

April 6, 2022

State Water Resources Control Board

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Department of Water Resources

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U.S. Bureau of Reclamation

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Re: Comments on April 4, 2022 Order Approving Temporary Urgency Changes to Water Right License and Permit Terms Relating to Delta Water Quality Objectives (TUCP Order)

These comments are submitted on behalf of the undersigned Firms' numerous clients holding Sacramento River Settlement Contracts (SRS Contracts) and Agreements on Diversion of Water from the Feather River. The Sacramento River Settlement Contractors and Feather River Agencies recognize the extraordinarily difficult emergency drought conditions facing our state and the need to take actions to address and mitigate the impacts and effects of drought. Our clients support the substance of the U.S. Bureau of Reclamation's and California Department of Water Resources' Temporary Urgency Change Petition (TUCP) and the goal to provide additional operational flexibility to support Reclamation's and DWR's project operations. We offer the following comments to clarify and correct certain statements in the TUCP Order:

1. The TUCP Order Should Be Modified to Accurately Describe 2022 Shasta Operations.

Page 15 of the TUCP Order should be modified to accurately reflect 2022 Shasta Operations, as follows:

As described below under Sacramento River Temperature Management, this year the CVP Sacramento River Settlement Contractors² ~~have agreed to~~ expect a reduction in use from roughly 1.6 MAF to 450 TAF supply under the SRS Contracts due to the extreme dry conditions in the upper Sacramento River watershed and significant concerns with Shasta Reservoir storage conditions this year ~~and going into next for temperature management, hydropower production, salinity management, and water supplies.~~

Under the SRS Contracts, the SRS Contractors are entitled to 75% supply and the specific amount of any reduction is currently under review between Reclamation and the SRS Contractors. It is premature for the TUCP Order to rely on any specific reduction in supply under the SRS Contracts.

2. The TUCP Order Should be Modified to Strike a Repetitive Paragraph, and to Accurately Reflect the Federal Court’s Order Approving the IOP and the State Water Board’s Role Under its Order 90-5.

Pages 20 and 21 of the TUCP Order contain repetitive paragraphs and inaccurately describe preliminary forecasts of Shasta carryover storage and the State Water Board’s role under its Order 90-5. We request the following revisions:

~~The collaborative process for Shasta operations put forth in the court approved IOP identify an end of September Shasta storage target of 1.2 MAF to 1.8 MAF in a critical water year. According to the March 3, 2022 Order re Motions to Remand Without Vacatur; Stay; and Impose Interim Injunctive Relief, “[p]reliminary modeling at the time the IOP was initially filed indicated potential carryover storage range volumes of 1.2 MAF to 1.8 MAF if 2022 is a critical year and 1.8 MAF to 2.5 MAF if 2022 is a dry year”. (Order p. 35, fn. 28, citing IOP at ¶ 16.ii.) The IOP contemplates a~~ As part of that collaborative process between Reclamation, CalEPA, DWR, NMFS, USFWS, and CDFW, working with the Sacramento River Settlement Contractors, who hold contracts with Reclamation for water stored in Shasta, to developed a TMP approach that seeks to maintain winter-run habitat for the longest period possible. As announced by CalEPA, an ~~This approach for Shasta operations was developed to~~ creates a target for an average water release schedule of 4,500 cfs from Keswick Dam below Lake Shasta and a target for Wilkins Slough on the Sacramento River of more than 3,000 cfs. Under these parameters, Shasta is projected to have an EOS carryover storage greater than 1 MAF.

~~The collaborative process for Shasta operations put forth in the court approved IOP identify an EOS target of 1.2 MAF to 1.8 MAF in a critical water year. As part of that collaborative process, Reclamation, CalEPA, DWR, NMFS, USFWS, and CDFW, working with the Sacramento River Settlement Contractors, who hold contracts with Reclamation for water stored in Shasta, developed a TMP approach that seeks to maintain winter-run habitat for the longest period possible. This approach for Shasta operations creates a target for an average water release schedule of 4,500 cfs from Keswick Dam below Lake Shasta and a target for Wilkins Slough on the Sacramento River of more than 3,000 cfs. Under these parameters, Shasta is projected to have an EOS carryover storage of 1.2 MAF. This approach is expected to be reflected in a final TMP that is submitted to NMFS for approval pursuant to the IOP and to the State Water Board for approval pursuant to State Water Board Order 90-5 and Order 2022-0095 by May 1, 2022. While the TUCP is expected to primarily improve storage in Oroville and Folsom Reservoirs according to the Projects’ February operations outlook submitted with the TUCP,~~

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the TUCP will help to support storage in Shasta Reservoir occurring as part of the Shasta planning process described above.

Similarly, the TUCP Order at page 4, and Condition 10 at page 51 improperly combines and conflates the TUCP approval order with the Order 90-5 process and mischaracterizes the Executive Director's action on the TMP as "approval" rather than "objection" as set forth in Order 90-5.

3. The Public Should be Afforded Notice and Opportunity to Comment Prior to Any Substantive Revisions of the TUCP Order Based on the Executive Director's Reserved Jurisdiction.

Condition 12 on page 51 of the TUCP Order authorizes the Executive Director to make modifications to the TUCP Order based on public and agency comments or objections or changed conditions. The public is afforded notice of changes within 24 hours after the change is made. Given the significance of the TUCP Order, and recognition of the complex and integrated nature of DWR's and Reclamation's project operations, we request opportunity for notice and opportunity for comment *prior* to any changes, as follows:

This Order following public notice and opportunity for comment may be further modified by the Executive Director or the State Water Board based on public and agency comments or objections, or changed circumstances. Information concerning changes to this Order will be posted on the State Water Board's website within 24 hours.

These comments are not an exclusive list of our concerns with the TUCP Order. By these comments, we do not waive or limit any potential relief on other grounds not raised in this letter. Further, we reserve the right to petition for reconsideration of and otherwise challenge the TUCP Order, in accordance with applicable law.

Thank you for the opportunity to offer these comments and corrections.

Sincerely,

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