a result of project traffic. These impacts also need to be recognized and mitigated. Any construction traffic that will be added to both these types of roadways, due to the nature of heavy loads, is expected to break down pavement conditions significantly.

Due to the age and condition of the infrastructure in the Delta, roads not built to current standards will deteriorate more rapidly as a result of heavy construction traffic, the existing geologic and hydrologic conditions in the area (roadways constructed on levees and on peat or in tidal areas), the heavy volume of construction traffic, and the nature of that traffic (heavily laden trucks), the Project likely will result in significant deterioration of roadways that are presently in acceptable condition. Impacts will not be limited to roadways that are identified in the Environmental Documents (RDEIR/SDEIS, Table 19-26) as currently deficient. Road deterioration can result in additional traffic delays, damage to vehicles, and increased safety hazards.

### 5. Mitigation Measure TRANS 2-c

This mitigation measure addresses the effect of construction traffic on roadways that currently have unacceptable pavement conditions by improving the physical condition of affected roadways. While the County appreciates the inclusion of Mitigation Measure TRANS-2c, it is too narrowly focused to adequately mitigate the Project's impacts to County roads. As shown in Table 19-26 – *Existing Pavement Conditions in the Study Area*, the pavement conditions on most of the Sacramento County roadway segments in the study area are unacceptable. (RDEIR/SDEIS, p. 19-130.) Furthermore, the few that are classified as acceptable have a Pavement Condition Index (PCI) rating on the border of unacceptable. Adding construction traffic to these

roadways will make them deteriorate to unusable conditions. Furthermore, any roads used, whether they have an existing pavement deficiency or not, are expected to deteriorate due to the nature of construction activity. Roadways with a current PCI slightly higher than 56 out of 100 may be considered "acceptable," but they are very close to becoming unacceptable. The introduction of significant amounts of heavy construction traffic will quickly cause them to deteriorate into the unacceptable category. Mitigation measure TRANS-2c fails to account for or mitigate significant impacts to these roadway segments. All roadways that will carry construction traffic will be affected (including side roads) and should be subject to this mitigation measure, not just the roads identified in Table 19-26.

Due to the lengthy construction period, the BDCP proponents should not only be required to restore roadways to pre-construction condition or better at the end of the construction period, but they also should be required perform routine maintenance on substandard or damaged roadways prior to and throughout construction activities to ensure that roads remain safe and in acceptable condition for other users, including emergency vehicles. As drafted, this mitigation measure requires restoration of roads to their "pre-construction" condition. This seems impractical. For roads that are presently deficient, or on the verge of being deficient, the Environmental Documents should explain how the contractor ultimately will restore these roads to an "acceptable" condition. To achieve this end, the Petitioners should be required to deliver acceptable roadways back to Sacramento County as determined by the director of the DOT.

#### 6. Railroad Corridor Use

The Petitioners propose to use railroad corridors for construction access. Sacramento County DOT does not support the use of railroad corridors for construction roads. Even railroad corridors that are infrequently or not used any more can be turned into transportation amenities for alternative modes of travel (i.e., pedestrians, bicycles, equestrians, etc.). The use of these corridors for construction or operation access roads is not supported without further study.

#### 7. Job Site Access

The entrance and egress for construction-related job sites must be wide enough for doubles trucks to go out and come in from the same direction. Provisions also must be made for maintenance and repair of affected side roads. On levee roads within the County, contractors routinely set up entrance ramps going one direction (e.g., west bound) and egress ramps going out in the same direction so as to keep the traffic flowing. Trucks thus go around the block to get back to the site, such as a borrow pit. This causes damage to side roads when they cut back across the islands to get back to the stockpiles. Petitioners need to provide more detail showing how trucks are to enter and leave the job sites and follow haul routes. Without this information, DOT is unable to evaluate the full scope of potential traffic and road impacts or comment on the adequacy of the proposed mitigation measures.

