

July 29, 2011

Ms. Frances Spivy-Weber  
Vice-Chair and Hearing Officer  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95812-2000

**RE: Long-Term Transfer Petition, Permit 16482 (Application 17512)**

Dear Vice-Chair and Hearing Officer:

We write on behalf of the California Department of Water Resources, Tulare Lake Basin Water Storage District, Empire West Side Irrigation District, and the Westlands Water District. As you are aware, in a July 26, 2011 letter, the Center for Biological Diversity notified you that it, along with the other protestants to the above-referenced petition, California Water Impact Network, California Sportfishing Protection Alliance, and AquAlliance, will not present any evidence to support the assertions made in their protest. Indeed, Protestants' decision to forego presentation of a case-in-chief is reflected by their failure to file with the State Water Board proposed testimony by the July 22, 2011 deadline.

By deciding not to present a case-in-chief, Protestants have abandoned their Protest and the State Water Board should dismiss it. See 23 Cal. Code Regs. § 750 (State Water Board has authority to deem a protest abandoned, and dismiss the protest). Also, because Protestants have abandoned their Protest, the State Water Board has no basis to hold a hearing.<sup>1</sup> The State Water Board's records contain sufficient information to support and the State Water Board possesses the expertise needed to render the findings required under Water Code section 1736, a point Protestants acknowledge. See July 26, 2011 Letter at p. 1 (explaining "[i]t is important to note that an evidentiary hearing in this matter should not be necessary.")

For these reasons, the California Department of Water Resources, Tulare Lake Basin Water Storage District, Empire West Side Irrigation District, the Westlands Water District respectfully request: (1) you cancel the hearing on the Water Right Petition for Long-term Transfer under Permit 16482 (Application 17512), and (2) the State Water Board process the Petition based upon the information in


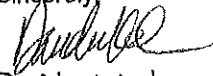

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<sup>1</sup> Because the opportunity for hearing was provided, and there remains no protests to the Petition, the State Water Board has no legal mandate to hold a hearing. See Wat. Code § 1736 ("The board, after providing notice and *opportunity* for a hearing, ..., may approve [] a petition [for a long-term transfer] ..." [emph. added]); see also 23 Cal. Code Regs. § 648(d) ("The presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings ..."), § 648.5(a) ("Adjudicative proceedings shall be conducted in a manner as the Board deems suitable to the particular case with a view toward securing relevant information expeditiously *without unnecessary delay and expense*...." [emph. added]). See also Cal. Code Regs. § 814 (hearing will be held upon the request of petitioner or protestant).

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State Water Board records. If you are not inclined to take those actions, before you act on this request, we request that you hold a pre-hearing conference to discuss the affect of Petitioners' actions.

Thank you.

<p>Sincerely,</p>  <p>Erick Soderlund Attorneys for California Department of Water Resources</p>	<p>Sincerely,</p>  <p>David W. Kahn <del>Michael Nordstrom</del> Attorneys for Tulare Lake Basin Water Storage District, Empire West Side Irrigation District</p>	<p>Sincerely,</p>  <p>Jon Rubin Attorneys for Westlands Water District</p>
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1 **PROOF OF SERVICE**

2 I, Gilberto J. Castro, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is Brownstein Hyatt Farber Schreck, LLP, 1415 L Street, Suite 800, Sacramento, California  
6 95814. On August 2, 2011, I served a copy of the within document(s):

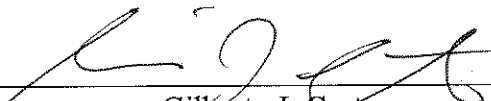
7 **JULY 29, 2011, LETTER TO MS. FRANCES SPIVY-WEBER**

- 8  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
9 forth below on this date before 5:00 p.m.
- 10  by placing the document(s) listed above in a sealed envelope with postage thereon  
11 fully prepaid, the United States mail at Sacramento, California addressed as set  
12 forth below.
- 12  by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and  
13 affixing a pre-paid air bill, and causing the envelope to be delivered to a  
\_\_\_\_\_ agent for delivery.
- 14  by personally delivering the document(s) listed above to the person(s) at the  
15 address(es) set forth below.
- 16  by transmitting via e-mail or electronic transmission the document(s) listed above  
17 to the person(s) at the e-mail address(es) set forth below.

18 I am readily familiar with the firm's practice of collection and processing correspondence  
19 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
20 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
21 motion of the party served, service is presumed invalid if postal cancellation date or postage  
22 meter date is more than one day after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above  
24 is true and correct.

25 Executed on August 2, 2011, at Sacramento, California.

26   
27 \_\_\_\_\_  
Gilberto J. Castro

**SERVICE LIST**

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<p>Mark Gilkey Tulare Lake Basin Water Storage District 1001 Chase Ave. Corcoran, CA 93212 mgilkey@tlbwsd.com</p>	<p>Adam Lazar Center for Biological Diversity 351 California St. #600 San Francisco, CA 94104 alazar@biologicaldiversity.org</p>
<p>John Herrick, Esq. South Delta Water Agency 4255 Pacific Avenue Stockton, CA 95207 Jherrlaw@aol.com</p>	

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