

PROTEST- PETITION

PETITION FOR CHANGE in water rights of the Department of Water Resources and U.S.

Bureau of Reclamation for the California WaterFix Project

APPLICATION 1 PERMIT 1 LICENSE 1

**OF the California Department of Water Resources
and the United States Bureau of Reclamation**

I (We) have carefully read the notice (state name): Islands, Inc.

Address, email address and phone number of authorized agent:

Michael J. Van Zandt
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
(415) 777-3200
mvanzandt@hansonbridgett.com

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS:

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

State facts which support the foregoing allegations:

Islands, Inc. owns riparian water rights from the Sacramento River and has established these rights for over 100 years. There is considerable concern that the BDCP will increase the salinity for the San Joaquin River as more and more fresh water is pumped from the Delta. There is a salinity monitoring station at the Rio Vista Bridge that must be maintained in order to ensure water quality for Ryer Island. Any interference with water quality must be evaluated as part of the petition process and appropriate mitigation measures implemented.

Islands, Inc. is also concerned with concentrations of selenium, chloride, mercury and other harmful substances increasing in the water as a result of the bypassing of large quantities of water from north to south in the pipeline. Islands, Inc. requests that additional monitoring of these substances be included in any mitigation plans and that mitigation measures be in place to prevent these pollutants from interfering with the agricultural operations on Ryer Island.

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

Islands, Inc. is also concerned about subsidence of the lands affected by the proposal. Islands, Inc.'s properties on Ryer Island are already below sea level. It is an accepted fact that the groundwater beneath Ryer Island is hydrogeologically connected directly to the flows of the Sacramento River. As water is withdrawn from the Delta that otherwise would flow as part of the underground flow of the river, then subsidence of the overlying lands can occur. Any further subsidence of the lands would move the Ryer Island surface closer to the water table. It is important for the soils on Ryer Island remain at a sufficient depth above the water table so that seepage will not occur. If the land subsides as a result of the removal of water from the Delta through the tunnels, then there is a probability that the surface of the land will subside and expose the crops to saturation at the root level, causing root rot. Obviously, this will be highly detrimental to the growth and sustainability of the crops.

Islands, Inc. understands that the proposed action will involve the protection of endangered species, limiting incidental takes, but also protecting the water rights of CVP and SWP members up to their contractual limits. There was no mention of protecting riparian water right owners in the project purposes and that protection must be included. The Delta is a large region and consists of many different interests. The interests of one of the largest agricultural producing regions in the world must be protected. Ryer Island is a significant contributor to the success of agriculture in the Delta, and its resources must be protected. Riparian water rights are the highest, protected type of water rights in California. Islands, Inc. has established these water rights as a result of the existence of the island immediately adjacent to the Sacramento River. The WaterFix must ensure that no part of the project will interfere with these rights.

Not only is Islands, Inc. concerned about water quality, it is also concerned about water quantity. As more and more water is shipped south and now with the two tunnels bypassing the region, there is considerable concern that the WaterFix will result in less fresh water being available for farmers along the path of the Sacramento Rivers. Steps must be taken to ensure that the quantity of water is maintained in the river to support agriculture. The priority of Island Inc.'s water rights as a pre-1914 riparian right is established through the voluminous documents recently submitted to the State Water Resources Control Board. These water rights have the highest priority and whatever water is shipped south through the tunnels should not interfere with these important agricultural water rights.

Ryer Island is below sea level and must depend on Reclamation District 501's pumps to keep the island from flooding. However, Islands, Inc. also has a series of intake pumps to pump water from the river to the island for irrigation. These intakes are set at certain depths and a drop in the level of the river could mean that islands, Inc. would have to reset its intakes deeper in the river. Mitigation steps must be taken to ensure that water that bypasses Ryer Island does not cause a drop in the river that prevents Islands, Inc. from diverting water onto the island.

Ryer Island was the subject of a temporary entry permit to investigate the feasibility of using the island as a route for the proposed tunnels. Although the route is not the preferred proposal, it is still an alternative analyzed in the EIS/EIR. Islands, Inc. is adamantly opposed to the destruction of its farm lands for use as a right of way for the tunnel. The disruption caused by the construction alone would destroy Islands, Inc.'s viability as a farming operation. The severance of so much of Islands, Inc.'s lands from the rest of the farm threaten to make the entire operation economically infeasible.