This host of impacts to the County's transportation system in the Delta must be properly mitigated for the SWRCB to determine that the Proejct is in the public interest.

### 8. Bridges

Petitioners should evaluate impacts to all bridges, rather than just drawbridges. (See DIER/EIS, p. 19-23.) An evaluation of "other bridges" should be included in the Environmental Documents. At a minimum, the Environmental Documents should include a listing and map of all stationary bridges affected by the construction and future operation of water operation facilities. The aging drawbridges listed in Table 19-6 Roadway and Rail Draw Bridges in the Study Area, are currently operating at their threshold capacity. As a result, any additional transportation-related activities that occur as a result of the Project can easily put these bridges above their safe operating levels of service. Presently, no oversized and/or overweight trucks over 80,000 pounds are allowed on most of Sacramento County's draw bridges, including Freeport Bridge, Snodgrass Bridge, Walnut Grove Bridge, and Tyler Road Island Bridge. Use of these bridges for the Project must be coordinated with and approved by the DOT for structural limits on each bridge.

### M. The Project is Inconsistent with the Delta Plan

The Delta Plan, required by the 2009 Delta Reform Act, created a management plan for the Delta pursuant to the policies and objectives set by the Legislature "inherent in the coequal goals for management of the Delta" (California Water Code §85020). As the Legislature formed this policy and these objectives in the public interest of the constituents of the State, the SWRCB cannot determine that the Project is in the public interest if the Project fails to meet the requirements of the Delta Plan and its authorizing legislation.

The Project is a "covered action" under the Delta Plan and must demonstrate consistency with each applicable regulatory policy of the Plan. Where full consistency with all relevant regulatory policies is not feasible, a project proponent must clearly identify areas where consistency is not feasible, explain why it is not feasible and explain how the covered action nevertheless, on the whole, is consistent with the coequal goals. While the County has not yet done a complete analysis of the Project's consistency with every relevant policy of the Delta Plan, even a cursory review (along with the public comments on BDCP and CalWaterFix CEQA and NEPA documents) demonstrates that the Project is inconsistent with numerous key Delta Plan policies, and thus the State's mandated coequal goals.

# 1. The Project Fails to Document Use of the Best Available Science

Delta Plan Policy G P1, Detailed Findings to Establish Consistency with the Delta Plan, requires that all covered actions "document use of best available science." (2013 Delta Plan, p. 53.) The 2015 ISB Report along with the ISB's May 2014 review of the

DEIR/DEIS are highly critical of the data and methodologies supporting the Project and its environmental studies. The ISB's detailed comments lament the RDEIR/SDEIS's "missing content," including key information about adaptive management and collaborative science, how levee failures would affect operation of dual conveyance systems, the effect of climate change on expected water exports from the Delta and system operations, and effects of changes in operations of the State Water Project and Central Valley Project or other changes in water availability, on agricultural practices in the San Joaquin Valley. (See 2015 ISB Report at p. 4 et seq.) The 2015 ISB Report is substantial evidence of the Project's failure to document the use of best available science. Additionally, the expert reports of MBK Engineers, Dave Vogel, Robert Latour and others who commented on the Environmental Documents provide additional substantial evidence to demonstrate that the Project and its environmental review documents do not evidence the use of best available science. In this critical respect the Project is inconsistent with both the language and intent of the Delta Reform Act and Delta Plan.

### 2. The Project Fails to Properly Define Adaptive Management

Delta Plan Policy G P1 requires that water management covered actions include adequate provisions appropriate to the scope of the covered action, to assure continued implementation of adaptive management. This requirement is to be satisfied through both of the following: (A) An adaptive management plan that describes the approach to be taken consistent with the prescribed adaptive management framework, and (B) Document of access to adequate resources and delineated authority by the entity responsible for the implementation of the proposed adaptive management process. (2013 Delta Plan, p. 53.)

