

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 CALIFORNIA WATERFIX PROJECT, dated October 30, 2015.

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

Protestant: Sacramento Regional County Sanitation District
Mr. Prabhakar Somavarapu, District Engineer
10060 Goethe Road
Sacramento, CA 95827
somavarapup@sacsewer.com
(916) 875-9116

Authorized Agent: Somach Simmons & Dunn, PC
Paul S. Simmons, Esq.
Andrew M. Hitchings, Esq.
Theresa A. Dunham, Esq.
Kelley M. Taber, Esq.
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
psimmons@somachlaw.com
ahitchings@somachlaw.com
tdunham@somachlaw.com
ktaber@somachlaw.com
(916) 446-7979

Attach supplemental sheets. 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 be within the State Water Resources Control Board's jurisdiction
- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations: **See Attachment 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**

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 4**

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

Where is your diversion point located? **See Attachment 5**

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? **See Attachment 5**

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

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

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

Signed: Paul J. S. _____ Date: January 5, 2016

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

ATTACHMENT 1 (Petitioners' Permits)

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

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

ATTACHMENT 2 (Facts Supporting Protest Based on Environmental, Public Interest Considerations, Applicable Law)

I. *Identification of Protestant*

Sacramento Regional County Sanitation District (Regional San) owns and operates the Sacramento Regional Wastewater Treatment Plant (SRWTP). The SRWTP was planned, located, designed, and constructed in the 1980s as the alternative to then-existing regional conditions under which there were over 20 facilities discharging wastewater to the American and Sacramento Rivers. The SRWTP receives and treats wastewater from businesses and a population of approximately 1.4 million people in the urban Sacramento County region and City of West Sacramento. The SRWTP is regulated under waste discharge requirements and NPDES No. CA0077682, as adopted and renewed in Central Valley Regional Water Quality Control Board Order No. R5-2010-0114-04. The authorized discharge is 181 million gallons per day (mgd), average dry weather flow. The SRWTP currently provides secondary treatment and disinfection prior to discharge from a 75-port diffuser located on the bottom of the Sacramento River in the vicinity of Freeport. Under the EchoWater Project, a \$2 billion undertaking, nitrification and denitrification and tertiary filtration will be provided prior to disinfection and discharge.

Regional San's current and future activities and interests also relate to direct and indirect re-use of treated water. Under applicable law, including the Water Code (e.g., sections 1486, 1212), Regional San may obtain permits to divert and beneficially use water from the Sacramento River or Delta based on the amounts of water that it has discharged to the Sacramento River, or dedicate water to instream purposes.

With respect to direct re-use, currently, Regional San conducts recycling and re-use in accordance with the July 31, 1996 State Water Resources Control Board Order on Application WW-28. The authorized use recognized in that order is 10 mgd, and current use is approximately 3.5 mgd. Regional San is also actively pursuing further recycled water use opportunities, including the "South County Agriculture & Habitat Lands Recycled Water Program" (South County Ag Project). The South County Ag Project would deliver up to 52,000 acre-feet per year of disinfected tertiary treated recycled water to approximately 16,000 acres of irrigated land in southern Sacramento County, which area could increase by about 5,000 acres. This project would advance state recycling goals and provide various benefits related to regional water reliability, reduce burdens on groundwater resources for irrigation, raise groundwater levels, improve Cosumnes River flow and fishery conditions, and provide water for wetland resources. The notice of preparation of an environment impact report (EIR) for this project was released in February 2015, and is available at http://www.regionalsan.com/sites/main/files/file-attachments/notice_of_preparation_final.pdf. A draft EIR is expected in early 2016.

II. *Basis for Protest*

The proposed action would be contrary to law, not best serve the public interest, and have adverse environmental impacts, and Petitioners have not met the burden required for, and the evidence does not support, approval of the Petition, as follows:

The Petition does not discuss, address, or resolve any of the issues or evidence presented in the October 30, 2015 “Regional San Comments on BDCP/CA WaterFix’s Recirculated Draft EIR/Supplemental Draft EIS” (Regional San October 2015 Comments) or the July 29, 2014 “Regional San Comments on Draft BDCP and Associated Draft EIR/EIS” (Regional San July 2014 Comments). The Regional San October 2015 Comments and Regional San July 2014 Comments are hereafter referred to collectively as the “Regional San Comments,” and are incorporated herein by reference.

