



March 15, 2024

SENT VIA EMAIL DCP-WR-Petition@waterboards.ca.gov

Attn: Delta Conveyance Project Change Petition Staff
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA, 95812-2000

Re: Unresolved Protests of California Department of Water Resources' Petitions for Extension of Time for Water Rights Permits Needed for Delta Conveyance Project

Dear Delta Conveyance Project Change Petition Staff:

This letter concerns the failure of the State Water Resources Control Board ("SWRCB") to address still pending protests to the Department of Water Resources' ("DWR") 2009 Petition for Extension of Time ("2009 Petition") for the water rights permits associated with the proposed Delta Conveyance Project ("DCP").¹ On June 6, 2023 and July 7, 2023, California Water Impact Network, California Sportfishing Protection Alliance, AquAlliance, Central Delta Water Agency, and South Delta Water Agency (collectively "Protestants") submitted letters to SWRCB regarding DWR's 2009

¹ The State Water Project permits at issue are: 16478, 16479, 16480, 16481, and 16482 (collectively "Permits").

State Water Resources Control Board
Division of Water Rights
March 15, 2024
Page 2 of 3

Petition, and the status of the unresolved protests filed against the 2009 Petition in 2010.² The letters requested that the SWRCB clarify the status of DWR's Permits and that the 2009 Petition be assigned to the Administrative Hearings Office for further proceedings. There has been no response from the SWRCB. We have included the SWRCB Chair and Members, as well as the Executive Director, as recipients of this letter, and reiterate our prior requests that the SWRCB address our protests to DWR's 2009 Petition.

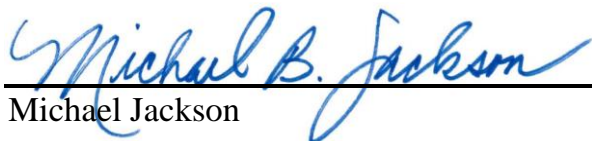
On February 22, 2024, the SWRCB received a Petition for Change from DWR to add two new points of diversion and rediversion associated with the same State Water Project permits that were the subject of our protests in 2010. Just seven days later, on February 29, 2024, the SWRCB issued a Notice of Petition Requesting Changes in Water Rights of the Department of Water Resources for the Delta Conveyance Project, setting the deadline for filing protests on the new Change Petition of April 29, 2024.

Protestants object to the noticing of DWR's new Change Petition prior to resolving our still pending 2010 protests regarding the same water rights. DWR's 2009 Petition, and the protests opposing it, have now been left unresolved for more than 14 years. Water allocated under the subject Permits has not been diligently put to full beneficial use, and thus has impermissibly been held in cold storage, for over 50 years using the 1972 Permit date and for over 90 years using the 1927 application date. The SWRCB's proposed ordering of proceedings is inconsistent with the water rights statutory scheme, implementing regulations, case law, and SWRCB Orders in other water rights proceedings. As a result, DWR's Petition for Change is incomplete,³ and cannot proceed prior to resolving our Protests.

Sincerely,

California Water Impact Network
AquAlliance

California Sportfishing Protection
Alliance


Michael Jackson


Chris Shutes, Executive Director

² The Protestants' July 7, 2023 letter, which includes the June 6, 2023 letter is attached as Exhibit A for your reference.

³ In alleging that DWR's 2024 Petition is incomplete for failure to resolve our protests, we do not waive the right to assert other bases for the incompleteness of the subject Petition.


State Water Resources Control Board
Division of Water Rights
March 15, 2024
Page 3 of 3

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.



Dante Nomellini, Sr.



John Herrick

Attachment: Exhibit A, July 7 and June 6, 2023 Letters to SWRCB

cc: Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov
Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov
Eric Oppenheimer, Eric.Oppenheimer@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov
David J. Steffenson, David.Steffenson@water.ca.gov

EXHIBIT A



AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS

July 7, 2023

SENT VIA EMAIL

(Erik.Ekdahl@waterboards.ca.gov)

Erik Ekdahl, Deputy Director
State Water Resources Control Board
Division of Water Rights
1001 I Street
Sacramento, California 95814

Re: California Department of Water Resources' Petition for Extension of Time for Water Rights Permits 16477, 16478, 16479, 16480, 16481, and 16482

Dear Mr. Ekdahl:

On June 6, 2023, California Water Impact Network, California Sportfishing Protection Alliance, AquAlliance, Central Delta Water Agency, and South Delta Water Agency (collectively "Protestants") submitted a letter to Chair Esquivel and the State Water Resources Control Board ("SWRCB").¹ The letter requested that the SWRCB clarify the status of the Department of Water Resources' ("DWR") water rights permits 16477, 16478, 16479, 16480, 16481, and 16482 (collectively "Permits"), clarify the status of 2009 Petition for Extension of Time ("2009 Petition") for the Permits, and the status of the protest that Protestants filed against the 2009 Petition. Protestants requested that the SWRCB respond to the June 6th letter by June 21, 2023. Having not received a response, this letter requests that you, as the Deputy Director of the Division of Water

¹ The Protestants' June 6, 2023 letter is attached for your reference.