An essential element of an adequate adaptive management process as defined in the Delta Plan is the establishment of concrete performance measures against which impacts and mitigation, and the success of the adaptive management process itself, can be measured. (See, e.g., Appendix 1B, pp. 1B-3-1B4.) The Environmental Documents rely heavily on vague and undefined "adaptive management" processes to quantify and mitigate the Project's many significant environmental impacts. The lack of specified thresholds for action was criticized by both the ISB (See 2015 ISB Report at pp. 5-6) and the SWRCB<sup>1</sup>, and this error has not been corrected in the revised Project or RDEIR/SDEIS. The Project's lack of a scientifically and legally adequate adaptive management process is inconsistent with Delta Plan Policy GP 1.

### 3. The Project Increases Reliance on the Delta as a Water Source

Delta Plan Policy WP P1. Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance, provides, among other things, that "water shall not be exported from, transferred through, or used in the Delta if: . . . (3) The export, transfer or use would have a significant adverse environmental impact in the Delta." (Delta Plan,

<sup>&</sup>lt;sup>1</sup> See July 29, 2014 letter to Ryan Wulff by Diane Riddle, Environmental Program Manager, SWRCB re Comments on BDCP, Draft BDCP EIR/EIS and BDCP Implementing Agreement.

2013, pp. 102-203.) The Project not only increases reliance on the Delta, through the expenditure of massive amounts of public funds and construction of permanent facilities dedicated to increasing the frequency and reliability of Delta diversions, but it also will result in numerous significant unavoidable permanent environmental impacts. Moreover, given the scale of known adverse effects (and not even accounting for the many unevaluated and likely substantial adverse effects), including but not limited to impacts to fish and water quality, there is no credible basis for finding that the Project furthers the coequal goal of "protecting, restoring, and enhancing the Delta ecosystem." In this way the Project is inconsistent with Delta Plan Policy PF P2.

### 4. The Project Fails to Respect Local Land Use

Delta Plan Policy DP P2. Respect Local Land Use When Siting Water or Flood Facilities or Restoring Habitat, requires that water management facilities respect local land use and be sited to avoid or reduce conflicts with existing uses or those uses described or depicted in city and county general plans. (2013 Delta Plan, p. 194.) As described in detail in the County's Comments, the proposed diversion facilities and associated infrastructure fail to respect local land use and will conflict with and irreparably damage the existing Delta communities of Hood, Clarksburg and Courtland by permanently altering the physical landscape, including agricultural and cultural/historic uses, substantially degrading its unique scenic qualities and cultural/historical and economic values in perpetuity. In this way the Project is fundamentally inconsistent with Delta Plan Policy DP P2.

### 5. The Project Fails to Protect Beneficial Uses of Water

Delta Plan Policy WQ R1. Protect Beneficial Uses, provides that water quality in the Delta be "maintained at a level that supports, enhances and protects beneficial uses identified in the applicable State Water Resources Control Board or regional water quality control board water quality control plans." (2013 Delta Plan, p. 230.) The Project will have significant adverse effects to Delta water quality, including salinity, that threaten beneficial uses identified in the applicable water quality control plans, including agricultural irrigation water, fisheries and drinking water for Delta communities. By degrading Delta water quality to levels that threaten existing beneficial uses, the Project is inconsistent with Delta Plan Policy WQ R1.

### IV. Conclusion

The Petitioners have failed to do what the law requires in support of their Petition. The SWRCB should not compound this error in violation of due process and sound public policy by commencing Petition proceedings on incomplete and scientifically and technically flawed Environmental Documents. Even if the SWRCB moves ahead with Petition hearings, the SWRCB must find that the multitude of negative impacts of the Project –concentrated in the County of Sacramento and spanning a spectrum of physical, environmental, economic, and social issues-- outweigh the Project's uncertain and ill-defined public benefits. Moreover, the Legislature defined the public benefit as it

relates to the Delta in the Delta Reform Act of 2009. Those policies and objectives, translated into the related regulations of the Delta Plan, require the Project to be fully consistent with such policies to be in the public interest. The Project is not consistent with the Delta Plan, and thus is not in the public interest. While the California Delta, of hemispherical importance, is in uncontroverted crisis, the Petitioners' Project is not supported by evidence of sufficient public, biological, or ecosystem benefits and the Petition should be denied.

