

(Objections of the San Joaquin Tributaries Authority)

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterboards.ca.gov/waterrights>

PROTEST– PETITION

OBJECTIONS TO:

ORDER APPROVING A TEMPORARY URGENCY CHANGE IN LICENSING AND PERMIT TERMS AND CONDITIONS REQUIRING COMPLIANCE WITH DELTA WATER QUALITY OBJECTIVES IN RESPONSE TO DROUGHT CONDITIONS. In the Matter of Specified License and Permits of the Department of Water Resources and U.S. Bureau of Reclamation for the State Water Project and Central Valley Project.

SPECIFIED LICENSE AND PERMITS:

Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources for the State Water Project and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 20245, and 16600 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 14858B, and 19304, respectively) of the United States Bureau of Reclamation for the Central Valley Project.

Protest based on the fact that the proposed action may:

- not be within the State Water Resources Control Board's jurisdiction;
- not best serve the public interest;
- be contrary to law; and
- injure legal users of water.

Facts supporting the foregoing allegations:

Attached hereto is document titled "SAN JOAQUIN TRIBUTARIES AUTHORITY PROTEST, OBJECTION AND, IN THE ALTERNATIVE, PETITION FOR RECONSIDERATION OF TEMPORARY URGENCY CHANGE ORDER."

**PROTEST, OBJECTION AND, IN THE ALTERNATIVE,
PETITION FOR RECONSIDERATION OF
TEMPORARY URGENCY CHANGE ORDER**

TO THE STATE WATER RESOURCES CONTROL BOARD:

The San Joaquin Tributaries Authority (“SJTA”) submits the following Protest, Objection, and in the Alternative, Petition for Reconsideration (“Protest”) of the Order Approving a Temporary Urgency Change Petition that suspends license and permit conditions requiring compliance with Delta water quality objectives in response to drought conditions (“Order”).

I. STATEMENT OF FACTS:

On January 29, 2014, the California Department of Water Resources (“DWR”) and the United States Bureau of Reclamation (“Reclamation”) jointly filed a Temporary Urgency Change Petition (“TUCP”) pursuant to Water Code section 1435 et seq., requesting the State Water Resources Control Board (“State Water Board”) to temporarily modify the requirements in Reclamation and DWR’s water right permits and licenses for the State Water Project (“SWP”) and the Central Valley Project (“CVP”). On January 31, 2014, the Executive Director of the State Water Board, acting under delegated authority, issued an order approving the TUCP pursuant to Water Code section 1438(a), which allows the State Water Board to issue a temporary change order in advance of public noticing requirements. On January 31, 2014, the State Water Board issued a notice regarding the TUCP and Order (“Notice”). The Notice stated that objections and comments regarding the Order must be received by the State Water Board no later than noon on March 3, 2014.

On February 7, 2014, the Executive Director of the State Water Board modified the Order. On February 18 and 19, 2014, the State Water Board held a workshop to discuss drought activities and actions. At this non-evidentiary workshop, the public had the opportunity to comment on the TUCP and the revised Order. On March 3, 2014, the Executive Director again modified the Order and extended the comment period to March 10, 2014.

II. BASIS OF PROTEST:

A. New Melones Permits and D-1641

The TUCP included the water permits which authorize the New Melones project (Water Right Application numbers 14858 and 19304). The TUCP, the record and the Order are not clear on the scope and extent of the relief that will be afforded to Reclamation’s permits at New Melones.

Water Right Decision 1641 (“D-1641”) modified Reclamation’s water right permits for New Melones. Under the conditions of its permits, Reclamation is solely responsible for meeting the February-June flow requirement and the April-May pulse flow requirement at Vernalis. The current February-June requirement requires 1,140 cubic feet per second to pass at Vernalis. The projected Vernalis pulse flow requirement is 3,140 cubic feet per second. The present flows at Vernalis measure only approximately 900 cubic feet per second. (*California Data Exchange Center* (Mar 7, 2014).)