State Water Resources Control Board
Division of Water Rights
July 7, 2023
Page 2 of 4

Rights, recommend that the 2009 Petition be assigned to the Administrative Hearings Office (“AHO”) for further proceedings.

DWR’s current iteration of new Delta conveyance, which relies on the ability to assert the water rights claimed in the 2009 Petition, would divert up to 6,000 cfs from the Sacramento River. Other entities also propose to divert water from the Sacramento River, such as the Sites Project Authority. Noticed for hearing on June 2, 2023, the Sites application would divert up to 4,200 cubic feet per second (“cfs”) from the Sacramento River and a yearly maximum diversion of 1,500,000 acre-feet. Those two applications amount to 10,200 cfs of diversions. With the apparent processing of the Site’s application first, it is unclear how DWR’s proposed diversions for the Delta Conveyance Project would be considered in the Sites hearing.

Further complicating matters, updates to the Water Quality Control Plan for the Bay-Delta (“Bay-Delta Plan”) to establish water quality objectives for the protection of beneficial uses are still pending. Amendments to the Bay-Delta Plan could restrict diversions in the Sacramento River Watershed. SWRCB staff’s “July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan” identifies a proposed inflow level of 45-65% of unimpaired flow, with a starting point of 55%. Again, it is unclear how any flow requirements affect the availability of water for these major new diversions from the Sacramento River. Continuing to hold the water rights sought in DWR’s Petition prejudices the orderly implementation of water rights as well as the protection of beneficial uses within the Bay-Delta watershed.

Assigning this matter to the AHO is within your discretion and consistent with past assignments by the SWRCB. For example, in February 2021, you proposed to assign the City of Stockton’s pending water rights application 30531B to the AHO for resolution. That application 30531 was filed in 1996 and requested to divert water from the San Joaquin River. In 2005, The SWRCB issued Permit 21176. However, the City of Stockton was required to develop the full beneficial use of the water by 2021. The City of Stockton informed SWRCB that it had not achieved the face value of the permit and was planning to request an extension of time. Based on the information you received from the City of Stockton, you proposed that the AHO resolve the application. Your letter to Executive Director Eileen Sobeck concluded, “Given the large project size and the location in the Bay Delta watershed, resolution of these issues would be most effectively achieved through a proceeding by the [AHO]. Therefore, I am recommending assignment of this matter to the [AHO] for noticing, conducting a proceeding, and preparing a

proposed order regarding the issues identified in this memo.”² The Executive Director subsequently assigned the matter to the AHO, which then commenced a hearing, ultimately ordering SWRCB to deny application 30531B.

Here, DWR has failed to develop the full beneficial use of the water and has requested multiple extensions of time. Protestants request that DWR be treated the same as other water rights applicants in the Bay Delta watershed, and not be provided special treatment for its water rights application.

DWR’s 2009 Petition, and the protests opposing it, have been left unresolved for more than 13 years. The AHO was created to “provide qualified, impartial hearing officers, to ensure that water rights matters, including water-related cannabis enforcement matters, are resolved in a timely manner, and to provide the board flexibility to assign hearing officers to other matters such as those involving water right change petitions and other matters concerning water right permits and licenses.” (Wat. Code, § 1110, subd. (b).) In order to ensure that water rights are not improperly put in “cold storage,” the SWRCB must act diligently to resolve the 2009 Petition and related protests, consistent with other applications and petitions in the Bay Delta watershed. Therefore, Protestants respectfully request that this matter be referred immediately to AHO for resolution.

² Letter from Erik Ekdahl to Eileen Sobeck can be accessed at: https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021_03_29_notice_stockton.pdf, Attachment 3, p. 4.

State Water Resources Control Board
Division of Water Rights
July 7, 2023
Page 4 of 4

Sincerely,

California Water Impact Network
AquAlliance


Michael Jackson

California Sportfishing Protection
Alliance


Chris Shutes, Executive Director

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


Dante Nomellini, Sr.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


John Herrick

Attachment: Exhibit A, June 6, 2023 Letter to SWRCB

Sent via email:

Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov
Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov
Eileen Sobeck, Eileen.Sobeck@waterboards.ca.gov
Jay Ziegler, Jay.Ziegler@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov
Eric Oppenheimer, Eric.Oppenheimer@waterboards.ca.gov
Nicole Kuenzi, Nicole.Kuenzi@waterboards.ca.gov
Megan Knize, Megan.Knize@waterboards.ca.gov

EXHIBIT A



AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS

June 6, 2023

SENT VIA EMAIL

(Joaquin Esquivel, Joaquin.Esquivel@waterboards.ca.gov)

