

LOCAL AGENCIES OF THE NORTH DELTA

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CENTRAL DELTA WATER AGENCY

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August 31, 2015

SENT VIA EMAIL (tom.howard@waterboards.ca.gov)

Mr. Tom Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

**RE: Defective Petition for Change Application for Water Fix
Submitted by DWR and BOR**

Dear Mr. Howard:

It has come to our attention that the California Department of Water Resources (“DWR”) and U.S. Bureau of Reclamation (“BOR”) have jointly submitted a Petition for a Change of Point of Diversion (Wat. Code, § 1701) and of Rediversion (Cal. Code Regs., tit. 23, § 791, subd. (e)). If granted, the Petition would permit the operation of the three massive water diversions on the Sacramento River near the community of Clarksburg, just south of the City of Sacramento. This project is identified as Alternative 4A of the State’s “California WaterFix” project. Our letter identifies just a few of our preliminary concerns about the Petition, which we believe is defective and should compel the State Water Resources Control Board (“SWRCB”) to make a determination that the Petition is incomplete.

A few of the most obvious errors in the Petition are described below:

1. Page 2: The application states that the applicants own the points of diversion/rediversion, which is known to be incorrect by the applicants. In fact, hundreds of parcels of private land must be purchased or taken for the Project to proceed according to the DCE CM 1 Property Acquisition

Management Plan for the California Water Fix/BDCP Alternative 4A, which was recently obtained through a Public Records Act request.¹ (See also Attachment 1: Representative Parcel Maps of private properties needed for diversion points.) The Environmental Information portion of the application also fails to include photographs of the riparian vegetation in each intake area, which are primarily on private property not owned by the Project applicants.

2. Page 2: The numbers of impacted water users between the points of diversion/rediversion are not identified and is marked as not applicable (“NA”). As the SWRCB is aware, there are thousands of affected water users and it is patently incorrect that there are no affected water users. (See, e.g., Attachment 2: eWRIMs printouts of Water Rights in Sacramento and San Joaquin Delta Watersheds.) Though the applicants are well aware of the affected intakes, they have deliberately failed to identify them. The truncated and vague discussion of injury to legal users of water buried in the Supplemental Information section (pp. 19-21) does not correct this deficiency. Moreover the RDEIR/EIS does not provide sufficient analysis to support a “no injury” determination.
3. Pages 2-6: The application repeatedly references the Water Fix RDEIR/EIS for the Project description and impacts. The sections referenced do not clearly provide the information needed to assess the direct and indirect impacts on the environment and specific water users. This is a key part of the SWRCB legal analysis, yet has been deliberately misconstrued in the application.

The Petition references the purported benefits of the Project without mentioning any of the Project’s environmental impacts of inducing or amplifying reverse flows in the North Delta, the massive and untested size of the screens, and the new injury to other listed fish, and birds. Indeed the project description even fails to identify that through-Delta conveyance would still be required for approximately half the time under the proposal.

The Petition further asserts that there would be no change to the rest of the State or Federal Water Projects, contrary to the Project’s modifications at

¹ Available at:
<https://www.dropbox.com/s/hf0r9bwwg8h72wno/DCE%20CM%201%20Property%20Acquisition%20Plan.pdf?dl=0>.

Clifton Court, and reoperations that are required to implement the Project (See Supplemental Information, p. 13.) Yet, the water quality modeling discussed in the RDEIR/EIS specifically states that it can only be used to compare impacts between alternatives, and that it does not provide a water quality analysis that can be used to determine actual impacts from the Project and Project impacts on reservoir operations. Thus, the potential impacts to water users and fish and wildlife from the construction and operation of the Project are unknown at this time; while the RDEIR/EIS provides some information pertaining to these issues, the RDEIR/EIS does not support a no injury analysis.

The Petition also makes clear that additional studies regarding the operation and design of the Project are also required that are not yet complete. (See p. 14 of the Supplemental Information attachment.) These additional studies would need to be completed in order to inform the SWRCB's Petition process.