As demonstrated by the Regional San Comments, the impacts of the proposed action have not been analyzed or disclosed, and analysis to date has been based on faulty and incomplete data. However, and based on the available information and analysis and data by experts John List and Aaron Mead of Flow Science, Inc., the proposed changes are expected to adversely affect Sacramento River flow conditions, increase frequency and magnitude of reverse flows, and alter water quality. In turn, these impacts will adversely affect Regional San and other parties, interests, and resources.

Under the terms of its NPDES permit, Regional San is prohibited from discharging when the ratio of Sacramento River flow to effluent flow is less than 14:1. The occurrence of flows at this ratio or lower, or of reverse flows, is a function of tidal influence. In turn, the tidal influence is greater when lower Sacramento River flow is reduced. Increases in the frequency, duration, or magnitude of ratios of less than 14:1, or reverse flow, require that Regional San incur costs for storage basin construction, operation, and maintenance, as well as costs to pump water out of basins that would not otherwise have to be pumped. SRWTP operators divert water to storage basins and pump out water when flows return. The Petitioners have not conducted, and the State Water Resources Control Board (State Water Board) does not presently have available, sufficiently specific modeling to identify or quantify this phenomenon. Regional San has investigated this issue and the investigation supports the conclusion that the increased frequency, duration, and magnitude of flows below the 14:1 ratio, or reverse flows, should be anticipated to adversely affect Regional San and its customers.

The effects of further flow diminution or reverse flows, and other hydrologic change and that will or may result under the proposed action, are not limited to the operational storage issues. The Petition would also lead to direct or indirect effects on water quality, or receiving water conditions for the SRWTP discharge. Because effects have not been adequately evaluated, the full range of adverse impacts is uncertain. The proposed action would, according to analysis conducted by Petitioners, result in increased salinity and methylmercury levels, which would be unmitigated. Such changes in water quality may increase regulatory burdens for other parties, such as Regional San. Regional San, further, questions how the State Water Board can certify that the proposed activities will attain water quality standards as required under section 401 of the Clean Water Act. Also, changes in assimilative capacity of the Sacramento River or Delta, whether resulting from reduction in lower Sacramento River

flows, exaggeration of tidal effects, or system operational changes, can increase regulatory burdens and costs for Regional San. Petitioners have not completed sufficient technical analysis, and have not met the burden or standards required for project approval because these impacts have not been evaluated sufficiently. Regional San will or may also incur increased regulatory burdens resulting from adverse changes in water quality or in the aquatic ecosystem caused by the proposed action. It would be inappropriate and contrary to the public interest to approve the changes based on the existing record.

The Petition cannot be approved because it does not meet the requirements or policies of the Delta Reform Act. This issue is addressed in the Regional San October 2015 Comments at page 9, and in summary: the project does not attain the co-equal goals; the project environmental impact analysis does not provide an adequate adaptive management plan; there has not been a comprehensive analysis of a reasonable range of flow criteria, rates of diversion, and other operational criteria to identify the remaining water available for export and other beneficial uses; the project is not proposed to be conditioned on arrangements being in place to pay for the cost of construction, operation, and maintenance of new Delta conveyance facilities; and water quality impacts are insufficiently avoided or mitigated.

ATTACHMENT 3 (Conditions Under Which This Protest May Be Disregarded and Dismissed)

I. *Protest Concerning Environmental or Public Interest Considerations (the Subject of Attachment 2 to Regional San's Protest)*

The 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 Regional San 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 Regional San that are attributable in whole or in part to the changes and any associated changes in facilities operations.

II. *Protest Concerning Injury to Prior Rights (the Subject of Attachments 4-5 to Regional San's Protest)*

The protest may be dismissed if the order on the Petition is conditioned to preclude any present or future determination, and preclude Petitioners or other parties from asserting: (i) that treated effluent from the SRWTP is available for appropriation or diversion by third parties (other than as may be acting in concert with Regional San), or that Regional San can be required to discharge treated effluent or ensure flow to provide water for diversion by other parties or to meet standards, objectives, or other criteria that are directly or indirectly related to flow; or (ii) that water dedicated to instream purposes under Water Code section 1212 is subject to appropriation or available for diversion by downstream parties.

