

**BEFORE THE  
STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

**In the Matter of Sacramento River Temperature Management Plan for Water Year 2021**

**PETITION FOR RECONSIDERATION OF  
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
OF THE STATE WATER RESOURCES CONTROL BOARD'S  
JUNE 16, 2023 APPROVAL OF THE  
SACRAMENTO RIVER TEMPERATURE MANAGEMENT PLAN  
FOR WATER YEAR 2023**

Pursuant to sections 1122 and 1126 of the California Water Code, section 769 of title 23 of the California Code of Regulations, and related authorities, the California Sportfishing Protection Alliance (CSPA) hereby petitions the State Water Resources Control Board (“Board”) to reconsider the Executive Director’s June 17, 2022 approval of the 2023 Sacramento River Temperature Management Plan (“2023 TMP”).

CSPA is a coalition of public interest, non-governmental resource conservation organization that seeks to protect the fisheries, habitat, water quality, and water resources of California, with much of its efforts focused in the Central Valley’s Bay-Delta watershed. CSPA requests that the State Water Resources Control Board (Board) set aside the Executive Director’s approval of the 2023 TMP, in order to conform to appropriate process and to measures required by Water Rights Order 90-5, the Board’s public trust responsibilities, and in conformance with the Board’s 2020 Settlement with CSPA. The issues at hand also address the Board’s ongoing failures to address such matters over 2021 and 2022, and in previous dry years.

**1. Name and Address of Petitioners (23 Cal. Code Regs., § 769(a)(1)):**

California Sportfishing Protection Alliance  
1608 Francisco Street  
Berkeley, CA 94703  
(510) 421-2405

Please direct communications to Petitioners regarding this petition to:

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Berkeley, CA 94703  
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(510) 421-2405

**2. The specific board action of which petitioner requests reconsideration (23 Cal. Code Regs., § 769(a)(2)):**

The Executive Director’s June 16, 2023 Approval of the Shasta Temperature Management Plan submitted by the U.S. Bureau of Reclamation pursuant to Water Rights Order 90-5<sup>1</sup> (“Approval Letter”).

**3. The date on which the order or decision was made by the board (23 Cal. Code Regs., § 769(a)(3)):**

The Executive Director approved the 2023 TMP on June 16, 2023.

**4. The reason the action was inappropriate or improper (23 Cal. Code Regs., § 769(a)(4)):**

As discussed in the attached memorandum of points and authorities, the Approval is not supported by substantial evidence, is arbitrary and capricious, and improperly delegates the Board’s responsibilities to Reclamation.

More specifically, the Approval fails to meet the procedural and substantive requirements of Water Rights Order 90-5 because it:

- (1) Fails to demonstrate that factors beyond Reclamation’s reasonable control prevent Reclamation from maintaining water temperatures of 56 degrees Fahrenheit (56°F) at Red Bluff Diversion Dam, as required by Order 90-5 and the Basin Plan;
- (2) Ignores temperature impacts to fall-run Chinook salmon, spring-run Chinook salmon, and the salmon fishery. Reclamation’s ongoing failure to maintain river temperatures and flows needed for successful reproduction and rearing of fall-run Chinook salmon and spring-run Chinook salmon harms the salmon fishery; and
- (3) Fails to provide expected Trinity River temperatures at the downstream compliance points of Douglas City and the North Fork Trinity River.

**5. The specific action which petitioner requests (23 Cal. Code Regs., § 769(a)(5)):**

- (1) The Board should rescind the Approval and perform the analysis required by Water Rights Order 90-5;
- (2) The Board should immediately require Reclamation to comply with 56°F temperature requirement at Balls Ferry;
- (3) The Board should perform the analysis required in Order 90-5, and, once performed, use the analysis to require as warranted further temperature requirements in the lower Sacramento River;

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<sup>1</sup> The Approval Letter is available online at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/sacramento\\_river/docs/2023/6-16-23-final-tmp-response-clean.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/sacramento_river/docs/2023/6-16-23-final-tmp-response-clean.pdf). This document and all other specific webpages cited herein are incorporated by reference.