# Attachment 3 (Conditions under which this protest may be dismissed)

The proposed Project intends to be one of the state's largest public works projects. The County is ground zero in terms of potential physical, environmental, and socioeconomic impacts of the proposed water infrastructure facilities, identified to be constructed in/near the communities of Freeport and Hood. The proposed Project, if approved and constructed, will impact County businesses and residents in a myriad and far-reaching range of ways – some identified in the current Environmental Documents and some that may not be apparent for years to come.

All current Project and mitigation alternatives proposed for the Project are inconsistent with existing Delta-specific policies and principles adopted by the County Board of Supervisors. Notably, the Project provides:

- No enforceable assurances or protections for Sacramento County
- Significant negative impacts to the short- and long-term prosperity and economic structure of the communities in the Delta
- Uncertainty for long-term water right holders upstream of the Delta
- Lost agricultural production and resulting lost property tax revenues
- Significant impacts to existing infrastructure: roadways and bridges, rail lines, natural gas wells, groundwater wells, and water lines

The County is well aware that improving the health of the Delta ecosystem and maintaining a reliable water supply is critical, of statewide significance, and a statutory mandate. The County has never opposed finding solutions to address these issues. However, to date the Project process and documents have not effectively addressed the County's significant local and public interest concerns. Additionally, state and federal principals have expended little effort in committing to enforceable assurances and local protections.

The County Protest may not be dismissed or disregarded unless and until there has been a thorough analysis of the types of impacts described in Attachment 2 and the County Comments and: (i) the analysis proves that no such impacts will occur under the planned project and operation and the project is conditioned to be consistent with the assumptions in the impact analysis; or (ii) the order is conditioned to require mitigation of all direct or indirect impacts to the County that are attributable in whole or in part to the changes and any associated changes in facilities operations.

At a minimum, in crafting conditions to be consistent with the assumptions in the impact analysis and requiring mitigation to protect the County, its residents, and its historical institutions, the County requests that the SWRCB adhere to the following principles:

- 1. Not redirect unmitigated adverse environmental, economic, or social impacts to Sacramento County:
- 2. Honor and adhere to water right priorities and area-of-origin protections;
- 3. Have no adverse effect on the existing and future operations of the Sacramento Regional County Sanitation District facilities or the Freeport Regional Water Project; further, any other adverse impacts of water conveyance facilities routed through Sacramento County must be fully mitigated, with County staff fully involved with the routing and operational issues for such facilities within the County:
- 4. Protect Sacramento County's governmental prerogatives in the areas of its local land use authority, tax and related revenues, public health and safety, economic development, and agricultural stability;
- 5. Protect Sacramento County's ability to govern, as an elected body, from usurpation through governance by any non-elected, appointed council, commission, board, or team by including elected representatives from Sacramento County as a voting member of any council, commission, board or team established for the Project;
- 6. Be consistent with Sacramento County's land use planning and economic development objectives, including agriculture, and the South County Habitat Conservation Plan (HCP);
- 7. Commit financial resources to maintain and enhance vital transportation, flood control infrastructure, and emergency response resources within those areas of the Sacramento County Delta; and
- 8. Account for the multiple causes of the Delta's decline and not simply focus on one or a limited number of issues.

### Attachment 4 PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On January 5, 2016, I served a true and correct copy of the PROTEST (By Sacramento County) – PETITION (of Department of Water Resources and Bureau of Reclamation); California WaterFix:

XXX (electronically) by electronically transmitting a true copy to the person(s) at the electronic mailing addresses as 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

Yolanda De La Cruz