III. *Regional San is Prepared to Engage Constructively With the Applicants to Resolve, as Efficiently as Possible, Any or All of the Protest Grounds Stated Herein*

ATTACHMENT 4 (Facts Supporting Protest Based on Injury to Prior Rights and Lawful Use of Water)

See Attachment 2, section I for pertinent background facts regarding Regional San. Approval of the Petition will, or may threaten to, impair Regional San's prior rights to water. Regional San has rights: to divert water downstream of its discharge based on the amount of treated effluent discharged; and to re-use treated effluent, or deliver effluent to others for re-use, rather than discharge such water to the Sacramento River. As such, under the water rights system, water currently discharged or authorized for discharge by Regional San is not subject to appropriation or call by others. To the extent the Petition assumes that Regional San's treated effluent will continue to be discharged to the Sacramento River, or that treated effluent will be available to meet obligations, standards, or objectives that are directly or indirectly related to flow, such assumption is incorrect; and action based on the assumption would injure Regional San, a legal user of water under its prior, superior rights, and would be contrary to law.

Further, pursuant to Water Code section 1212, Regional San has the right to dedicate flows to instream purposes, on a temporary or permanent basis. Diversion of such water at the new (or any existing) points of diversion is not permissible.

ATTACHMENT 5 (Nature of Protestant's Rights to Water)

I. *Regional San Claims a Right of Use of Water as Follows*

Regional San has a right to divert water from the Sacramento River and Delta for beneficial use based on quantities discharged, in accordance with applicable law. Regional San also has the right to use, or to deliver to others for use, treated effluent that could otherwise be discharged to the Sacramento River whether at the current point of discharge for the SRWTP or elsewhere. Regional San's rights are based on ownership and possession of the treated wastewater under prior rights and under applicable statutes, case law, and State Water Board decisions. Currently, the State Water Board's Order on application WW-28 confirms Regional San's rights to recycle and re-use up to 10 mgd of its discharges. Regional San's rights, however, extend to all water that Regional San might otherwise discharge. Such rights may include, but are not limited to, rights addressed under Water Code section 1486.

Regional San also claims a right to dedicate discharged flows to instream use under Water Code section 1212, at locations both upstream and downstream of the proposed new points of diversion and rediversion.

II. *Permit, License, or Statement of Diversion and Use*

Regional San currently holds State Water Board Order on application WW-28. Regional San's other prior rights to water are not based on appropriation (in the sense of historic diversion and application to beneficial use) or riparian claim, but on applicable law and the Water Code.

III. *Protestant's Diversion*

Regional San does not currently extract water from the Sacramento River. Regional San's current point of discharge to the Sacramento River of water to which it is entitled, and from which it may continue or discontinue to discharge, is at latitude 38 degrees north, 27 minutes, 15 seconds; longitude 121 degrees west, 30 minutes, 00 seconds. This location is upstream of the Petitioners' proposed new points of diversion.

Regional San's diversion of water based on discharged flows, and its dedication of water to instream use may be either upstream or downstream of Petitioners' proposed new points of diversion (or both).

IV. *Extent of Past Water Use*

Regional San's historic discharge of water that it is entitled to use is variable. The average annual discharge over the past decade is 137 mgd and the peak discharge has been 364 mgd. Regional San's current recycled water use under the State Water Board Order on application WW-28 is approximately 3.5 mgd. Regional San's recycled water use under the South County Ag Project would be approximately 52,000 acre-feet, generally consistent with a typical irrigation pattern. Regional San's future diversion or dedication of water to instream use may include volumes up to the entire amount authorized for discharge.

ATTACHMENT 6 (Proof of Service)

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 Regional County Sanitation District) – PETITION (of Department of Water Resources and Bureau of Reclamation; California Water Fix Project):

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

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 5, 2016, at Sacramento, California.



Crystal Rivera