(4) The Board should initiate a proceeding to evaluate and revise Order 90-5.

**6. A statement that copies of the petition and any accompanying materials have been sent to all interested parties (23 Cal. Code Regs., § 769(a)(6)):**

This petition and accompanying materials have been emailed to the U.S. Bureau of Reclamation and California Department of Water Resources at the following addresses:

Kristin White, [knwhite@usbr.gov](mailto:knwhite@usbr.gov)

Amy Aufdemberge, [Amy.Aufdemberge@sol.doi.gov](mailto:Amy.Aufdemberge@sol.doi.gov)

James Mizell, [james.mizell@water.ca.gov](mailto:james.mizell@water.ca.gov)

**7. Conclusion**

For the reasons stated above and in the attached Memorandum of Points and Authorities, CSPA respectfully requests that the Board grant reconsideration, rescind the Executive Director's Approval of the 2023 TMP, and require the requested actions.

Respectfully submitted this 21<sup>st</sup> day of July, 2023.

Chris Shutes



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Executive Director  
California Sportfishing Protection Alliance

## MEMORANDUM OF POINTS AND AUTHORITIES

As described in the June 15, 2023 Objection of CSPA et al.<sup>2</sup> to the 2023 TMP, the Approval fails to minimally comply with the requirements of Water Rights Order 90-5.

Order 90-5 only allows for designation of an upstream temperature compliance location when “factors beyond the reasonable control” of Reclamation prevent Reclamation from maintaining water temperatures of 56°F at Red Bluff Diversion Dam. The 2023 TMP fails to evaluate whether it is possible to meet 56°F at Red Bluff Diversion Dam. In fact, the 2023 TMP does not provide any modeling of water temperatures at this location. Nor does it evaluate whether factors beyond Reclamation’s reasonable control prevent achieving this water temperature obligation.

The complete failure of the 2023 TMP to consider this important aspect of Reclamation’s legal obligations under Order 90-5 is arbitrary and capricious.

Rather than evaluating Reclamation’s ability to maintain daily average river temperatures at or below 56°F at Red Bluff, the 2023 TMP instead evaluates the potential to maintain 56°F at Balls Ferry. The 2023 TMP offers no explanation for this arbitrary decision to model temperature management at Balls Ferry. The 2023 TMP presents model outputs for two scenarios: maintaining 56°F at Balls Ferry (“Attachment 3”) and maintaining 53.5°F at Clear Creek (the “May 31 scenario”). Modeling of those two management approaches reveals that operating to maintain temperatures at or below 56°F at Balls Ferry:

- Is possible (Attachment 3, Table 1 at p. 12, and Figure 1 at p. 13);
- Results in very little increased risk of losing temperature control (Compare end-of-September Shasta cold water pool as a result of operating to meet 56°F at Balls Ferry (1.47 MAF) to cold water pool expected to result in the May 31 scenario (1.5 MAF), see pages 9 and 12); and
- Results in lower frequency of exceeding the 53.5°F target upstream at CCR (See modeled daily average temperatures at pages 10 and 13).

Despite these positive comparisons with the May 31 scenario, the 2023 TMP states: “Reclamation does not propose to operate the TCD explicitly to meet 56 degrees F at BSF under conditions that may require changes to TCD operations that could risk cold water pool resources for use later in the temperature management season. This would cause an unreasonable risk to other goals and objectives.” 2023 TMP at 4. Reclamation provides no evidence to support this alleged risk.

The Approval’s acceptance of Reclamation’s conclusion is not supported by substantial evidence because Reclamation presents a conclusion without supporting analysis. The Approval thus also improperly delegates the Board’s analytical responsibilities to Reclamation.