4. Page 5: The need for a Waste Discharge Requirement ("WDR") is simply ignored, despite the obvious needs for both a WDR as well as a 401 Certification. Moreover, no federal and state permits are identified as needed, despite the applicants' full knowledge of the host of federal and state permits that are required.

While there are many other defects, the examples enumerated above show that the Petition for Change is incomplete if not deliberately erroneous. (Wat. Code, §§ 1701, 1701.2.) Among other deficiencies, the Petition: (1) does not adequately describe the changes sought; (2) fails to attempt to demonstrate a reasonable likelihood that the change will not injure any other legal user of water; and (3) fails to describe the extent of impacts to fish and wildlife. Thus, the Petition is incomplete and must be rejected.

Please also be advised that, due to the numerous grievous factual misstatements in the Petition, we are requesting that the Office of the Sacramento County District Attorney review the Petition and associated documents to assess whether perjury has occurred. (Penal Code, §§ 118, 118a.) It is shocking that after nine years of planning this Project, that the applicants would provide such a deficient and misleading Petition to the SWRCB. The cavalier manner in which some of the most senior water rights in the state are dismissed as nonexistent (e.g., "N/A") is disturbing given the major changes to Delta waterways being proposed.

Tom Howard
State Water Resources Control Board
August 31, 2015
Page 4 of 4

We appreciate your attention to this urgent matter and respectfully request that you direct DWR and BOR to correct and complete their Petition prior to the SWRCB taking any action to begin processing of the Petition.

Very truly yours,



Osha R. Meserve
Counsel for LAND

Yours very truly,



Dante John Nomellini
Manager and Co-counsel CDWA

cc: Felicia Marcus Chair, State Water Resources Control Board
(Felicia.Marcus@waterboards.ca.gov)
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David Murillo, Regional Director Bureau of Reclamation
(dmurillo@usbr.gov)

ATTACHMENT 1

Information for Parcel:
132-0120-001-0000

PROPERTY INFORMATION

Assessor Parcel #	13201200010000
Address	10405 STATE HWY 160
City, Zip	HOOD 95639
Jurisdiction	UNINCORPORATED
County Supervisor District	Don Nottoli - District 5

PROPERTY TAX BILL

A summary of the most recent property tax bill is available on the e-PropTax site.

