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September 16, 2014

TO: State Water Resources Control Board Members

Re: **Comments on behalf of San Joaquin River Exchange Contractors Water Authority to the SWRCB's Proposed Order Taking Action on Petitions for Reconsideration to January 31, 2014 Order Approving Temporary Urgency Changes for SWP and CVP.**

- 1. Modification of and Extension of Temporary Urgency Petition and Reissuance of a TUCP**
- 2. Ruling upon Petitions for Reconsideration**

I. Summary

1. Temporary Urgency Petitions are not to be utilized to modify water quality control standards in the Delta. The Court in the *Delta* cases found that (136 Cal.App.4th 674 (2006)).

2. If the Board now recognizes that Decision 1641 standards are wasteful of water in these drought circumstances and agrees to relaxation of those standards, then adding conditions that imperil a usable water delivery system are irrational and distracting. To attempt to condition relaxation on not using part of the water delivery system by stating that before any water can be exported above 1,500 cfs, those too-restrictive standards for Delta outflow, water quality and Delta Cross-Gate closure requirements must first be met and reinstated is attempting to use January 2014 tools in a totally different current hydrological situation to make the environmental community believe that pain was inflicted in return for change. The SWRCB is above this, and in fall 2014 and winter of 2015 the circumstances will damage environmental as well as water consumers.

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3. Hold a brief evidentiary hearing. Let the TUCP process lapse and end until the Projects bring you new requests for modification of license or permit conditions (not Delta standards, as the TUCP process is inapplicable), and the Projects and other water right holders can provide evidence of the effects of those changes. Let the water right priority system and what operational flexibility exists in the water delivery system be used without outdated and meaningless terms placed by SWRCB staff members in the early TUCP editions who imagined that they had a “better idea” to compensate for lack of rainfall and snow. You may find that modification of the Delta standards by getting closer to natural Delta outflow conditions while preserving as much of the use of the water conveyance system chosen by our State is a better response in late 2014 and early 2015.

4. The fact that the CVP and SWP suggested the condition of 1500 cfs pumping in January of 2014 does not mean the condition has any utility or viability in the fall, winter and spring of 2015. Simply stating the equivalent of “there is an emergency and we’re going to adopt orders in order to seem to be taking action, but we can’t let the conveyance system be utilized if Delta standards adopted in 2000 are not complied with” is the sort of fiction that ignores reality and damages rather than helps the situation.

5. The Board should allow the TUCP process to lapse and instead hold an evidentiary hearing about alternatives and impacts, obtain as much data and evidence as practical in a short period and develop an alternative criteria to the current Delta Standards that truly allows the Governor by Emergency Order to save as much of the environmental value and utility of our water system as possible in these circumstances. Trying to hide the fact that the Delta Standards must be modified by ordering no storage releases for exports unless the Delta outflow criteria adopted in 2000 is met on a day-by-day or average basis is ignoring reality and prudent operations.

II. The Board violates Water Code sections 1440 and 1441 when it attempts to adopt the Executor Director’s TUCP and then amend it and extend its term.

Water Code §§1440 and 1441 are explicit that a Temporary Urgency Petition is to expire after 180 days. The proposed order in the “Introduction” paragraph states “This order does make some modifications to the TUCP Order in response...”, and then states on page 52 of 58 that the January 31, 2014 TUCP and subsequent modifications to that Order are affirmed. Section 1441 is explicit that a Temporary Urgency Petition can be

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renewed after 180 days only if there is a petition from the CVP and SWP:

§1440: "...Any temporary change order shall automatically expire 180 days after the date of its issuance unless an earlier date is specified or it has been revoked."

§1441: "A temporary change order issued under this chapter may be renewed by the board...Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal". (Emphasis added.) [see attachments]

No petition has been filed by the CVP and SWP as required by Water Code §1435 ("Any permittee or licensee who has an urgent need...may petition..."). If a petition were filed in September 2014 by the CVP and SWP after the experience of the last 9 months, it would be substantially different than the one filed in January of 2014.

A. Without a Petition from any permit holder or licensee, on page 1 of the Order (page 52 of 58) the Board purports to order the conditions of its Delta conditions and limitations upon diversion of water and export from the Delta to last for "...360 days, or until such time as this Order is amended or rescinded...". In the previous paragraph introducing the TUCP language, the Order states "This order shall be effective until January 27, 2015."

