

PROTEST- PETITION
This form may also be used for objections

**PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE
OR TRANSFER ON**

APPLICATION various **PERMIT** various **LICENSE** various
OF U.S. Bureau of Reclamation and California Dept. of Water Resources

I (We) have carefully read the notice (state name):
TUCP filed by DWR and BOR regarding permits and license of the SWP and CVP in response to current dry conditions

Address, email address and phone number of protestant or authorized agent: Ric Ortega, Grassland Water District, 200 W. Willmott Ave., Los Banos, CA 93635; rortega@gwdwater.org; (209) 826-5188 // Mark Biddlecomb, Ducks Unlimited, 3074 Gold Canal Drive, Rancho Cordova, CA 95670; mbiddlecomb@ducks.org; (916) 852-2000 // Mark Hennelly, California Waterfowl Association, 1346 Blue Oaks Blvd., Roseville, CA 95678; mhennelly@calwaterfowl.org; (916) 648-1406

Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):

- the proposed action will not be within the State Water Resources Control Board's jurisdiction
- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations See attached.

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)

Protest and objections are to the partial denial of the petition for temporary urgency changes, and may be disregarded and dismissed upon the issuance of a revised order granting the petition in full.

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: _____

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):: _____

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).

Where is your diversion point located? ___¹/₄ of ___¹/₄ of Section _____, T ____, R____, ___B&M

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? _____

The extent of present and past use of water by protestant or his predecessors in interest is as follows:

- a. Source _____
- b. Approximate date first use made _____
- c. Amount used (list units) _____
- d. Diversion season _____
- e. Purpose(s) of use _____

Under what conditions may this protest be disregarded and dismissed? _____

All protests must be signed by the protestant or authorized representative:

Signed: RO MB MH (full signatures attached) Date: February 13, 2015

All protests must be served on the petitioner. Provide the date served and method of service used:

Served on February 13, 2015 via U.S. mail and e-mail to James Mizell (DWR) and Amy Aufdemberge (Regional Solicitor)



February 12, 2015

VIA U.S. MAIL AND E-MAIL

State Water Resources Control Board
c/o Rich Satkowski
P.O. Box 2000
Sacramento, CA 95812-2000
Rich.Satkowski@waterboards.ca.gov

**RE: Objections to Temporary Urgency Change Order for the
Central Valley Project and State Water Project**

Dear Mr. Satkowski, Executive Director Howard, and Members of the Board:

Grassland Water District and Grassland Resource Conservation District (collectively "GWD"), Ducks Unlimited, and the California Waterfowl Association submit the following objections to the February 3, 2015 order approving a Temporary Urgency Change Petition ("TUCP") filed by the U.S. Bureau of Reclamation ("Reclamation") and the California Department of Water Resources ("DWR"), the agencies that operate the Central Valley Project ("CVP") and State Water Project ("SWP").

This is the second consecutive year of TUCP drought proceedings for the projects. The 2015 TUCP request is a carefully considered proposal submitted by the agencies who manage the storage and delivery of a large portion of California's developed surface water supplies. All aspects of the proposal received concurrence from the three agencies charged with overseeing the projects' compliance with endangered species laws: the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife. Their concurrence determinations were based on a review of the Biological Reports submitted by the operations agencies, which contain detailed information about the predicted effects of the proposed TUCP operations on smelt, salmon, and sturgeon.

Your February 3rd order approves all but one of the proposed TUCP actions, the “intermediate” combined Delta export level of no greater than 3,500 cfs during periods when net Delta outflow is greater than 5,500 cfs but lower than 7,100 cfs and when the Delta Cross Channel Gates are closed.

We submit these objections to underscore the physical and financial impacts on south-of-Delta (“SOD”) wildlife refuges that may result from denying the intermediate export level, and encourage the SWRCB to make every possible effort to obtain the information it requires in order to reconsider its denial.

In last year’s TUCP order the SWRCB limited Delta exports to 1,500 cfs when net delta outflow was lower than 7,100 cfs. This year’s TUCP order concludes that “the water supply tradeoffs are unclear” and there is “not adequate information” to determine if an intermediate export level is reasonable, and therefore falls back on the same 1,500 cfs export level approved last year. That export level created a cascade of negative effects that refuge managers and stakeholders sorely wish to avoid this year:

