

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