



September 16, 2014

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814

VIA E-MAIL
commentletters@waterboards.ca.gov

Re: Draft Reconsideration Order on CVP/SWP Temporary Urgency Order –
Comments of Cities of Folsom and Roseville, San Juan Water District and
Sacramento Suburban Water District

Dear Ms. Townsend:

We appreciate the opportunity to comment on the pending draft order on Central Valley Project (CVP) and State Water Project (SWP) operations, as well as the State Water Resources Control Board's (SWRCB) attention to the need to protect upstream reservoir storage. We suggest edits on the draft order, but generally support its adoption. Over the past year, we have consulted with the Bureau of Reclamation frequently to emphasize the need to plan to provide municipal water supplies from Folsom Reservoir – the primary water source for over 500,000 people in our region – if the upcoming winter were to be dry. We believe that, with some edits, the draft order's proposal to require Reclamation and the Department of Water Resources to prepare a water year 2015 drought contingency plan appropriately addresses the possibility that this severe drought may continue.

1. Background on American River Conditions and Consultations with Reclamation

The American River and, more specifically, Folsom Reservoir are the primary water source for 500,000 people within Folsom, Roseville and San Juan. Those people will be severely impacted if planning for Folsom Reservoir operations does not ensure that adequate water supplies are available from the reservoir under all conditions. Assurances about the stability and sufficiency of water supplies from Folsom Reservoir to serve the American River region therefore are necessary to implement state water policy, including the “human right to water” stated in Water Code section 106.3.

Early in 2014, it was distinctly possible that the level of Folsom Reservoir would drop so low that it would be below the water-supply intake in the reservoir. That intake would be dry if the lake were to drop below about 100,000 acre-feet. Moreover, that intake would have significant operational limitations at even higher reservoir levels. Folsom Reservoir reached its low point in 2014 at 162,617 acre-feet on February 6, 2014. Without the one multi-day storm of the 2013-2014 winter, which occurred shortly after February 6, the reservoir's water-supply

intake would have been dry – and the primary water supply for 500,000 people would have been cut off – by about the end of March 2014.

As a result of this brush with catastrophe, our agencies and others in the Sacramento region have taken significant steps to address the potential that a similar crisis – or an even worse one – could occur in the coming year. This region has led in the state in responding to the Governor's call for water conservation this year. This conservation has been the latest in our region's significant efforts to improve our self-reliance. For example, Sacramento Suburban's investment of over \$100,000,000 in supplies from Folsom Reservoir and related facilities have reduced its historical complete dependence on groundwater pumping, helping to stabilize groundwater levels in the Sacramento County portion of the North American Subbasin in the last 15 years.

Because of our experience earlier this year, our heightened management efforts have included more involvement with Folsom Reservoir operations. We have been in almost continuous contact with Reclamation staff concerning their operation of the reservoir and their planning for the coming water year. As part of that planning, Reclamation has been sharing its operational projections for 90% and 99% exceedance conditions in the coming year, although the 99% exceedance projection extends only through January 2015. While we appreciate this increased communication with Reclamation, we remain extremely concerned about the current state of Folsom Reservoir. On August 31, 2013, the reservoir had 429,368 acre-feet in storage. On August 31, 2014, the reservoir had 381,013 acre-feet in storage – 48,355 acre-feet less. Folsom Reservoir therefore is entering the coming water year in worse condition than it entered last water year. While the reduced storage is no doubt due in large part to the severe drought, the fact remains that there is less water in the reservoir this year than last, when this region nearly suffered a water-supply disaster.

As far as we can understand, Folsom Reservoir's current condition exists at least in some significant part to redirected impacts from operations of other parts of the CVP and the SWP. We understand that, under the Coordinated Operations Agreement, the SWP's decision to increase certain contractual allocations imposed a greater burden for Delta water quality conditions on the CVP, which in turn imposed a greater burden on Folsom Reservoir this summer because a primary CVP management goal was to attempt to maintain higher storage in Shasta Reservoir. As a result, releases from Folsom Reservoir were maintained above 1,500 cfs for much of this summer, reducing the reservoir's storage by 3,000 acre-feet or more each day.

2. *Comments on Draft Order*

Based on our serious concerns about Folsom Reservoir's condition and the possibility that its current condition may result in serious disruptions to our water supplies if the coming winter were to be dry, we have the following comments on the SWRCB's draft order.