The Vernalis requirement is part of Reclamation's responsibility for meeting Delta outflow conditions. However, it does not appear Reclamation sought, or the State Water Board granted, relief from Reclamation's Vernalis flow requirement. The SJTA requests the State Water Board confirm the Order does not provide such relief.

B. Dry Year Relief

Given the current hydrologic conditions, the SJTA understands certain operational changes and relief may be necessary. In fact, the SJTA and its predecessor, the San Joaquin River Group Authority, have long held the position that historic pulse flow requirements in successive dry year periods are untenable. This year provides an example of this problem. In order to meet the Vernalis requirement, Reclamation will need to release an additional 80,000 to 100,000 acre feet from New Melones, which would further reduce existing storage. As the State Water Board moves forward with its Phase I plan, it must recognize the fact that in critical water-short years, these types of flow objectives are not sustainable and not implementable. As this year demonstrates, it is not sustainable to address drought periods with temporary urgency change petitions. Rather, any revision of the Bay Delta Plan objectives must account for drought periods and include objectives that are able to remain in place during critically dry years.

C. Redirected Impacts

The Order is silent and unclear regarding potential redirected impacts from the relief it provides. The SJTA is concerned that the Order's relief from outflow requirements may be offset by future State Water Board actions requiring other water user to curtail or otherwise forego diverting water to which they have a right. If the intent of the Order is to provide relief from outflow requirements, without otherwise seeking other sources or contributions to supplement outflow, the SJTA requests the State Water Board amend the Order to make this intent clear and pledge commitment to avoid any redirected impacts from providing such relief.

Related to the point above, but worth distinction, the State Water Board should understand the how the Order, combined with the rules of water right priority, may restrict future State Water Board drought action. Specifically, the State Water Board cannot provide relief from flow requirements to junior water users and also attempt to curtail water diversions by senior water right holders. For example, if the Order provides relief to Reclamation's requirement to meet the Vernalis flow requirement, the State Water Board would be prohibited from issuing any curtailment notices on the San Joaquin River system; Reclamation's permits to store water in New Melones are the most junior on the San Joaquin River system. These junior permits require the release of stored water to meet the Vernalis objective. Thus, it would violate the rules of water right priority to provide Reclamation relief from releasing water while curtailing senior water right holders.

D. Authority to Amend Bay Delta Objectives

The Order provides relief from the requirements of D-1641, which implemented the Bay Delta Water Quality Control Plan. The Order does not state the authority under which the State Water Board is able to amend or otherwise provide relief from the requirements of the Bay Delta Plan Water Quality Control Plan. The SJTA requests the Order be revised to clearly outline the authority under which the Executive Director has taken such action.

III. REQUEST AND CONCLUSION:

The SJTA requests the State Water Board provide the above requested clarifications to the Order. In the event the State Water Board is unable to amend the Order as requested, the SJTA requests the State Water Board notice and hold a hearing to review the Order.

IV. STATEMENT OF SERVICE:

This Protest has been served by email upon the State Water Board, Reclamation and the Department of Water Resources as follows:

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

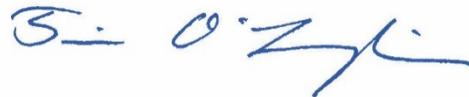
Department of Water Resources
c/o James Mizell
P.O. Box 942836
Sacramento, CA 94236-0001
James.Mizell@water.ca.gov

Regional Solicitor's Office
c/o Amy Aufdemberge
2800 Cottage Way, Rm. E-1712
Sacramento, CA 95825
Amy.Aufdemberge@sol.doi.gov

U.S. Bureau of Reclamation
Paul Fujitani
3310 El Camino Ave., Room 300
Sacramento, CA 95821
pfujitani@usbr.gov

Dated: March 10, 2014

O'LAUGHLIN & PARIS, LLP



By:

TIM O'LAUGHLIN, Attorneys for the
SAN JOAQUIN TRIBUTARIES AUTHORITY