



**Terry Tamminen**  
*Secretary for  
Environmental  
Protection*

# State Water Resources Control Board



**Arnold Schwarzenegger**  
*Governor*

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor • Sacramento, California 95814 • (916) 341-5300  
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000  
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>

## NOTICE OF PETITION

### **BY THE UNITED STATES BUREAU OF RECLAMATION REQUESTING APPROVAL OF A TEMPORARY URGENCY CHANGE IN PERMIT TERM FOR NEW MELONES RESERVOIR STORAGE UNDER PERMITTED APPLICATIONS 14858A AND 19304**

Dated: February 10, 2004

On January 30, 2004, the United State Bureau of Reclamation (USBR) petitioned the State Water Resources Control Board's (SWRCB) Division of Water Rights (Division) for a temporary urgency change pursuant to Water Code Section 1435. The petition requests a temporary change in the terms for New Melones Reservoir pursuant to Permitted Applications 14858A and 19304 in order to change the fish and wildlife flow requirement for the San Joaquin River at Vernalis included in Table 3 of Revised Decision 1641 (D-1641) (condition 2(a) on page 161) from February thru June of 2004 (with the exception of the April 15 thru May 15 period). Approval of the requested change will allow USBR to conserve storage in New Melones Reservoir by meeting a lower flow requirement. USBR proposes to consult with the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (DFG), and the National Marine Fisheries Service (NOAA Fisheries) to determine required flows. If approved, the SWRCB would also likely require a minimum monthly flow of 1,420 cubic-feet per second (cfs) in addition to consultation with the fisheries agencies to determine required flows above 1,420 cfs.

## **BACKGROUND**

USBR was issued Permit 16597 on July 7, 1973 pursuant to Application 14858A and Permit 16600 on July 19, 1973 pursuant to Application 19304. Together the permits authorize storage of 2.4 million acre-feet of water from the Stanislaus River in New Melones Reservoir from November 1 through June 30 of each year.

This year's 60-20-20 San Joaquin Valley Water Year Hydrologic Classification (Figure 2, D-1641 page 189) is currently considered to be dry. The San Joaquin River watershed has experienced similarly dry conditions over the past 3 years and USBR anticipates that the current year's forecast will approach the critical dry year classification during February of 2004. As a result, New Melones carryover storage has proceeded to drop over the past 3 years and is expected to continue to drop. Low carryover storage levels may impair USBR's ability to comply with regulatory requirements and fulfill other project needs. USBR states that compliance with the fish and wildlife flow objective this year would likely compromise the safe yield of the New Melones project and USBR's ability to meet the various needs of the project, including fish and wildlife needs, during this and subsequent years.

Under dry year conditions, D-1641 requires USBR to maintain a minimum monthly average flow of 1,420 cfs or 2,280 cfs at Vernalis from February thru June (with the exception of the April 15 to May 15 period when a different set of flow requirements applies). The higher flow objective applies when unimpaired runoff from the Sacramento and San Joaquin rivers and their tributaries is at a higher level in which, pursuant to D-1641, Delta Outflow (as determined by the 8 River

Index (see D-1641 footnote 9 on page 185)) is required to maintain the fresh water/salt water mixing zone (referred to as X2) in the Delta at the more westerly of two locations (west of Chipps Island). Because the Sacramento River and its tributaries contribute the majority of the flow to the Delta, water year type conditions in the Sacramento River watershed have a more significant effect on whether the higher or lower flow objective is required. Consequently, even though the San Joaquin River watershed is experiencing dry conditions, the higher flow objective was triggered due to wetter conditions in the Sacramento River watershed. As a result, USBR has requested a temporary change in the fish and wildlife flow requirement at Vernalis in order to preserve storage in New Melones Reservoir. USBR has also requested that this issue be addressed in the SWRCB's current periodic review of the 1995 Bay-Delta Water Quality Control Plan.