B. So what is it? Is a temporary order to have a 360-day term (2 x 180 days), and if so, measured from what date...the last date the TUCP was modified on May 2, 2014? Or is the term of 360 days meaningless, and the date of this Order is presumably September 23-24, 2014 to be effective for one year thereafter, or is it 180 days thereafter? Is the SWRCB the party seeking the TUCP on its own motion? Or is the Board renewing the Executive Director's Order as its order for a period beyond 180 days? Or are all of the orders and modifications, including the September 23-24, 2014 Board action to take the place of the TUCP's adopted by the Executive Directors, to end in four months in January 2015?

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C. Obviously, the Decision 1641 standards if fully enforced would prevent the prudent operations of our State's water system. Most everyone would admit that the system cannot viably continue to not operate as it has for the last 15 years, sending stored water to the Delta and then the ocean for imagined benefits and trying to re-create "natural conditions." Now, when nature would dictate salt water intrusion should reach deep into the Delta, paralyzing the system, the Board should be able to hold a hearing and consider what changes should be made in water quality control standards.

D. What should the Board do? Preserve the Board's credibility: The Board should not attempt to affirm to a Court that it believes that the 180-day requirement under §§1340 and 1341 can be avoided and the Legislature's restriction to a 6-month term are meaningless. The Board should not ignore the *Delta* cases requirement of a hearing to modify Delta water quality standards. The Board should hold a hearing on water quality standards in the Delta to apply during this emergency. If you instead believe it is permissible after the Executive Director has modified his "plan" by 8 subsequent orders, to then in September of 2014 have the Board adopt that TUCP and avoid the time limits of the Water Code (with plenty of opportunity to hold a hearing and receive actual evidence but not calling a hearing), a clear record is being established here.

It is respectfully suggested that the Board should reject any further TUCP modifications, ask the CVP and SWP to submit a new request, and hold a brief evidentiary hearing to make findings and determinations for emergency relaxation of Decision 1641 requirements. A hearing may also lead the Board to recommend to the Governor that he invoke the ESA Cabinet-level appeal process to require the Federal ESA agencies to abandon their lack of flexibility requirements for species protection and recognize that ignoring the realities regarding the need for water system operations will not in the long- or short-term save the endangered and threatened species being focused upon. Leaders do not succeed by dodging reality. Instead, they fail.

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III. The proposed Urgency Order includes language that may have been deemed appropriate in January 2014 when the Projects appealed to the SWRCB and appeared to be in disarray. However, to now extend that language would totally confound California water rights and prudent operating practices. The TUCP should lapse.

A. Requirement that natural flow and abandoned flows be bypassed (par. 7).

Paragraph 7 of the proposed order states:

“7. While DWR and Reclamation are operating under the changes approved by this order, they shall bypass natural and abandoned flows in order to prevent injury to other lawful users of water.” [see attachments]

This language is an inapplicable relic of January, February and March 2014. Natural and abandoned flows are often stored for less than 30 days or more than that period by the CVP and SWP to regulate natural flow water arriving at a storage reservoir. Each of the Project water rights already requires that the Projects not impair senior rights. This respect for senior water rights is often encompassed within operating and quantification agreements by the Projects. Why does water have to be bypassed at reservoirs and the Delta pumps?

This TUCP paragraph 7 language goes too far, directing that all natural flow whether needed or necessary to comply with senior water rights be bypassed and not stored. Paragraph 7 should be removed. As demonstrated during the short duration events in March and April 2014, in order to conserve water, operations must be facile and prompt during a drought, and a condition like this adds nothing to the well-established rules of water right priority.

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B. Why does the TUCP limit water pumped in excess of 1500 cfs to “unstored water”? This is not protective of any water right or fishery interest.

Paragraph 2 of the proposed modified TUCP order states:

“2. During the effective period of this Order, if precipitation events occur that enable DWR and Reclamation to fully comply with the Delta outflow, DCC Gate Closure, Rio Vista flow and Sacramento River at Emmaton EC requirements contained in Decision 1641, then Decision 1641 requirements shall be operative, except that any SWP and CVP exports greater than 1500 cfs shall be limited to natural or abandoned flow, or transfers as specified in condition 1b.”

This condition would prohibit any stored water being pumped at the Export pumps at rates above 1500 cfs. If more than 1,500 cfs is to be pumped on a given date during any time that the relaxation of Delta water quality requirements is in effect, in theory the water must be traced to natural flow or abandoned flows or transfer water instead of to stored water. When water is released from Shasta or another Project reservoir during a dry period in the fall and winter of 2014-2015, and the releases exceed 1,500 cfs and are from storage supplies, must they now be abandoned and not exported? Of course, on the date of release of stored water for fish flow or temperature requirement purposes, there may be inflow into the reservoirs. May the inflow into the reservoirs be treated as the natural flow being pumped at the Export pumps above 1500 cfs? The language gives no clue as to how to trace the water source between stored water and natural flow! Finding and tracing “abandoned water” could also take some effort on the part of monks with the credentials of St. Augustine.