Islands, Inc. is also concerned that as water levels and flows drop there will be an increased buildup of aquatic plants. These aquatic plants are not only a hazard to navigation on the river and sloughs, but also present a hazard to the diversion intakes that Islands, Inc. maintains. The clogging of the intakes prevents water from reaching the pumps and diversion works and if the plants enter the pumps, then

machinery can be damaged and irrigation must stop. The loss of the ability to divert will have a disastrous impact on crops.

The proposed action will not be within the State Water Resources Control Board's jurisdiction because:

A complete application for a change in water rights has not yet been submitted for the proposed change. In particular, the proposed operations of the new diversion facilities has not been provided, nor has an analysis of the water quality and other impacts of the project been completed. Moreover, no NEPA/CEQA review has been completed which denies protestant the opportunity to be informed about environmental impacts and possible mitigation measures that could be implemented to eliminate or reduce impacts to existing water rights and the environmental. As a result of these deficiencies it is not possible for the Board to review the petition in isolation from the environmental analysis and protestants are prevented from presenting evidence at any hearing which will inform the Board of the true impacts from the petition.

Protest based on INJURY TO PRIOR RIGHTS:

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

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on pre-1914 riparian rights.

1. Surface water level impacts
2. Increased salinity, selenium, chloride, mercury and other harmful substances
3. Growth of aquatic weeds and algae
4. Groundwater level impacts – Dewatering during construction of the CWF (intakes, forebay and tunnels) would lower water levels
5. Land Subsidence
6. See also statement of facts above.

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree). See Supplemental Exhibit 1 and attached map.

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

The extent of present and past use of water by protestant or his predecessors in interest is as follows: See Supplemental Exhibit 1.

- a. Miner Slough, Cache Slough, Steamboat Slough, off Sacramento River at Ryer Island
- b. Approximate date first use made 1860s and 1870s
- c. Amount used (list units) See Supplemental Exhibit 1 and map
- d. Diversion season January to October
- e. Purpose(s) of use Irrigation

Under what conditions may this protest be disregarded and dismissed?

This protest may be disregarded and dismissed when the subject change petition described above is withdrawn from consideration before the State Water Resources Control Board. Due to the failure of DWR/BOR to comply with existing permit conditions and to meet water quality standards in D-1641, compliance with additional conditions would not be considered adequate to address protestant's concerns.

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

Signed: 
Michael J. Van Zandt
Attorney for Islands, Inc.

