



State Water Resources Control Board



Executive Office

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Linda S. Adams

Secretary for

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Arnold Schwarzenegger

Governor

MAR 11 2009

Ronald Milligan
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Dear Mr. Milligan:

PETITION FOR TEMPORARY URGENCY CHANGE TO MODIFY THE SAN JOAQUIN RIVER FLOW REQUIREMENT FOR THE MONTH OF MARCH 2009

On March 4, 2009, the United States Bureau of Reclamation (Reclamation) filed a petition for temporary urgency change regarding San Joaquin River flow requirements for the month of March 2009. The petition anticipates that the March 1 snow survey will result in a change in water year type for the San Joaquin Valley Water Year Hydrologic Classification (hereinafter water year type) from 'Critical' to 'Dry'. According to the conditions of Permits 16597 and 16600 (Applications 14858A and 19304) Reclamation must meet the San Joaquin River flow objective (measured at Vernalis). In 'Dry' years the San Joaquin River flow objective is 2280 cubic feet per second (cfs) and in 'Critical' years the objective is 1140 cfs. The petition requests a temporary urgency change to modify the San Joaquin River flow objective for the month of March, 2009, to allow for the 'Critical' year flows to be in effect if the water year type is 'Dry'. On March 10, 2009, the Department of Water Resources issued the results of the March 1 snow survey, and the water year type remains 'Critical'. On March 11, 2009, per email to State Water Board staff, you withdrew your petition. I want to take this opportunity to thank you for submitting a timely petition that relied upon the best information available at the time the petition was filed.

State Water Board staff has, however, reviewed your petition and supporting information and has identified concerns that likely would have prevented me from making the findings necessary to approve the petition. Due to current dry conditions, additional future modifications to water quality objectives may be required. Accordingly, I would like to share our concerns in order to assist you in preparing for additional actions. Water Code section 1435 defines "urgent need" to mean "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented...." Prior to approving a petition for temporary urgency change which proposes to relax water quality objectives, I must determine that the water saved by relaxing the objective is necessary to maximize the beneficial use of water.

California Environmental Protection Agency

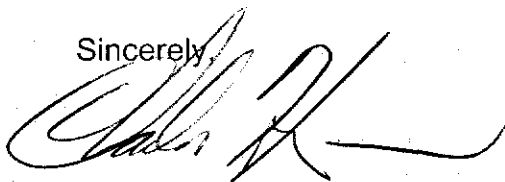
MAR 11 2009

Additionally, I must find that the change can be made without injury to other legal users of the water, would not unreasonably affect fish, wildlife, and other instream beneficial uses, and is in the public interest. In the supporting information submitted with your petition, you state that the requested change would save an additional 30,000 to 40,000 acre-feet of water to supply water needs for all beneficial uses; fish and wildlife, municipal and industrial, and agricultural, for the rest of 2009 and potentially 2010 and beyond. This information is not specific enough for me to adequately evaluate the costs and benefits of the proposed modification. In the future, a more specific description of the potential uses of water saved would assist the State Water Board in determining whether to approve a temporary urgency change in water quality objectives.

Finally, State Water Board staff has identified a discrepancy in your interpretation of the application of the water year type determination to the San Joaquin River flow objective. The 'best available estimate' of the water year type is based on snow survey data taken on the first of the month between December and May. The official determination of water year type is typically issued around the 10th of each month. Your petition assumes that if the best available estimate of the water year type changes on March 10 from 'Critical' (based on the February 1 snow survey data) to 'Dry' (based on the March 1 snow survey data), the flow objective for dry years (2280 cfs) would apply over the entire month of March. Under these circumstances, however, I do not believe that the 2280 cfs objective would apply retroactively to the March 1 through March 10 period. Instead, the objective would consist of an average of the values weighted for the remaining number of days in March over which the objective is effective.

Thank you for your continued cooperation. Should you have any questions on this matter, please contact Victoria Whitney, Deputy Director for Water Rights, at (916) 341-5302.

Sincerely,



Charles R. Hoppin
Board Chair