The January 2014 TUCP language was obviously an attempt to prohibit stored water to be moved South of the Delta in quantities greater than 1,500 cfs without requiring full compliance with the Decision 1641, yet in 9 months' previous operations in 2014 the Board must recognize that the Decision 1641 water quality requirements are too stringent and restrictive for these conditions and will cause widespread harm unnecessarily south of the Delta. Why this language remains even after a recognition that the whole utility of the California water transport system going into another dry year potentially requires flexibility in operation is not made clear. If the SWRCB wishes to condemn water supplies stored in reservoirs for a higher purpose on behalf of the State of

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California or revoke the water rights appurtenant to that stored water arriving between now and the spring of 2015 at the Export Pumps, it must do it in a different manner and do it more clearly. The TUCP is simply an inappropriate device.

C. The Conservation Account water. No legal authority and a bad idea as well.

Section 4 of the Order states:

“4. DWR and Reclamation shall calculate and maintain a record of the amount of water conserved through the changes authorized by this Order and shall submit such records on a monthly basis to the State Water Board within 10 working days after the first day of the following month. The water conserved shall be maintained in storage to protect flows for fisheries, used to maintain water supplies, or used to improve water quality. The use of such water shall be determined through the Real-Time Drought Operations Management Team Process described above.”

The language of Section 4 purports to create a new water right apparently administered by the Board itself and requires that the water be stored at no cost in the CVP and SWP facilities from the “conserved water” made available because of the changes in Decision 1641 Delta quality requirements.

The Board should abandon this fiction. The water rights system does not allow the Board to simply create a new water right by stating that it will not change or relax Delta water quality standards unless the Projects assign control of an amount of water to the SWRCB, and it does not allow the SWRCB to obtain storage privileges and dispatch that water through a different priority of use than the water rights system prescribes. As an example, Water Code section 1775 requires procedural due process and compensation when storage facilities are to be used by a “different water right holder”.

If the SWRCB theory is that it may control the use of that quantity of water as a type of environmental reparations while the rights to the water is retained by the Projects, there has been no petition filed by the Projects to divest themselves of a portion of their water rights or rights to use storage as is required by Water Code section 1435 to initiate a

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Temporary Urgency Permit. Nothing in the Governor's Proclamation of emergency powers authorizes the SWRCB to purport to acquire water rights that it itself can administer, and there is no such authority under the TUCP provisions of the Water Code which limit the authority to request such an order to a "permittee" or "licensee". Further, limiting the use of what it labels "conserved water" to "fisheries, [to] maintain water supplies or used to improve water quality" sounds innocuous, except that California water law has not yet authorized the SWRCB to carve out particular quantities of an existing right of a Permittee or Licensee because they apply for a Temporary Urgency Petition. This language should be deleted.

IV. What authority or purpose is served by incorporating a letter from the Projects in this Order?

On page 53 of 58, the Board purports to make the use of water already specified for use under the water rights of the Projects now subject to the language of a letter from the Projects dated March 18, 2014. The Board having previously mistakenly judged that it could determine what "health and safety" requirements were and not understanding that no one contests the right to sufficient water for domestic needs either under existing water rights or under the powers of eminent domain and with procedural due process in a true emergency, now apparently the Board wishes to obfuscate its previous mistaken and unnecessary action. However, the mechanism (incorporating a letter) further confuses and distracts. This portion of the whole TUCP should be stricken. The language of the March 18, 2014 letter states: "Water for outdoor landscaping is not considered a public health and safety need."

The language on page 2 in total states:

"Once DWR and Reclamation have determined that sufficient water is available to satisfy these health and safety needs this year, DWR and Reclamation will ensure that these supplies are accounted for in SWP and CVP exports, and where possible, stored south of the Delta. Any water in excess of these public health and safety needs, exported under either the conditions of temporary urgency change or exported pursuant to the provision of D-1641, will be delivered to serve SWP/CVP authorized uses. DWR and Reclamation intend to prioritize critical needs in these deliveries."