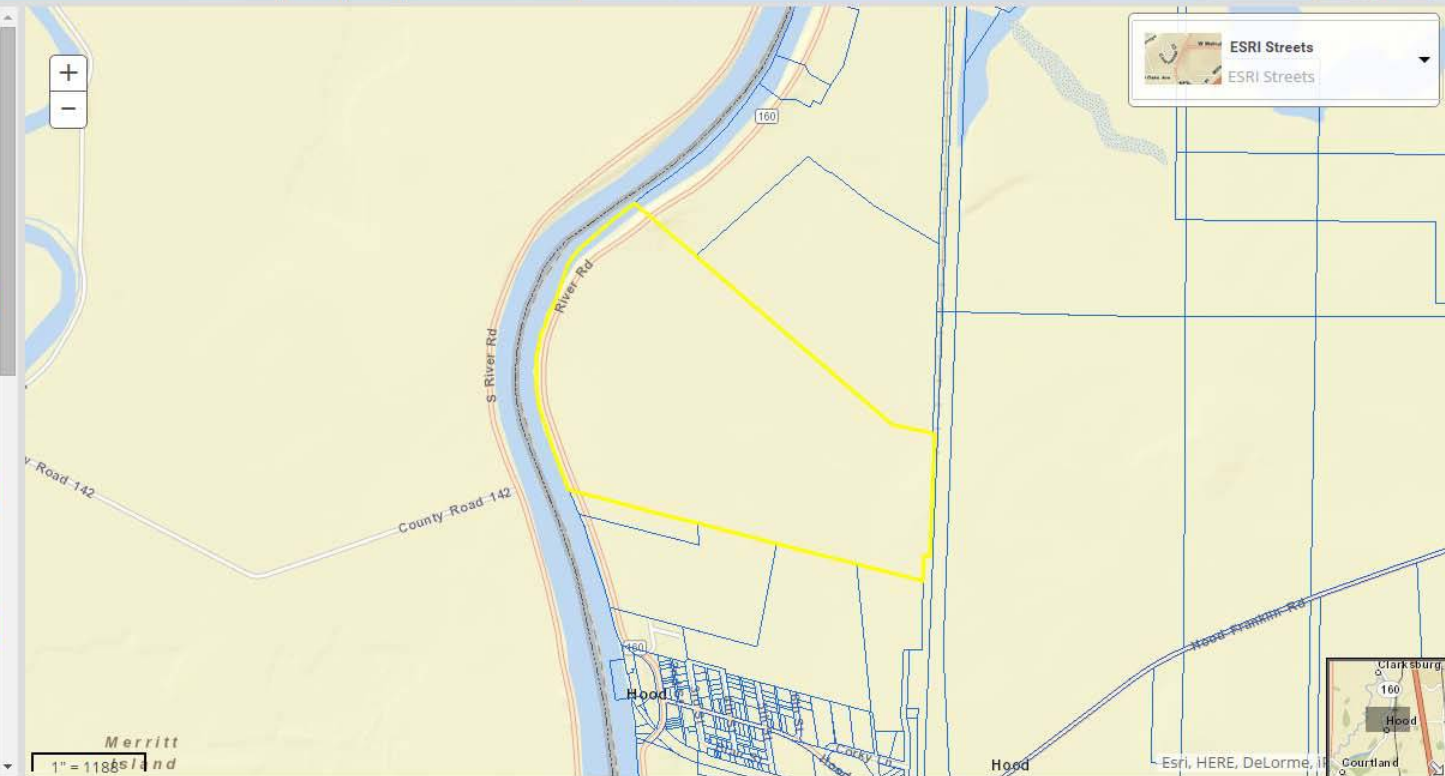
[e-PropTax](#)

Tax Rate Area Code: 56-006

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$677,579
Improvement Value	\$22,350
Personal Property Value	\$0



[Help](#)
[Layers](#)
[Legend](#)
[Select Parcels](#)

[Recent Sales Activity](#)
[Measure](#)

[Search Results](#)
[Parcel Details](#)

Information for Parcel:
132-0120-081-0000

PROPERTY INFORMATION

Assessor Parcel #	13201200810000
Address	11003 STATE HWY 160
City, Zip	COURTLAND 95615
Jurisdiction	UNINCORPORATED
County Supervisor District	Don Nottoli - District 5

