

March 16, 2016

VIA EMAIL

Felicia Marcus
State Water Board Chair
WaterFix Project Co-Hearing Officer

Tam Doduc
State Water Board Member
WaterFix Project Co-Hearing Officer

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812

Re: California WaterFix Hearings
Request to Amend Protest and Add Party by Save the California Delta Alliance, et al.,
and Michael Brodsky.

Dear Hearing Officers Marcus and Doduc:

Protestants Save the California Delta Alliance, et al., (Delta Alliance”) hereby request leave to amend their Protest in order to accurately participate in Part 1 of the hearings (in addition to participating in Part 2) in light of recent clarification as to the scope of the hearings and the March 4, 2016, ruling regarding filing of amended Notices of Intent to Appear. In light of the Board’s recent communication to the Met, allowing for a request of a non-party otherwise participating in the hearings to become a party, Delta Alliance and Michael Brodsky request that Michael Brodsky be added as a party to Delta Alliance’s Protest.

Protestants believe that granting these requests will provide valuable information to the Board, no delay or prolongation of the hearings will result, and that no party will be prejudiced thereby.

Protestants seek to amend their protest to make clear that they are alleging injury to legal users of water within the meaning of Water Code section 1702 in addition to the public interest considerations stated in the Protest. Protestants note that their original Protest, filed on January 5, 2016, indicated at page 18 that due to the nature of the proceedings they might seek leave to amend the Protest. We also note that the original Protest alleged that Protestants had “a right to

oppose a change in the point of diversion pursuant to Water Code section 1702.” See Delta Alliance Protest at page 1, n.1. Protestants also alleged in the original Protest that:

The McCleery’s and Mr. Morgan [parties to the original Protest] retain their riparian legal rights to put Delta waters to beneficial use by individually diverting small quantities of water for irrigation of gardens and other domestic uses.

Delta Alliance Protest, p.2. And further alleged that:

Adverse impacts on water quality and circulation in the bays of Discovery Bay also impacts the riparian rights of Protestants to put the waters over and abutting their lands to beneficial domestic use.

Delta Alliance Protest, p. 13.

Protestants therefore seek to amend their Protest by adding the following supplement to the Protest:

1) In addition to public interest considerations the Protest is based on injury to legal users of water within the meaning of Water Code section 1702.

2) In addition to public interest considerations, the Protest is based on injury to human uses, within the meaning of the Board’s clarification of that term.

3) Michael Brodsky (“Brodsky”) is added as a party. Brodsky owns and personally uses a residence located at 5070 Discovery Point, Discovery Bay, CA 94505, Contra Costa APN 004-071-016-200, which is a waterfront parcel with attached dock abutting Cabrillo Bay. Brodsky exercises his riparian recreational rights by swimming and engaging in water sports in the waters overlying his submerged lands and abutting his riparian lands. Brodsky also docks his boat at his attached dock and exercises the navigational rights attendant upon riparian ownership. Brodsky also boats and recreates throughout the Delta, including regularly swimming, fishing, and engaging in watersports in Delta waters. Brodsky exercises his riparian rights to put Delta water to beneficial use upon his parcel within the meaning of Water Code section 1702. Brodsky has participated throughout these WaterFix hearings as attorney for Protestants, attended and participated in the Pre-Hearing Conference, and has followed all correspondence and orders from the Board to date.

4) Brodsky, Frank Morgan, Michael and Janet McCleery, and riparian members of Save the California Delta Alliance will suffer injury as legal users of water within the meaning of Water Code section 1702.

5) **Protest based on INJURY TO PRIOR RIGHTS** is added as follows:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: Water quality in the bays of Discovery Bay will be significantly degraded. Invasive weeds (Egeria Densa, Curly Leaf Pond Plant, Hyacinth, and others) will increase. Circulation will be diminished and sedimentation will increase.

All of these, and other impacts, will interfere with Protestants ability to put waters of the bays of Discovery Bay to beneficial use.

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 or riparian right): RIPARIAN RIGHT.

Where is the point of diversion located: Brodsky, 5070 Discovery Point, Discovery Bay, CA 94505, Contra Costa APN 004-071-016-200. See attached Statement of Diversion for photographs and maps of point of diversion and place of use.