This language adds nothing to the Fall 2014 and 2015 water operations or to the

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body of California law that provides for human health and safety (but does not permit that category to move ahead of vested contractual or water rights without eminent domain authority). Yet, now the SWRCB is apparently adopting language and including that language in an Urgency Order (through incorporation of a letter) that could be contended to claim that outdoor landscaping use of water by the SWP south of the Tehachapi Range or on the Central Coast, including parks, fire breaks and maintenance of landscaping which are depended upon by tens of thousands of businesses and workers in the area served by the SWP, should be treated as something other than “critical needs”.

This inclusion should be removed. If the Board wishes to make orders regarding landscaping or outdoor watering, hold a hearing, receive evidence and then make orders.

V. Conclusion.

The SWRCB should allow the Temporary Urgency Orders of the Executive Director adopted January 31, 2014 and amended sequentially to lapse through its own limit of 180-day order effectiveness requirement. The Board should immediately notice a hearing to consider the changes in the Decision 1641 Bay Delta requirements and should demand that the CVP and SWP bring before the Board the exact requirement changes sought. This will be the “alternative operating plans” you request, although the utility of hypothesizing different rainfall conditions when the end result sought by all is flexibility with as little risk as possible of creating unnecessary damage is not easily “bookended.” The current situation is different than that faced in January and February of 2014. It is reasonable to suspect those requests and needs will be different and greater to maintain the functioning of California’s water delivery system and that system’s ability to maintain protection of some fish and wildlife habitat. The Board – not the Executive Director – should alter the Decision 1641 requirements based on the evidence it receives after such a hearing, and leave Project operations to the terms of issued water rights. The TUCP amended 8 times tells you “orders” do not add certainty in these conditions.

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The genius of a regulatory body such as the SWRCB is sometimes best exposed when it (1) recognizes stringent water quality standards cannot be achieved and are too restrictive, and admits that fact, and (2) it ceases blind and uncritical adherence to other regulatory bodies such as is occurring through the Federal and State Endangered Species Act attempts to control and restrict use of water facilities. The Board can do the Governor a service by directing his attention to the fact that governors are given under the ESA a unique and powerful role in making the ESA responsive to true emergencies.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

PAUL R. MINASIAN, ESQ.

PRM:dd(vlh)

Enclosures: Water Code section 1440 and 1441
Excerpts of TUCP

cc: San Joaquin River Exchange Contractors Water Authority & Members
Dan Steiner

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point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with the board within 10 days of publication.

(2) In all other cases, unless the change order is to be in effect less than 10 days:

(A) The permittee or licensee shall post the notice in at least two conspicuous places in the locality to be affected by the change. Notices shall be posted not later than two days after receipt. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(B) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary change.

(c) Regardless of the rate of diversion or the amount of storage, if the change order is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the change order, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file an objection to the temporary change with the board, and the board shall send a copy of that objection to the permittee or licensee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee or licensee to comply with any requirement of this section shall result in the automatic termination of the temporary change. (Added by Stats.1982, c. 867, p. 3224, § 6.)

§ 1439. Supervision of diversion and use of water

The board shall supervise diversion and use of water under the temporary change order for the protection of all other lawful users of water and instream beneficial uses and for compliance with change order conditions. (Added by Stats.1982, c. 867, p. 3224, § 6. Amended by Stats.1986, c. 455, § 6.)

§ 1440. Rights acquired under order; expiration of orders

Any temporary change order issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. Any temporary change order shall automatically expire 180 days after the date of its issuance unless an earlier date is specified or it has been revoked. (Added by Stats.1982, c. 867, p. 3224, § 6.)

§ 1441. Renewal of orders

A temporary change order issued under this chapter may be renewed by the board. Requests for renewal shall be processed in the manner provided by this chapter except that the permittee or licensee shall not be required

to file duplicate maps, drawings, or other data if they were furnished with the original petition. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal. (Added by Stats.1982, c. 867, p. 3224, § 6.)

§ 1442. Application of chapter

This chapter shall not apply to any permittee or licensee petitioning for a temporary change pursuant to Chapter 10.5 (commencing with Section 1725). (Added by Stats.1982, c. 867, p. 3224, § 6.)

CHAPTER 7. PRIORITIES

Article	Section
1. Priority of Application	1450
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3. Preferred Priorities of Municipalities	1460
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ARTICLE 1. PRIORITY OF APPLICATION

Section

1450. Application date; continuance of priority.

§ 1450. Application date; continuance of priority

Any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Such priority continues only so long as the provisions of law and the rules and regulations of the board are followed by the applicant. (Stats.1943, c. 368, p. 1622, § 1450. Amended by Stats.1957, c. 1932, p. 3383, § 101.)