PROPERTY TAX BILL

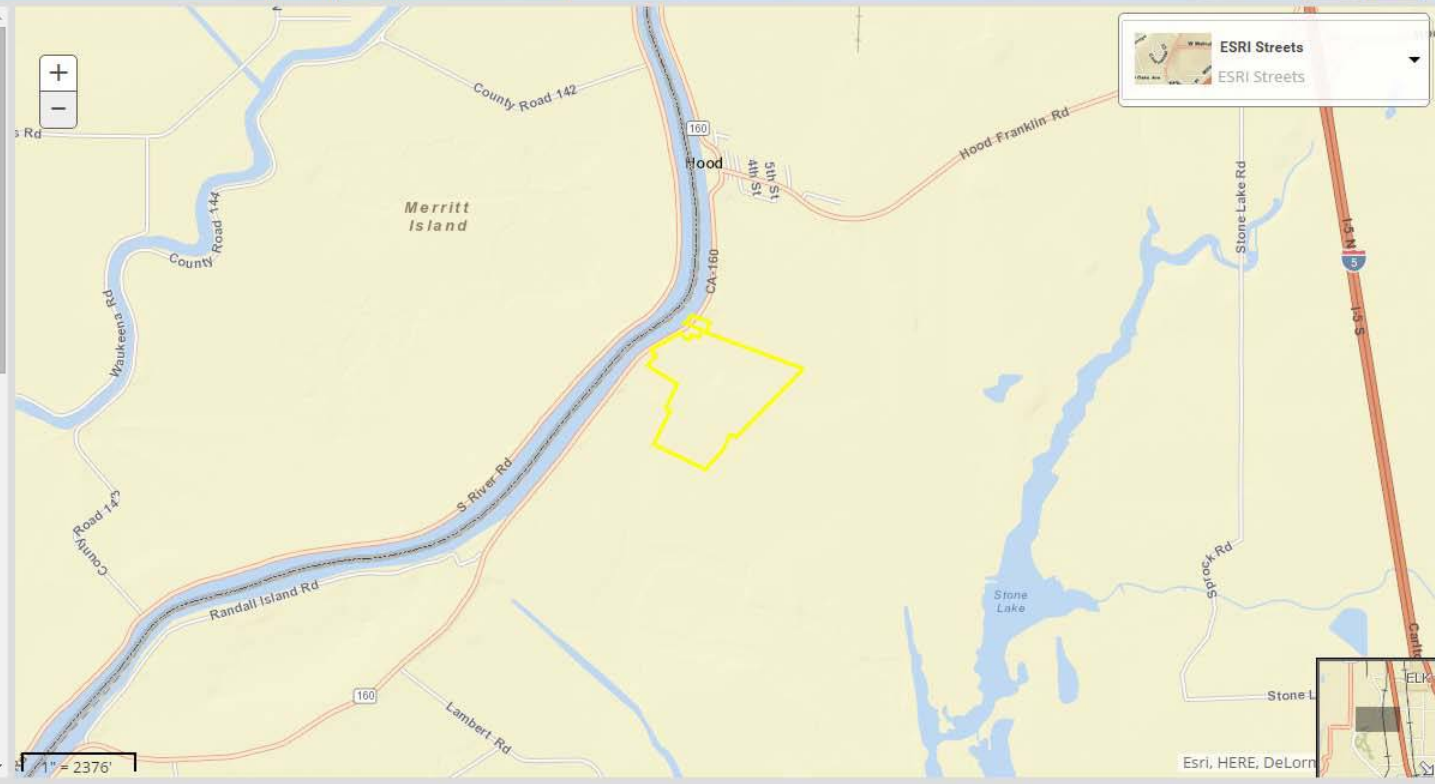
A summary of the most recent property tax bill is available on the e-PropTax site.

Tax Rate Area Code: 56-006

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$294,271
Improvement Value	\$56,634
Personal Property Value	\$0



1190230042

What can I find?

- Help
- Layers
- Legend
- Select Parcels
- Recent Sales Activity
- Measure
- Search Results
- Parcel Details**

Information for Parcel:
119-0230-042-0000

PROPERTY INFORMATION

Assessor Parcel #	11902300420000
Address	9431 RIVER RD
City, Zip	SACRAMENTO 95832
Jurisdiction	UNINCORPORATED
County Supervisor District	Don Nottoli - District 5