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion. Brodsky's point of diversion is downstream from Petitioner's proposed new point of diversion at north Delta intakes. Brodsky's point of diversion is downstream from Petitioner's existing points of diversion (Jones and Banks). In addition to requesting a new point of diversion, the change Petition includes changes in operations of Jones and Banks that will injure Brodsky and other legal users of water in Discovery Bay. Although naturally upstream of Discovery Bay, reverse OMR flows make Jones and Banks "downstream" of Discovery Bay at times.

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

- a. **Source:** Cabrillo Bay, fed by Kellogg Creek. See attached copy of Statement of Diversion (filed under separate cover with the Division of Water Rights) for map, upstream and downstream view, point of diversion and place of use, and details of use.
- b. **Approximate date first use made:** Current use approximately 2009. Prior use uncertain. Riparian right runs from first federal land patent.
- c. **Amount used (list units):** less than 35 gallons per day.
- d. **Diversion season:** year round.
- e. **Purpose(s) of use:** Irrigation of ornamental plants, outdoor supply, and other lawful uses.
- f. **Under what conditions may this protest be disregarded and dismissed?** See original Protest, filed January 5, 2016.

Signed:






Date: March 16, 2016

State Water Resources Control Board
DIVISION OF WATER RIGHTS
INITIAL STATEMENT OF WATER DIVERSION AND USE
 A STATEMENT SHALL NOT ESTABLISH OR CONSTITUTE EVIDENCE OF A WATER RIGHT
 READ THE ATTACHED INFORMATION AND INSTRUCTION SHEET BEFORE COMPLETING THIS FORM
 FURTHER INFORMATION CAN BE FOUND IN WATER CODE, SECTIONS 5100-5107

Page 1 of 3: INITIAL STATEMENT OF WATER DIVERSION AND USE DIVERTER NAME _____
 SOURCE/TRIBUTARY _____ DIVERSION WORKS NAME _____

A. Diverter Information			
Diverter Name(s)			
Mailing Address	City	State	Zip
Phone Number	Email Address (if available)		
Person Filing Statement (If Different From Diverter)			
Mailing Address	City	State	Zip
Phone Number	Email Address (if available)		
Land Owner Name			
Mailing Address	City	State	Zip
Mail Receiver	Diverter	Person Filing	

B. Signature and Important Information			
DATE: _____			
SIGNATURE: _____			
PRINTED NAME: _____	(first name)	(middle name)	(last name)
I declare that the information in this report is true to the best of my knowledge and belief.			
			
THE STATE WATER RESOURCES CONTROL BOARD MAY RELY ON THE NAMES AND ADDRESSES ON THIS DOCUMENT FOR MAILING NOTICES REGARDING PROCEEDINGS BEFORE THE BOARD. (Wat. Code, § 5106, subd. (b)(1).)			
SUPPLEMENTAL STATEMENTS OF WATER DIVERSION AND USE MUST BE FILED AT THREE-YEAR INTERVALS OR IF THERE IS A CHANGE IN THE NAME OR ADDRESS OF THE DIVERTER. (Wat. Code, § 5104.)			
THE MAKING OF A WILLFUL MISSTATEMENT ON A STATEMENT OF WATER DIVERSION AND USE IS A MISDEMEANOR PUNISHABLE BY A FINE NOT EXCEEDING \$1,000 OR BY IMPRISONMENT IN THE COUNTY JAIL FOR UP TO SIX MONTHS, OR BOTH. THE BOARD MAY IMPOSE CIVIL LIABILITY UPON A PERSON WHO KNOWINGLY MAKES A MATERIAL MISSTATEMENT ON THIS FORM. (Wat. Code, § 5107.)			

UPON COMPLETION OF THIS STATEMENT, ATTACH ALL SUPPORTING DOCUMENTATION AND MAPS AND MAIL TO:

State Water Resources Control Board
 Division of Water Rights
 PO Box 2000
 Sacramento, CA 95812-2000

Additional copies of this form, instructions on how to complete this form and water right information can be obtained at http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/. Revised January 2014.