USBR states that it intends to reinitiate consultation with the USFWS on the requirements for protection of the delta smelt. The flow requirements included in the USFWS's biological opinion for delta smelt (dated March 5, 1995) are the same as the flow requirements included in the Vernalis fish and wildlife flow objective. USBR also indicates that it will continue to coordinate with DFG, NOAA Fisheries, the CALFED Operations Group, and the Water Operations and Management Team to determine future operations. USBR proposes to operate New Melones Reservoir to meet minimum fishery flow requirements in the Stanislaus River, water rights agreements, and the Vernalis salinity objectives, as well as meet modified minimum flows at Vernalis as determined by the fisheries agencies. USBR also states that it intends to coordinate its operations with other Central Valley Project (CVP) reservoirs and the California Department of Water Resources (DWR) to satisfy Delta Outflow requirements.

USBR states that it will use the Central Valley Project Improvement Act Section 3406(b)(2) water that it would have used to meet the fish and wildlife flow requirement at Vernalis, elsewhere in the CVP system for fishery purposes after it consults with the fisheries agencies and DWR.

## **CEQA COMPLIANCE**

SWRCB staff has reviewed the proposed temporary change and has preliminarily determined that it is exempt from the California Environmental Quality Act (CEQA) in accordance with Title 14, California Code of Regulations Section 15307. If approved, this change will be conditioned such that there will be no adverse impacts to the environment. Further, approval of the proposed change would allow USBR to preserve limited water resources in order to meet future environmental and water supply needs.

## **SWRCB'S STATUTORY PROVISIONS**

Pursuant to Water Code section 1435, et seq., the SWRCB is authorized to issue temporary urgency change orders, allowing the change of a point of diversion, the place of use, purpose of use of the water, or change in the conditions of the permit. The SWRCB may issue a conditional order after completing an initial evaluation sufficient to determine that the proposed temporary urgency changes comply with the following:

1. The permittee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;

3. The proposed change may be made without unreasonable effect upon fish, wildlife or other instream beneficial uses; and
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

The SWRCB may issue a conditional order on the proposed change prior to the close of the comment period. However, the SWRCB will retain jurisdiction to modify any order that may be issued. Following the close of the comment period, the SWRCB will take any comments or objections it receives under consideration.

Temporary urgency changes authorized under section 1435, et seq. expire 180 days after the date of issuance, after which they may be renewed upon request of the petitioner if they still meet the above criteria.

Pursuant to the requirements of section 1435 above, the SWRCB is seeking information to assist in the evaluation of the proposed temporary urgency change. Any person may file comments or objections concerning USBR's petition. The materials must address the issues that the SWRCB must evaluate, as set forth above. If the SWRCB can not satisfy, in a timely manner, the provisions of section 1435, et seq., then the SWRCB may schedule and notice a hearing regarding the temporary urgency change. Any approval issued before or after the comment period has ended may be revised or withdrawn if there is good cause.

Materials filed in response to this notice **shall be mailed to the parties at the addresses listed below**. The response must be received in the office of the SWRCB's Division of Water Rights, at the address listed below by **12:00 p.m. on the 20<sup>th</sup> day after the date of this notice**. Interested parties are encouraged to file comments, etc., by FAX and to notify the following contact persons by telephone of any materials that will be submitted.

However, an original copy of all materials **must** be received for the SWRCB to consider your concerns.

**Diane Riddle, Environmental Scientist**  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

Phone No. (916) 341-5297  
FAX No. (916) 341-5400

**Chester Bowling, Operations Manager**  
U.S. Bureau of Reclamation  
Central Valley Operations Office  
3310 El Camino Avenue, Suite 300  
Sacramento, CA 95821

Phone No. **Paul Fujitani:** (916) 979-2197  
or **Peggy Manza:** (916) 979-2683  
FAX. No. (916) 979-2494

VICTORIA A. WHITNEY  
**Division of Water Rights**

**Dated:** February 10, 2004  
U:\Herdrv\DRiddle\A14858A long Notice.doc