PROPERTY TAX BILL

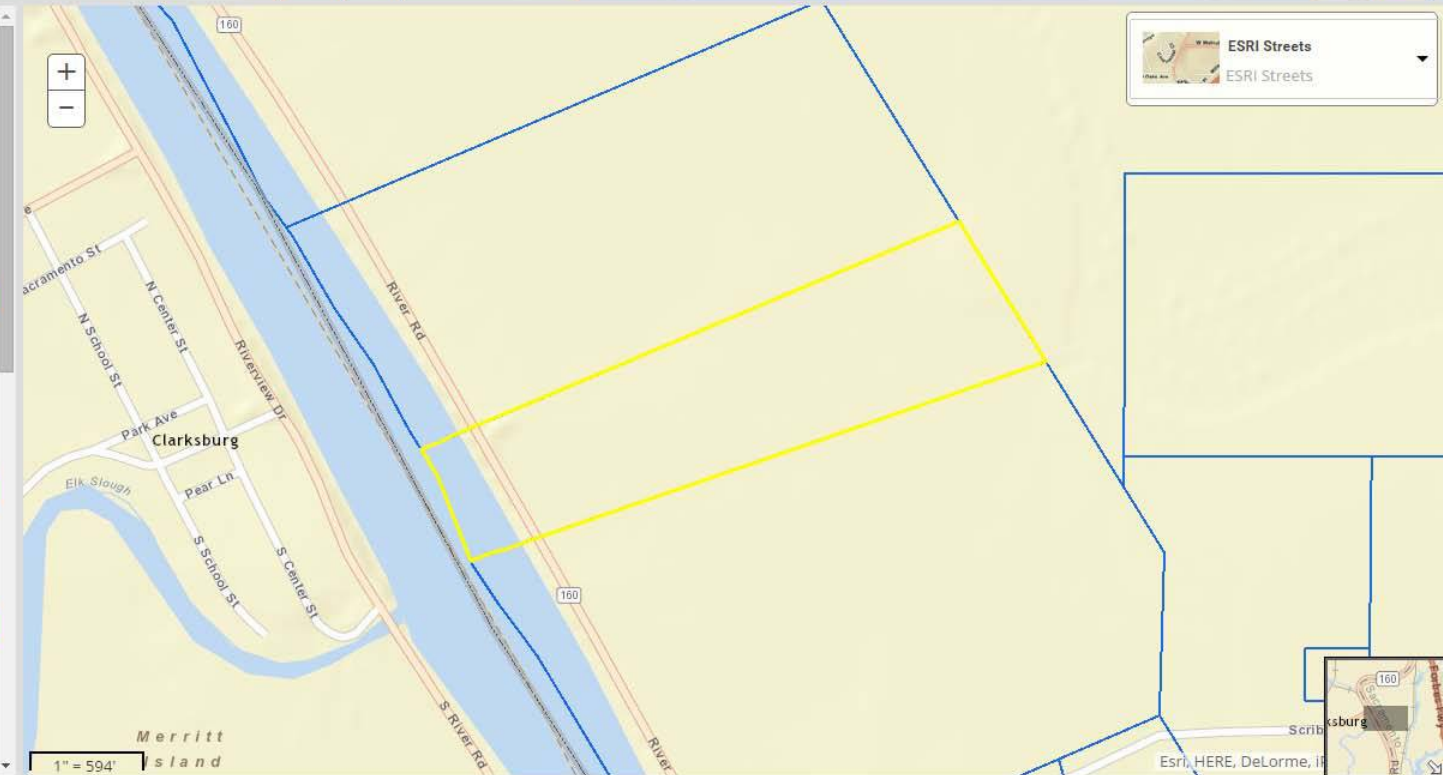
A summary of the most recent property tax bill is available on the e-PropTax site.

Tax Rate Area Code 53-007

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$154,799
Improvement Value	\$265,440
Personal Property Value	\$0



1190230042

What can I find?

Search Results Parcel Details

Information for Parcel:
119-0230-044-0000

PROPERTY INFORMATION

Assessor Parcel # 11902300440000
Address 1120 SCRIBNER RD
City, Zip SACRAMENTO 95832
Jurisdiction UNINCORPORATED
County Supervisor District Don Nottoli - District 5

PROPERTY TAX BILL

A summary of the most recent property tax bill is available on the e-PropTax site:

Tax Rate Area Code 56-006

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$133,880
Improvement Value	\$51,877
Personal Property Value	\$0
Fixtures	\$0
Homeowner's Exemption	\$0
Other Exemption	\$0
Net Assessed Value	\$185,757



1320210032

What can I find?