State Water Resources Control Board
DIVISION OF WATER RIGHTS

INITIAL STATEMENT OF WATER DIVERSION AND USE

A STATEMENT SHALL NOT ESTABLISH OR CONSTITUTE EVIDENCE OF A WATER RIGHT
 READ THE ATTACHED INFORMATION AND INSTRUCTION SHEET BEFORE COMPLETING THIS FORM
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PAGE 2 OF 3: INITIAL STATEMENT OF WATER DIVERSION AND USE DIVERTER NAME _____
 SOURCE/TRIBUTARY _____ DIVERSION WORKS NAME _____

1. Type of Claim															
Check the box(s) which describe the type of claim(s) under which you are diverting water.															
Riparian	Pre-1914	Court Decree	Pending Appropriative Application	Pueblo	Other: _____										
If you checked yes for Court Decree, Pending Appropriative Application or other, list the decree number, application ID or explanation:															
2. Water Course Description															
Water Course Name at the point of diversion							Water Course is tributary to								
3. Legal Land Description															
Provide the location of the Point of Diversion using one of the following methods (check one box and enter coordinates, if applicable)															
Latitude/Longitude Measurements: _____															
California Coordinate System (NAD 1983): _____															
USGS Topographic Map with point of diversion labeled on map (if checked yes, please attach map)															
Assessor's Parcel Number(s), if assigned:							County								
Provide Public Land Description to nearest 40 acres (if assigned)															
_____ ¼ of the _____ ¼ of Section _____, Township _____, Range _____, B&M _____															
4. Place of Use Description															
Provide a general description of the area in which the water was used															
Identify the location of the place of use on a specific United States Geological Survey (USGS) topographic map and on any other maps with identifiable landmarks. If assigned, provide the public land description to the nearest 40-acre subdivision and the assessor's parcel number. (check box indicating each map attached)															
USGS Topographic Map							County Assessor's parcel map								
5. Purpose of Use Description (Please select all that apply below)															
Irrigation Number of Acres :			Domestic Persons Served :			Stock watering Number of stock and type:			Other Please Explain:						
6. Diversion Works Description															
Name of Diversion Works, if named							Year in which diversion commenced (or specify nearest known year)								
List any related existing water rights, if applicable (for example, an appropriative right using the same diversion works)															
Type of Diversion Facility (select one)															
Gravity		Water Course Pump			Well Pump			Other (please specify) _____							
Do you directly divert water? Capacity of Direct Diversion Works (specify unit and amount) _____															
Yes		No		Cubic feet per second			Gallons per minute			Gallons per day			Do you divert water to storage?		
											On-stream storage (Complete Section B)				
											Off-stream storage (Complete Sections A & B)				
A. Capacity of Storage Diversion Works (specify unit and amount) _____							B. Capacity of Storage Tank or Reservoir (specify unit and amount)								
Cubic feet per second			Gallons per minute			Gallons per day			Gallons			Acre-feet			
7. Quantity of Water Diverted Note: Measurements must be made using best available technologies and best professional practices as listed in Section 8a unless documentation is provided to the State Water Resources Control Board that the implementation of those practices is not locally cost effective.															
Provide the quantity of water diverted each month in the table below as a measured in (check one box)											Gallons		Acre-feet		
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total		

ATTACHMENT TO INITIAL STATEMENT OF DIVERSION AND USE
MICHAEL BRODSKY
5070 DISCOVERY POINT
DISCOVERY BAY, CA 94505
APN 004-071-016-200

I have diverted water using a bucket in minimal quantities over the last several years. I have included my use for 2015 on the initial statement. Use was curtailed in 2015 due to drought emergency and reduced use of residence. I was unaware of the reporting requirement for minimal use and learned of it tangential to my participation in the California WaterFix proceedings. When I learned of the requirement, I phoned the Water Board to obtain information about filing the statement; Board staff kindly directed me to the forms available online. I am making a good faith effort to comply with all reporting requirements.

I plan to upgrade my diversion method to use a small electric pump and connection to a drip irrigation system and faucet. The smallest pump available has a 6gpm capacity. I expect to complete my new diversion system this year.

March 16, 2016.

A handwritten signature in cursive script, appearing to read "Michael Brodsky". The signature is written in black ink and is positioned below the date.