A. *Need for Exceedance Levels in Drought Contingency Plan*

We very much appreciate the proposal in the draft order to require Reclamation and the Department of Water Resources to prepare a water year 2015 drought contingency plan. Our experience with similar projections indicates that it is important to specify on what hydrologic

exceedance levels such a plan should be based. Specifically, we believe that it is important that a plan for the upcoming year be based on both: (1) a “reasonably dry” 90% exceedance level; and (2) a “severe drought” 99% exceedance level, which would reflect a repeat of last winter. We also believe that the SWRCB should set a deadline for comments on the drought contingency plan. We request that the new term 11 proposed by the draft order be edited as follows:

In consultation with the fisheries agencies, DWR and Reclamation shall develop a water year 2015 drought contingency plan for operations in the Delta and the associated Project reservoirs in the event that water supplies remain inadequate to satisfy the Projects’ water right permit and license requirements and other uses. **The plan shall reflect at least projections of 90% and 99% exceedance conditions through June 2015.** The drought contingency plan shall identify planned minimum monthly flow and storage conditions that consider Delta salinity control, fisheries protection, and supplies for municipal water users related to projected flow and storage conditions, and any other information that may be requested by the Executive Director or his designee. The plan shall be submitted to the Executive Director by October 15, 2014. Following submittal, the plan will be posted **as quickly as possible** on the State Water Board’s website for public review. **Comments on the plan shall be due on October 31, 2014.** The Executive Director will consider public comments that may be submitted when determining whether to take any action based on the plan or whether to request additional information.

B. Draft Order’s Discussion of Operational Considerations at Folsom Reservoir in Footnote 8

As the draft order discusses, previous comments by Folsom, Roseville and San Juan on the CVP/SWP urgency order have relied on numerous legal protections for water supplies from Folsom Reservoir as bases for requesting drought planning specific to the American River. Those legal bases include the settlement contracts held by Folsom and San Juan that reflect pre-CVP water rights in the American River and the permit term that the State Water Rights Board, in 1958’s Decision 893, inserted in Reclamation’s water-right permits for the explicit purpose of assuring an adequate supply to agencies “naturally dependent” on the American River. Consistent with our previous letters and the discussion above, we appreciate the draft order’s proposal to require a water year 2015 drought contingency plan.

We are concerned, however, about the draft order’s discussion, in its footnote 8 on page 17, of the legal bases asserted in Folsom’s, Roseville’s and San Juan’s previous comments. Specifically, that footnote would state that the SWRCB recognizes that:

[D]evelopment of a drought contingency plan is a complex undertaking that will require careful consideration of various legal requirements, including federal reclamation law, the terms and conditions of the water right permits for the Projects, ESA requirements, the Coordinated Operating Agreement between DWR and Reclamation, and DWR’s and Reclamation’s contractual obligations.

This discussion could be read to suggest that the water-supply assurances provided to Folsom, Roseville and San Juan could be “balanced away” by the CVP and the SWP prioritizing other concerns. We believe that this interpretation would be legally incorrect. As an initial matter, footnote 8 does not account for the settlement contracts that Folsom and San Juan hold, contracts that do not allow Reclamation to reduce their contractual water supplies in dry conditions. (See CVP Contracts Nos. 14-06-200-5515A, 14-06-200-4816A and DA-04-167-eng-610.) Moreover, there is no conflict among reclamation law, the terms of Reclamation’s water-right permits for Folsom Reservoir and Reclamation’s contractual obligations. As the draft order itself states (p. 37), federal reclamation law requires that Reclamation follow its water-right permits’ terms. As discussed in previous letters by Folsom, Roseville and San Juan, Decision 893 explicitly inserted terms in Reclamation’s permits to protect this region’s water supplies and Reclamation’s CVP water-service contracts incorporate the terms of its permits. To the extent that the Coordinated Operations Agreement or the Endangered Species Act result in severe water-supply impacts on our agencies inconsistent with our contracts with Reclamation and Reclamation’s water-right permit terms, there would be serious issues of statutory interpretation and constitutional law. Given these significant problems with footnote 8’s discussion and the fact that footnote 8 is not necessary to support the draft order’s proposal to require a drought contingency plan, **we respectfully request that footnote 8 be deleted from the draft order.**

Conclusion

We appreciate the opportunity to comment on the pending draft order concerning the CVP/SWP urgency order. We also appreciate the draft order’s proposal to require that water year 2015 drought contingency plan be prepared and submitted by October 15, 2014. While we have concerns about the draft order’s footnote 8, that footnote does not appear to be necessary to support the proposed requirement for the water year 2015 drought contingency plan and therefore should be deleted. Please do not hesitate to contact any of us with any questions.

Very truly yours,

CITY OF FOLSOM

SAN JUAN WATER DISTRICT

By: 

Marcus Yasutake
Environmental and
Water Resources Director


By: _____
Shauna Lorance
General Manager

CITY OF ROSEVILLE

SACRAMENTO SUBURBAN WATER DISTRICT


By: _____
Ed Kriz
Director, Environmental Utilities


By: _____
Robert Roscoe
General Manager

Ms. Jeanine Townsend

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Cc: Hon. Dianne Feinstein
Hon. Tom McClintock
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Hon. Ted Gaines
Hon. Jim Nielsen
Hon. Darrell Steinberg
Hon. Lois Wolk
Hon. Ken Cooley
Hon. Beth Gaines
Hon. Jim Frazier
Felicia Marcus
Tam Dudoc
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Ron Stork
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