- Reclamation was unable to meet its obligations to divide exported water supplies with DWR under the Coordinated Operations Agreement (“COA”);
- Reclamation was unable to secure water from San Luis Reservoir and through direct Delta diversions to meet its 75% critical water year obligations to San Joaquin River Exchange Contractors and SOD refuges (Level 2);
- Reclamation released water from Friant Dam to the San Joaquin River in order to reach a 65% water allocation to the Exchange Contractors, resulting in a 0% allocation to Friant contractors;
- Friant contractors filed a lawsuit against Reclamation and GWD, alleging that SOD refuges should have received a 0% Level 2 allocation (the suit was voluntarily dismissed but GWD incurred substantial defense costs);
- Because of the alternative deliveries from the San Joaquin River and the 0% allocation to SOD agricultural water service contractors, O&M costs for the Jones Pumping Plant, Delta-Mendota Canal, O’Neill Forebay and Mendota Pool were spread among contractors who did receive water from the Delta, including refuges. In 2014 Reclamation paid 97% of what it paid in 2013 to convey refuge water from the Delta, but delivered only 54% of the volume of water delivered in 2013. Critical funding for other refuge programs was redirected to pay for water conveyance;
- Reclamation was unable to purchase surface water supplies to meet the Incremental Level 4 water needs of SOD refuges, further reducing the total

refuge water supply allocation. Refuges turned to emergency groundwater pumping projects to maintain crucial habitat for waterfowl and the threatened giant garter snake;

- SOD refuges experienced higher-than-normal water losses in their conveyance systems due to dry soil conditions in canals, a significantly shrunken habitat footprint with no maintenance flows to improve water quality and reduce disease, lack of water in late summer and early fall leading to reduced plant growth that waterfowl rely on for food, bird crowding, and avian disease outbreaks;¹
- GWD saw a decrease in operational revenues, all refuges saw an increase in staff time required to closely manage limited water supplies and collect avian carcasses, and all experienced fewer hunters and recreationalists visiting refuges and contributing to local economies.

We urge the SWRCB not to shrug off the operations agencies' proposed intermediate export level because water supply impacts are "unclear." The TUCP order states that the water supply tradeoffs of denying the request for an intermediate export level "are not clear given the unknown water contract allocations that will occur this year." We disagree and believe that there is a high likelihood of increased water supply impacts to refuges as a result of denying the intermediate export level.

Recent calculations suggest that there is at least a 50% chance that the hydrology at Lake Shasta in upcoming months will trigger a 100% water delivery obligation to refuges (Level 2) and the Exchange Contractors.² Reclamation's ability to meet its water delivery obligations is unknown, but last year it did not meet its obligations and instead made 65% deliveries, and only then after: (1) accruing a significant water "debt" under the COA agreement that must be "paid back" to DWR this year; (2) releasing water from Friant dam; and (3) negotiating changes in water delivery schedules, which resulted in a substantial delay in refuge water deliveries that compounded refuge habitat impacts.

Water storage in San Luis Reservoir is well below average, and much of that water is banked there by other contractors. Recent calculations predict that the remaining volume of storage will not be sufficient to meet the water supply needs of refuges and the Exchange Contractors.³ The potential for another refuge water

¹ Refuge managers agree that avian cholera outbreaks seen in late 2014 would have been much worse if not for unexpectedly high December rainfall and an emergency diversion of water by Reclamation to refuges due to a broken pump in the SOD water conveyance system.

² Tom Boardman, January 14, 2015 "January Project Operations Update," p. 1, *available at*: http://www.sldmwa.org/OHTDocs/pdf_documents/Tom%20Boardman/Jan15_fc.pdf.

³ *Ibid.*, p. 2.

supply crisis in 2015 may not be crystal clear but it will most certainly be affected by the timing and volume of Delta exports in coming months. Small adjustments and flexibility in operations, such as the requested intermediate export level, could very well make a significant difference for refuge water supply impacts this year.

The operations and resource agencies have committed to undertaking real-time actions to help manage adverse affects on fish species, an example of which was the operations agencies' recent voluntary forbearance of 50% export pumping capacity to avoid drawing turbidity toward the Delta pumps.⁴ Further agreements to consult and make adjustments as necessary are set forth in the resource agencies' concurrence letters. Please reconsider your agency's denial of the proposed intermediate pumping level.

Thank you for considering these comments.

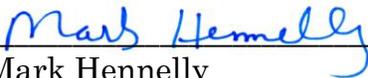
Sincerely,



Ricardo Ortega
General Manager
Grassland Water District



Mark Biddlecomb
Western Region Director
Ducks Unlimited



Mark Hennelly
Vice President, Legislative Affairs and Public Policy
California Waterfowl Association

⁴ *Ibid.*, p. 1.

cc (via e-mail):

SWRCB Members and Executive Director
James Mizell, DWR
Amy Aufdemberge, Regional Solicitor's Office
David Murillo, Reclamation