Google earth

feet
meters

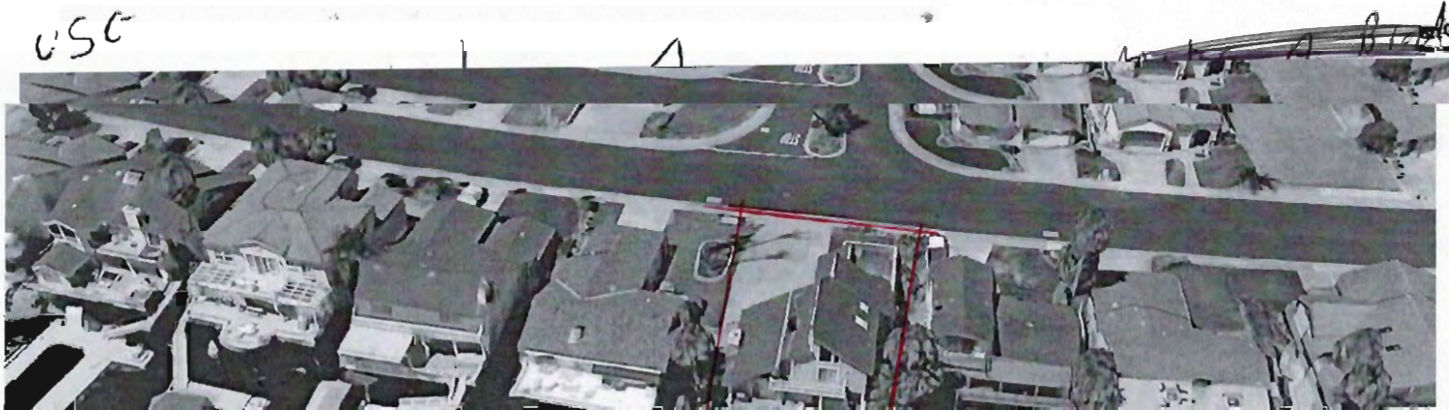
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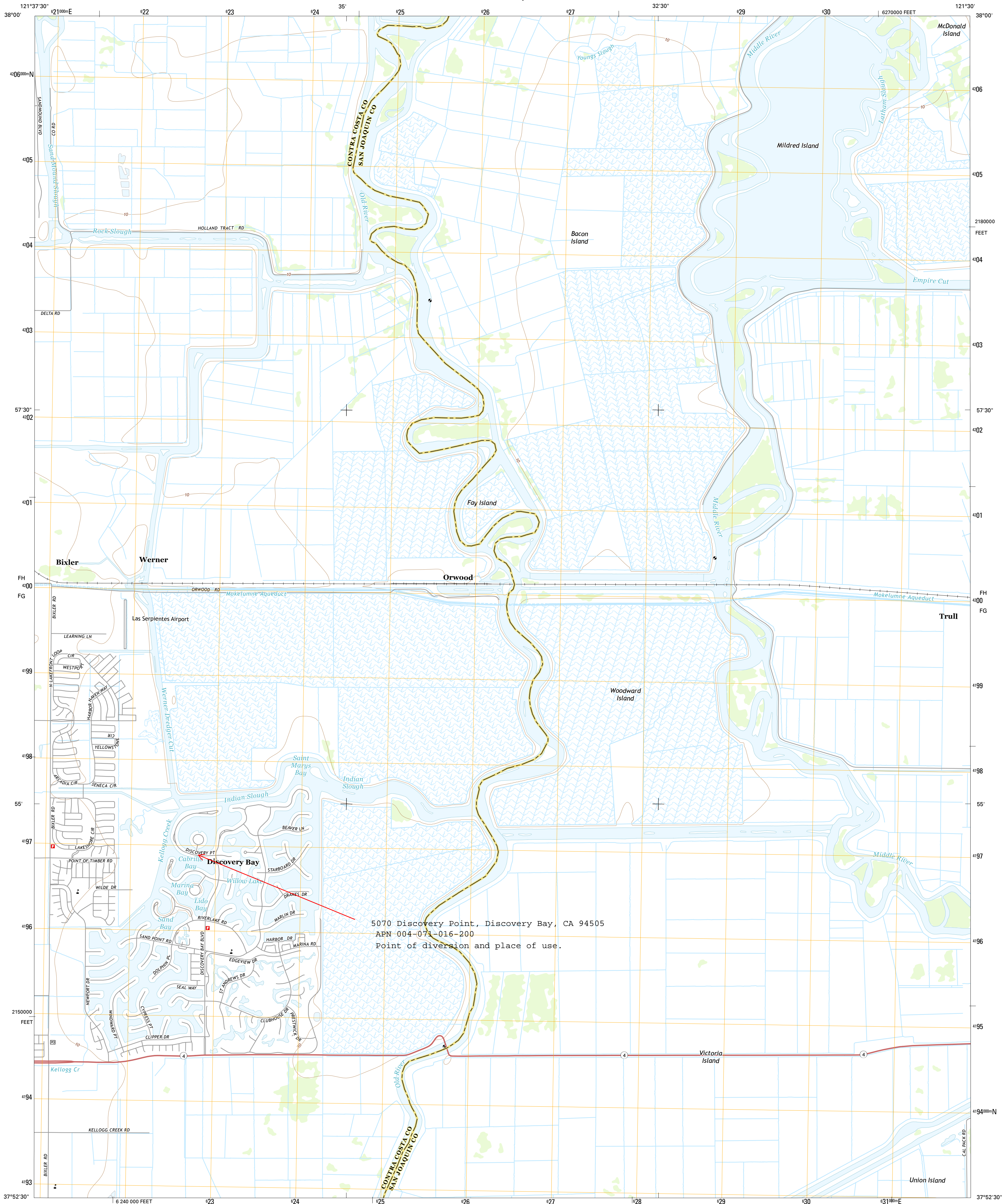
50