132-0210-032-0000

PROPERTY INFORMATION

Assessor Parcel # 13202100320000
 Address LAMBERT RD
 City, Zip COURTLAND 95615
 Jurisdiction UNINCORPORATED
 County Supervisor District Don Nottoli - District 5

PROPERTY TAX BILL

A summary of the most recent property tax bill is available on the e-PropTax site:
 Tax Rate Area Code 56-000

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$501,443
Improvement Value	\$1,377,960
Personal Property Value	\$0
Fixtures	\$0
Homeowner's Exemption	\$0
Other Exemption	\$0
Net Assessed Value	\$1,879,403

For changes made after July 1, 2015, please see Assessed Value Lookup viewer

LAND INFORMATION



1320210054

What can I find?



132-0210-054-0000

PROPERTY INFORMATION

Assessor Parcel # 13202100540000
 Address STATE HWY 160
 City, Zip COURTLAND 95615
 Jurisdiction UNINCORPORATED
 County Supervisor District Don Nottoli - District 5

PROPERTY TAX BILL

A summary of the most recent property tax bill is available on the e-PropTax site:

Tax Rate Area Code 56-006

ASSESSOR'S ROLL VALUES

as of July 1, 2015

Land Value	\$301,371
Improvement Value	\$304,242
Personal Property Value	\$0
Fixtures	\$0
Homeowner's Exemption	\$0
Other Exemption	\$0
Net Assessed Value	\$605,613

For changes made after July 1, 2015, please see Assessed Value Lookup viewer

LAND INFORMATION



ATTACHMENT 2

Water Rights in Sacramento Watershed

The screenshot displays the eWRIMS GIS web application interface. At the top, the browser address bar shows the URL `waterrightsmaps.waterboards.ca.gov/ewrims/gisapp.aspx`. The application header features the "eWRIMS GIS" logo and navigation links for HOME, HELP, FAQ, and EXIT. Below the header is a toolbar with various GIS navigation icons and a "Print Map" button. A "Scale ~ 1: 1200000" indicator is visible on the right side of the toolbar.

The main map area shows a topographic map of the Sacramento Watershed, with numerous yellow arrows representing water rights. The "Central Valley" is labeled in orange text on the right side of the map. A scale bar at the bottom right of the map indicates 0, 4, and 8 miles.

On the left side, a "Task Assistant" panel is visible, listing various search criteria for water rights:

- Find Water Right By
- Find Water Right By County
- Find Water Right By Special Use Area
- Find Water Right By PLSS
- Find Water Right By Watershed
- Find Water Right By Stream
- Find Water Right By Owner

Below the search criteria, there is a "Clear All" link and a "Records 1" indicator. The footer of the application includes copyright information: "© 2011 State of California" and links to "POD Legend", "Metadata", "Conditions of Use", and "Privacy Policy".

The Windows taskbar at the bottom shows several open applications, including Microsoft Word and Google Chrome, and the system clock displays the time as 8:13 PM on 8/30/2015.

Water Rights in San Joaquin Watershed

energy.gov/si x LexisNexis Pr x Get a Docum x 30 Google Calen x www.hasting x Friends of So x CA Codes (pr x www.blm.gov x State Water R x California Int x eWRIMS GIS x

waterrightsmaps.waterboards.ca.gov/ewrims/gisapp.aspx

eWRIMS GIS

HOME HELP
FAQ EXIT

AERIAL / QUAD MAP TOGGLE [Core App Link](#) Scale ~ 1:1200000

Task Assistant

- Find Water Right By
- Find Water Right By County
- Find Water Right By Special Use Area
- Find Water Right By PLSS
- Find Water Right By Watershed
- Find Water Right By Stream
- Find Water Right By Owner
- [Clear All](#)
- Upstream/Downstre
- Quad Map Lookup

R

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8:17 PM 8/30/2015