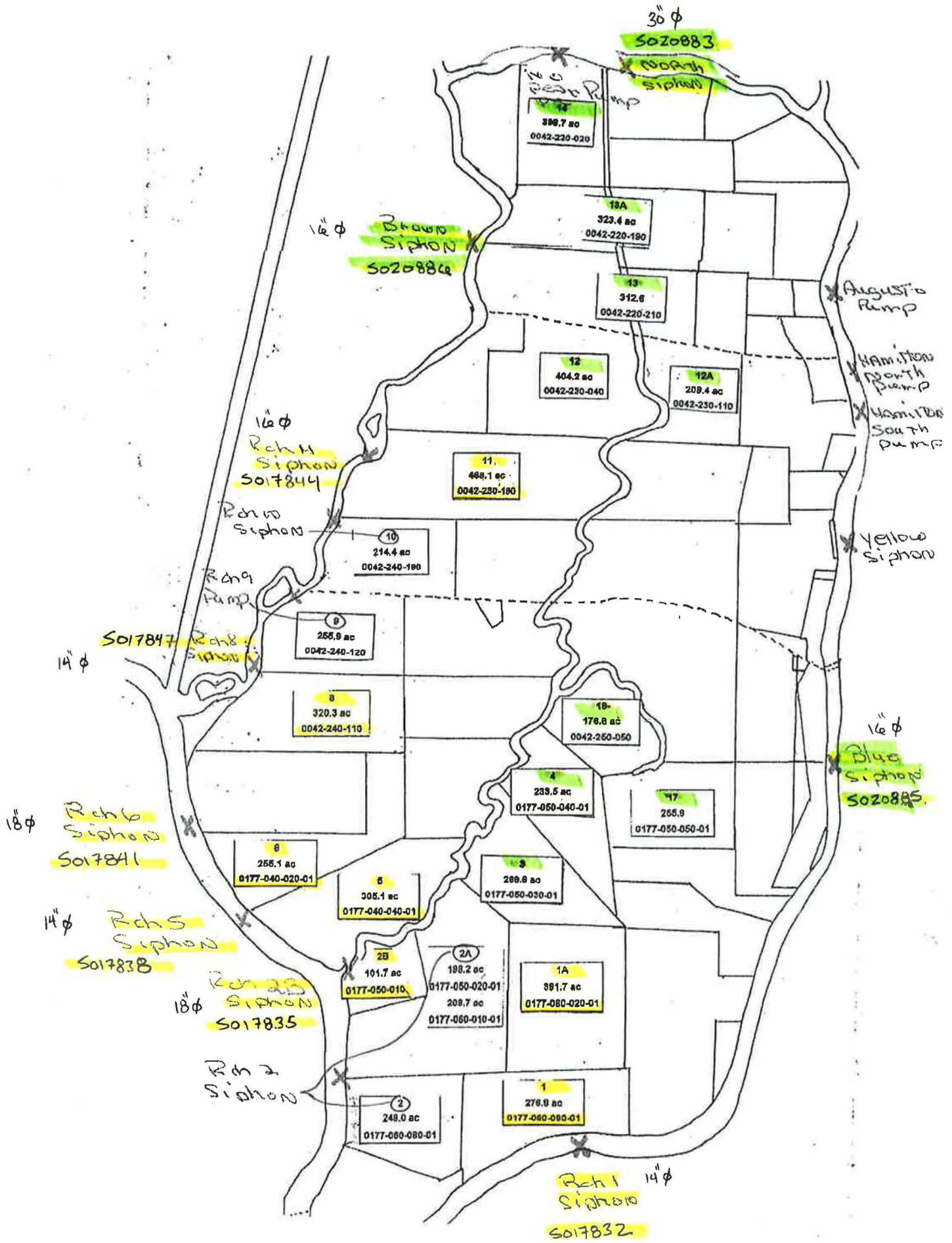
Date: January 5, 2016

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

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

Islands, Inc. Water Rights

Application Number	WR Type	Status	Primary Owner	Location	Amount AF	Date First Used
S017832	Statement of Div and Use	Claimed	Islands, Inc.	NENW, Sec. 15, 4N, 3E	234	1871
S017059	Statement of Div and Use	Claimed	Islands, Inc.	NESW, Sec. 10, 5N, 3E	203	1870
S017841	Statement of Div and Use	Claimed	Islands, Inc.	SWNE, Sec. 5, 4N, 3E	1006	1876
S017844	Statement of Div and Use	Claimed	Islands, Inc.	NENW, Sec. 28, 5N, 3E	1229	1868
S020886	Statement of Div and Use	Claimed	Islands, Inc.	NWSW, Sec. 15, 5N, 3E	481	1876
S017835	Statement of Div and Use	Claimed	Islands, Inc.	SWNW, Sec. 9, 4N, 3E	1227	1876
S020884	Statement of Div and Use	Claimed	Islands, Inc.	NWSW, Sec. 25, 5N, 3E	293	1870
S017838	Statement of Div and Use	Claimed	Islands, Inc.	SWSE, Sec. 5, 4N, 3E	497	1876
S020882	Statement of Div and Use	Claimed	Islands, Inc.	SWNW, Sec. 28, 5N, 3E	0	1870
S020885	Statement of Div and Use	Claimed	Islands, Inc.	SWSE, Sec. 2, 4N, 3E	1397	1876
S020881	Statement of Div and Use	Claimed	Islands, Inc.	SESE, Sec. 29, 5N, 3E	0	1870
S020883	Statement of Div and Use	Claimed	Islands, Inc.	NWSE, Sec. 10, 5N, 3E	2242	1876
S017847	Statement of Div and Use	Claimed	Islands, Inc.	SWNE, Sec. 32, 5N, 3E	460	1878
S020880	Statement of Div and Use	Claimed	Islands, Inc.	SWSW, Sec. 9, 4N, 3E	0	1870



ISLANDS, INC. POINT OF DIVERSION MAP