point of
diversion
?
place
of
use

5070 Discovery Point
Discovery Bay, CA 94505
APN 004-071-016-200



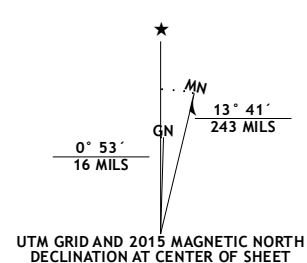


5070 Discovery Point, Discovery Bay, CA 94505
APN 004-071-016-200
Point of diversion and place of use.

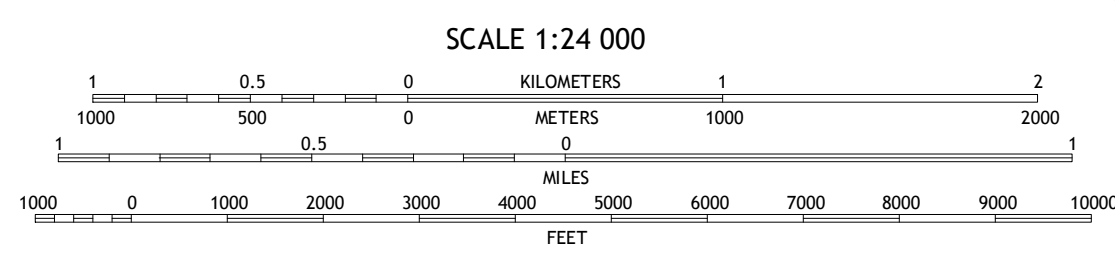
Produced by the United States Geological Survey
North American Datum of 1983 (NAD83)
World Geodetic System of 1984 (WGS84). Projection and
1 000-meter grid: Universal Transverse Mercator, Zone 10S
10 000-foot ticks: California Coordinate System of 1983 (zone 3)

This map is not a legal document. Boundaries may be
generalized for this map scale. Private lands within government
reservations may not be shown. Obtain permission before
entering private lands.

Imagery.....NAIP, May 2012
Roads.....HERE, ©2013 - 2014
Names.....GNIS, 2015
Hydrography.....National Hydrography Dataset, 2012
Contours.....National Elevation Dataset, 2005
Boundaries.....Multiple sources; see metadata file 1972 - 2015
Public Land Survey System.....BLM, 2011



U.S. National Grid
100,000-m Square ID
FH
FG
Grid Zone Designation
10S



CONTOUR INTERVAL 10 FEET
NORTH AMERICAN VERTICAL DATUM OF 1988
This map was produced to conform with the
National Geospatial Program US Topo Product Standard, 2011.
A metadata file associated with this product is draft version 0.6.18