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<sup>2</sup> The Objection of CSPA et al. to the 2023 TMP is available at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/sacramento\\_river/docs/2023/2023.06.15\\_CSPA\\_23tmp\\_objection.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/sacramento_river/docs/2023/2023.06.15_CSPA_23tmp_objection.pdf).

Order 90-5 does not allow Reclamation to plan to maintain daily average temperatures higher than 56°F upstream of Red Bluff during periods when temperature increases will be detrimental to the fishery,<sup>3</sup> when there are measures within Reclamation’s reasonable control that would avoid such an outcome. Yet this is the 2023 TMP’s expectation (Attachment 2, Figure 1 at p. 10). Reclamation, however, accepts temperatures higher than 56°F at the Clear Creek gage. Reclamation and the Approval’s acceptance of a higher temperature without explanation of why 56° is not in Reclamation’s reasonable control is arbitrary and capricious and an unreasonable effect on fish and wildlife.

Order 90-5 requires more of Reclamation than protecting endangered salmon. Rather, it prohibits water temperatures that are detrimental to the salmon “fishery,” including fall-run Chinook salmon, as the State Water Board has acknowledged. *See, e.g.*, April 3, 2020 letter from the State Water Board to Reclamation regarding Order 90-5 Sacramento River Temperature Planning. Despite Order 90-5’s clear focus on the salmon fishery, the 2023 TMP makes only a passing mention of “fall-run Chinook salmon” and “spring-run Chinook salmon” that spawn in the Sacramento River, stating: “Modeled water temperature forecasts also indicate suitable temperatures for spring-run and fall-run Chinook salmon incubation; however, temperature models are more uncertain during the fall period.” *See* 2023 TMP at 5. This perfunctory box-checking provides neither analysis nor discussion of measures within Reclamation’s reasonable control that Reclamation could implement in response to conditions that produce unsuitable temperatures for these species. The lack of serious analysis or planning regarding this important aspect of Reclamation’s legal obligations under Order 90-5 is also arbitrary and capricious.

Order 90-5 requires Reclamation to protect Trinity River salmon by meeting 56°F at Douglas City and at the North Fork Trinity confluence during specific time periods. However, the 2023 TMP does not provide any Trinity River temperature projections other than at Trinity Dam and Lewiston. The State Water Board cannot determine if there are Trinity River impacts based on the 2023 TMP. The State Water Board should correct this omission by requiring Reclamation to show projected Trinity River temperatures at these compliance points. The Approval’s failure to require analysis of the 2023 TMNP’s temperature impacts to the Trinity is arbitrary and capricious.

Finally, modification of Order 90-5 is long overdue. Reclamation has repeatedly failed to achieve water temperatures of 56°F at Red Bluff Diversion Dam as required under Order 90-5 and the Basin Plan. Reclamation has also repeatedly refused to reduce water supply allocations to Sacramento River Settlement Contractors and take other actions under its reasonable control to improve water temperatures to protect the salmon fishery. In addition, the best available science demonstrates that temperature dependent mortality of Chinook salmon eggs begins when temperatures exceed 53.5°F, meaning Order 90-5’s 56°F target is unprotective. *See* Martin et al 2017, Martin et al 2020. For Trinity River Coho salmon, temperature dependent mortality begins when temperatures exceed 50°F (*see* Justin Ly, NMFS, e-mail to SWRCB, 4/27/22); Order 90-5 contains no protection that reflects this science.

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<sup>3</sup> Order 90-5 states (at p. 11): “Permittee *shall* control releases from Shasta Dam, Spring Creek Power Plant and Keswick Dam so as not to allow the average daily water temperature of the Sacramento River in the reach between Keswick Dam and Hamilton City to exceed 56°F during periods when temperature increases will be detrimental to the fishery” (emphasis added).

Therefore, the State Water Board should rescind the 2023 TMP because it fails to address Reclamation's obligations under Order 90-5, and should formally begin proceedings to modify Order 90-5 to be consistent with the best available science and to protect the salmon fishery, including fall-run Chinook salmon and Trinity River Coho salmon.