Chair Esquivel and Members of the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: California Department of Water Resources' Petition for Extension of Time for Water Rights Permits 16477, 16478, 16479, 16480, 16481, and 16482

Dear Chair Esquivel and Members of the Board:

This letter is written on behalf of California Water Impact Network, Central Delta Water Agency, South Delta Water Agency, Lafayette Ranch Inc., R.C. Farms Inc., AquAlliance, and California Sportfishing Protection Alliance (collectively "Protestants"). Protestants request that the State Water Resources Control Board ("SWRCB") provide a status update regarding the Department of Water Resources' ("DWR") water rights permits 16477, 16478, 16479, 16480, 16481, and 16482 (collectively "Permits"). Under these Permits, the time for the completion of construction and putting the full amount of water to beneficial use passed in 2015 (or earlier). Since these Permits were issued, the hydrology of the Delta has changed, climate change continues to impact the State's water sources, and the development of water sources by DWR outside the Delta region has not and will not come to fruition. DWR has impermissibly put this water in "cold storage" for decades. SWRCB must determine the validity of the Permits, starting with Protestants' 2009 protests that opposed DWR's 2009 Petition for Extension of Time.

DWR's Petition for Extension of Time states that the Permits were issued to DWR on September 26, 1972.¹ The Permits initially required DWR to complete construction before December 1, 1980, and complete the application of the water to the proposed use by December 1, 1990. DWR failed to meet these deadlines and filed a Petition for Extension of Time. SWRCB granted the request, and in the early 1990s, the Permits were amended to require DWR to complete construction prior to December 31, 2000, and put the water to beneficial use prior to December 31, 2009. DWR, again, failed to meet these deadlines.

On December 31, 2009, DWR submitted another Petition for Extension of Time ("2009 Petition"). The 2009 Petition requested that the Permits be extended for an additional five-year period to 2015. The 2009 Petition states, "At the end of this period, DWR should be in a much better position to explain the time, facilities, and operations that will be necessary to maximize the beneficial use of water. Depending on circumstances in the future, at the conclusion of this five-year period, DWR may need to petition for further extension of said permits." Several entities filed protests against the 2009 Petition.

However, before the protests were resolved, DWR submitted a separate petition to change the point of diversion associated with the California WaterFix project. As a result, SWRCB issued a notice of public hearing and pre-hearing conference for the WaterFix change petition on October 30, 2015. Footnote 11 of the October 30, 2015, notice of public hearing for the WaterFix change petition stated:

Water right permits issued by the State Water Board specify a development schedule to complete construction and beneficial use of water. When a permit development schedule has elapsed, no further development of water use may occur. The permittee is limited to the maximum annual quantity put to use during the permit development schedule unless the permittee is granted an extension of time to extend the development schedule. DWR's time to complete construction and beneficial use of water for its subject permits elapsed on December 31, 2000, and December 31, 2009, respectively. On December 31, 2009, DWR filed petitions to extend the development schedule until December 31, 2015, for the subject four permits and two additional DWR permits. The State Water Board noticed all six DWR petitions on August 19, 2010, and received eight protests. The

¹ The Permits were initially issued at various times between the 1920s and 1950s.

protests have not been resolved and the petitions for time extensions are still pending.²

Therefore, in 2015, SWRCB publicly acknowledged that the protests related to the Permits had not been resolved.³ However, since 2015, the SWRCB has failed to take action to commence the hearing associated with the 2009 Petition protests.

Protestants' protests were filed in 2009. Although the 2009 Petition requested an extension of time to 2015, that date has long passed. The 2009 Petition is no longer valid. The below Protestants request that SWRCB respond to this letter within ten business days clarifying the status of the Permits, the status of the 2009 Petition, and the status of the protests filed opposing the 2009 Petition.

Sincerely,

California Water Impact Network
AquAlliance


Michael Jackson

California Sportfishing Protection
Alliance


Chris Shutes, Executive Director

Central Delta Water Agency
South Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


Dante Nomellini, Sr.

South Delta Water Agency
Central Delta Water Agency
Lafayette Ranch Inc.
R.C. Farms Inc.


John Herrick

² The Notice of Petition can be accessed at:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwfnotice_pet_hrg.pdf

³ Prior to the conclusion of the hearing, DWR withdrew the WaterFix change petition on May 2, 2019.

Chair Esquivel and Members of the Board
State Water Resources Control Board
June 6, 2023
Page 4 of 4

Sent via email:

Dorene Dadamo, dorene.dadamo@waterboards.ca.gov
Sean Maguire, sean.maguire@waterboards.ca.gov
Laurel Firestone, laurel.firestone@waterboards.ca.gov
Nichole Morgan, nichole.morgan@waterboards.ca.gov

cc via email:

Eileen Sobeck, Eileen.Sobeck@waterboards.ca.gov
Kathryn Gaffney, Kathryn.Gaffney@waterboards.ca.gov