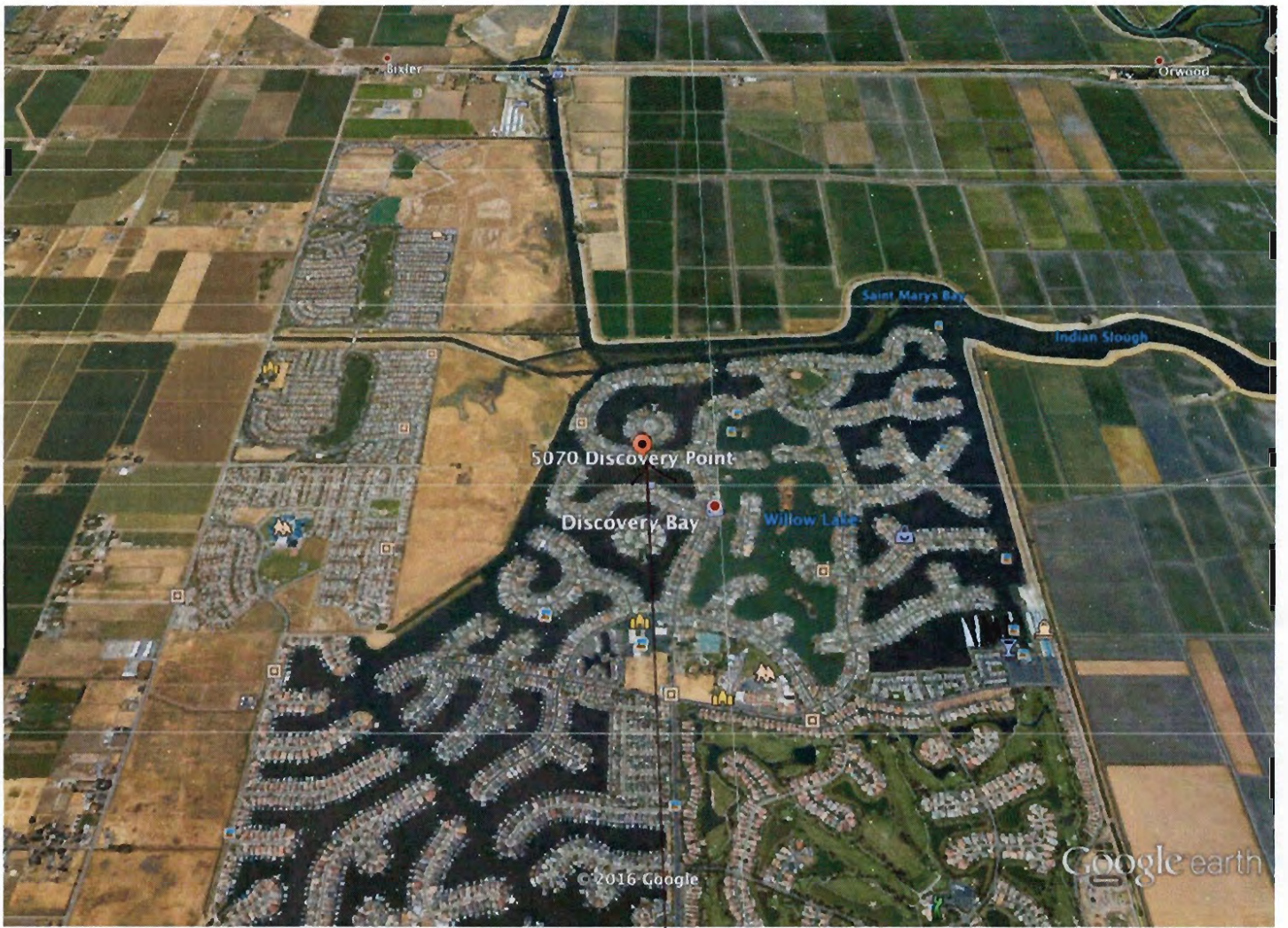
ROAD CLASSIFICATION

Expressway	Local Connector
Secondary Hwy	Local Road
Ramp	4WD
Interstate Route	US Route
	State Route

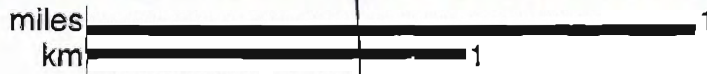
ADJOINING QUADRANGLES

1	2	3
4	5	6
7	8	

1 Jersey Island
2 Bouldin Island
3 Terminus
4 Brentwood
5 Holt
6 Byron Hot Springs
7 Clifton Court Forebay
8 Union Island



