

## PETITION

Michael J. Barkley  
161 N. Sheridan Ave. #1  
Manteca, CA 95336  
209/823-4817  
[mjbarkl@inreach.com](mailto:mjbarkl@inreach.com)  
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To Charles R. Hoppin, Frances Spivy-Weber, Arthur G. Baggett, Jr., Tam M. Doduc, and Walter G. Pettit, individually and as members of the California State Water Resources Control Board:

Pursuant to the California Public Records Act, Government Code Section 6250 et seq., and your own published guidelines at [http://www.swrcb.ca.gov/resources/public\\_records/public\\_recordsact\\_guidelines.pdf](http://www.swrcb.ca.gov/resources/public_records/public_recordsact_guidelines.pdf) I request and petition for a true copy of any and all writings as described below. I agree to pay up to \$1000 in fees for searching and photocopying, or if you prefer, I have an ongoing account with Capitol Digital Document Solutions which handles your Division of Water Rights Records Unit copies that are sent out. PDF format on CD-ROM is acceptable. Writings sought :

It is obvious to anyone who spends much time digging through the water rights files for Stony Creek (Glenn/Tehama/Colusa Counties) that there are radically different standards being applied to applications and petitions as contrasted with their related protests, and that while applications and petitions are nursed along for months with patient Division of Water Rights support, cajoling, and nurturing to get every i dotted and t crossed, protestants are allowed a very short response time and more often than not the issues therein are misstated, distorted, trivialized, or missed altogether by Division Staff and the protests summarily rejected without notice of any appeal right. This process interferes with or denies outright the public's statutory right to protest, and perpetrates serious due process and equal protection damage upon protestants. In the Ap. 18115 files I count over the years some 66 protests with some 59 rejected outright. I seek a thorough understanding of SWRCB policies behind these procedures.

Please furnish me a true copy of all writings (as defined in the codes) of your procedures that you use to examine protests and to decide what the issues are therein, to choose which protests you will accept and which you will reject, to choose which issues you will accept and which issues you will reject; and

any templates or checklists of how such issues are to be analyzed, described, accepted, or rejected;

any writings on how to treat jurisdictional issues raised in protests;

any statistical or other types of surveys you may have done on what protests you accept and what ones you reject as well as from whom;

any expressions of concern regarding any imbalance of treatment between protestants and petitioners or applicants;

any writings on whether or not the United States of America or other regularly successful litigants should receive preferential acceptance of their protests;

any writings touching on circumstances under which you would allow an upstream protest against a downstream appropriation;

any guidelines, rules, suggestions, or back-and-forth comments or memos or notes or other writings as to how protest acceptance or rejection letters are to be drafted;

if protest rejection letters are generated by successive re-use with customized modification, all of those letters and the notes pertaining thereto in that chain of letters going back from the rejection letter of 12/14/2009 in Ap. 18115 to the beginning of that process;

any discussions contrasting your issues analysis procedures and the issue-presentation requirements of the Water Code or Government Code;

any writings on whether or not to inform protestants of appeal procedures available to them and what those procedures are;

any writings on your conclusion that applicants and petitioners are entitled to a hearing or formal hearing on any rejection but protestants are not;

any writings on furnishing ADA considerations for protestants who may not have the equivalent litigation skills of petitioners or applicants;

any writings on the use of allowing some issues to remain protested as a way of causing the run of statutes of limitation on others;

any writings on whether or not your protest rejection letters need to furnish in any way the information contemplated by California Code of Civil Procedure Section 1094.5.

These records should include records dating to the beginning of when you began to reject protests as well as all of time since.

I request a formal hearing on any denial of this request and petition.

Respectfully submitted

Michael J. Barkley

cc: Bob Colella, Reclamation

Comments before the California State Water Rights Control Board, January 5, 2010

**My name is Michael Barkley, my address is 161 N. Sheridan Ave. #1, Manteca, California. This will take about 2 minutes. The wording of your "Public Forum" part of your agenda suggests multiple meanings. I hope I fit the meaning you intend.**

**The underlying water rights, public trust, and related issues subject of this comment are in the Stony Creek watershed in Glenn, Tehama, and Colusa counties. I have one petition to present to you individually and as a Board, and a request for clarification following that:**

**1. My petition is a request under the California Public Records Act for a copy of your internal procedures and unpublished rules whereby you screen Water Rights protests and manage to reject nearly all of them despite the equivalence in the right to formal hearing for applications and protests under the Water Code. My requests to staff for this information have so far been met with silence or what is obviously misinformation so I am submitting this to you. These writings are necessary for a petition I am drafting for the Office of Administrative Law regarding your protest procedures, which I regard as a prohibited underground regulation per the OAL Regs.**

**2. Yesterday I received a phone call from one of your lawyers, a Mr. Nathan Jacobson, who informed me that the appropriate reconsideration procedure for a staff denial of the right to protest is under Sections 1122 of the Water Code and 768 & 769 of your Regs. That surprised me because in reading those sections I would not have understood them to be applicable to a simple dismissive staff form letter. If this is not the procedure I would appreciate hearing about it promptly, but if it is your procedure, and considering the many protests you receive from people unfamiliar with this sort of government mischief, you might change your policy and start informing protestants of that reconsideration right.**

**Thank you.**

cc: Bob Colella, Reclamation