Google earth



~~Mike A. Brodsky~~
~~SPAIN BARRISALC~~
~~Registration~~
~~Application~~

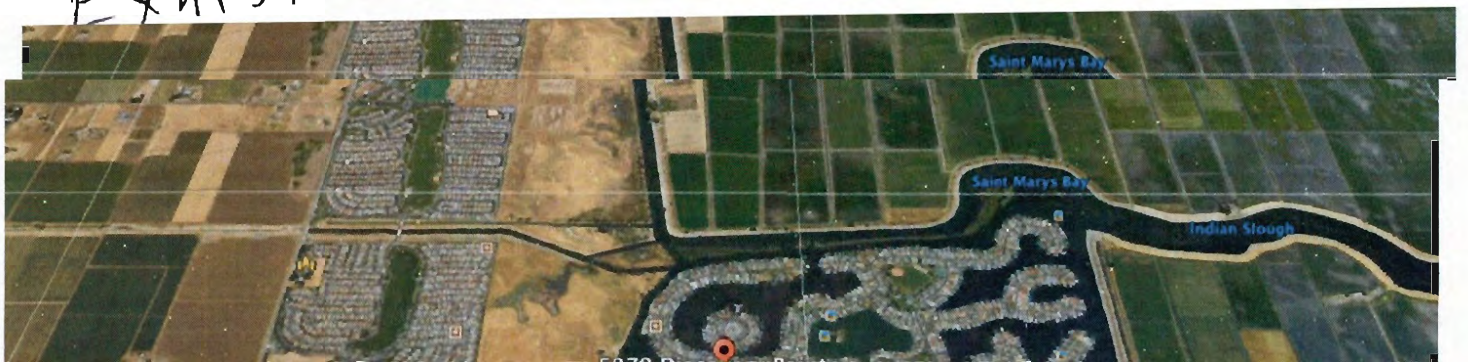
point of diversion
use

5070 Discovery Point
Discovery Bay, CA

94505

APN 004-071-016-200

Exhibit 3



Home » Shop by Brand » Little Giant » 555103 » *Enlarge Image*

Enter a Keyword or Item #

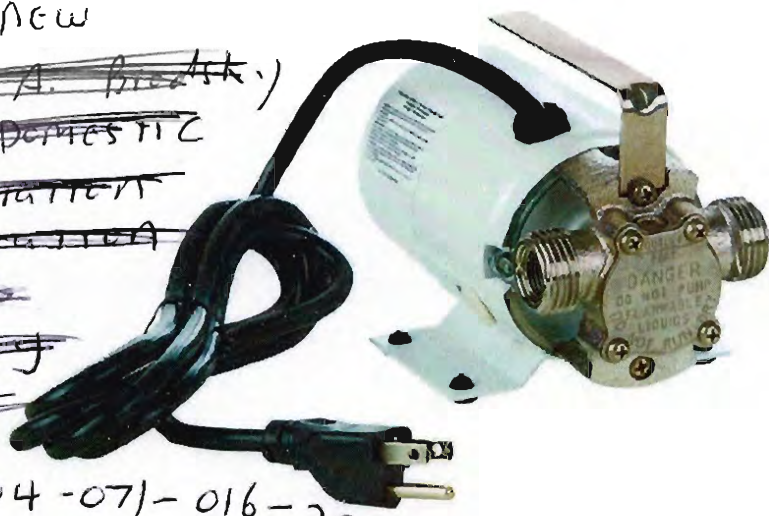
< Back to Product

Little Giant 360S - 6 GPM 115V Flex Vane Non-Submersible Transfer Pump Images

Exhibit 4
proposed Diversion works
New

~~Mike A. (Brooklyn)~~
~~Small Domestic~~
~~Registration~~
~~Application~~
~~5070~~
~~Delivery~~
~~Point~~

APN 004-071-016-200



Little Giant 360S - 6 GPM 115V Flex Vane Non-Submersible Transfer Pump

X Product Discontinued



Model: 555110

Try This Instead

Little Giant 360S - 6 GPM 115V Flex Vane Non-Submersible Transfer Pump



Write a Review (0)

Little Giant 555103 Image Gallery



< Back to Product

Video Library

No Videos Available

Home » Shop by Brand » Little Giant » 555103 » *Enlarge Image*

Enter a Keyword or Item #

< Back to Product

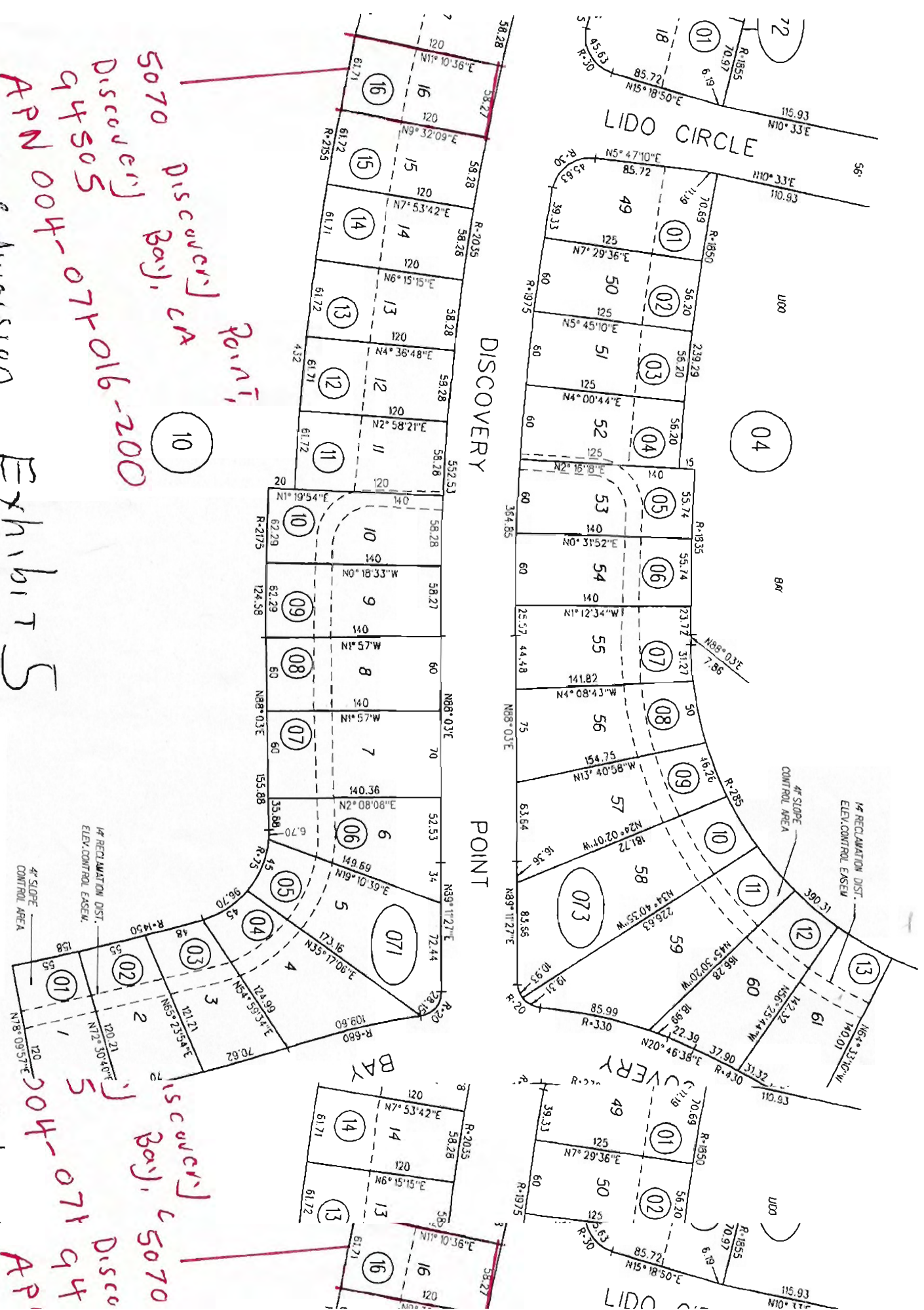
Little Giant 360S - 6 GPM 115V Flex Vane Non-Submersible Transfer Pump Images

5070 Discovery Bay, CA Point, CA
 Discovery 94505
 APN 004-07-016-200

point of diversion and place of use Exhibits 5

5070 Discovery Bay, CA Point, CA
 Discovery 94505
 APN 004-07-016-200

point of diversion and place of use Exhibits 5



STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Request to Amend Protest and Add Party by Save the California Delta Alliance, et al., and Michael Brodsky.

First Amended Notice of Intent to Appear

To be served by **Electronic Mail** (eail) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing Dated March 15, 2016, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml.

I certify that the foregoing is true and correct and that this document was executed on March 16, 2016.



Michael A. Brodsky
Attorney for Protestants
Save the California Delta Alliance et al.
201 Esplanade, Upper Suite
Capitola, CA 95010