ARTICLE 2. EFFECT OF ISSUANCE OF PERMIT

Section

1455. Continuance of priority; right conferred.

§ 1455. Continuance of priority; right conferred

The issuance of a permit continues in effect the priority of right as of the date of the application and gives the right to take and use the amount of water specified in the permit until the issuance of a license for the use of the water or until the permit is revoked. (Stats.1943, c. 368, p. 1622, § 1455. Amended by Stats.1969, c. 1087, p. 2088, § 1.)

ARTICLE 3. PREFERRED PRIORITIES OF MUNICIPALITIES

Section

1460. Municipal priority.
1461. Limited use.

ORDER

IT IS HEREBY ORDERED that, except as modified below, the Executive Director's January 31, 2014 TUCP Order and subsequent modifications to that Order are affirmed, and the petitions for reconsideration are denied. For convenience, the entire ordering section of the Executive Director's May 2, 2014 Order is reproduced below. The modifications to the Order are indicated in **bold strikethrough** (deletions) and **bold underline** (additions).

NOW, THEREFORE, IT IS ORDERED that the petition for temporary urgency change in permit and license conditions under Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources (DWR) for the State Water Project (SWP) 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 (Reclamation) for the Central Valley Project (CVP); is approved subject to the following terms and conditions. All other terms and conditions of the subject license and permits, including those added by the State Water Resources Control Board (State Water Board) in Revised Decision 1641 (Decision 1641) shall remain in effect. This Order shall be effective until January 27, 2015.

1. Except as otherwise provided in condition 2, below, for a period not to exceed 360 days, or until such time as this Order is amended or rescinded based on changed circumstances, the requirements of Decision 1641 for DWR and Reclamation (or Petitioners) to meet specified water quality objectives are amended as follows:
 - a. The minimum Delta outflow levels specified in Table 3 are modified as follows: the minimum Net Delta outflow Index (NDOI) described in Figure 3 of Decision 1641 during the months of February, March, April, May and July shall be no less than 3,000 cubic-feet per second (cfs) on a monthly average. The 7-day running average shall not be less than 1,000 cfs below the monthly average. In addition to base Delta outflows, pursuant to this Order, a higher pulse flow may also be

- From the date of this Order to the start of the pulse flow period, flows shall be no less than 700 cfs, on a 3-day running average.
- The 31-day pulse flow period shall consist of an overall pulse flow volume equivalent to 16-days of flow at 3,300 cfs, and 15 days of flow at 1,500 cfs. The start date and flow schedule for the overall pulse flow volume of water shall be determined through consultation with the Department of Fish and Wildlife, National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (fisheries agencies).
- From the end of the pulse flow period through May 31, an average flow of 500 cfs shall be maintained.
- For the month of June, flows shall be maintained on the Stanislaus River to meet the NMFS Biological Opinion requirements and water right permit requirements for dissolved oxygen on the Stanislaus River and water right permit salinity requirements on the San Joaquin River at Vernalis.

e. The Table 3 Sacramento River at Rio Vista flow requirements from September through November 15 of 2014 are modified as follows: flows shall be no less than 2,000 cfs on a monthly average. The 7-day running average shall not be less than 1,500 cfs.

f. The Table 2 Western Delta Sacramento River at Emmaton EC requirement is modified as follows: the compliance location is moved from Emmaton on the Sacramento River to Threemile Slough on the Sacramento River.

2. During the effective period of this Order, if precipitation events occur that enable DWR and Reclamation to fully comply with the Delta outflow, DCC Gate Closure, Rio Vista flow and Sacramento River at Emmaton EC requirements contained in Decision 1641, then Decision 1641 requirements shall be operative, except that any SWP and CVP exports greater than 1500 cfs shall be limited to natural or abandoned flow, or transfers as specified in condition 1b.

3. DWR and Reclamation shall convene a Real-Time Drought Operations Management Team with designated representatives from DWR, Reclamation, the State Water Board, and the fisheries agencies. The Real-Time Drought Operations Management Team shall be convened to discuss potential changes to SWP and CVP operations to meet health and safety requirements and to reasonably protect all beneficial uses of water. The team shall meet on a regular basis, and no less than weekly, to discuss current conditions and may be combined with the existing Water Operations Management Team as appropriate. The State Water Board representative shall be designated by the Executive Director of the State Water Board and shall be authorized to make real-time operational decisions to modify requirements to meet pulse flows associated with the modification to the Delta outflow objective described above, Export Limits, DCC gate closures, and the associated requirements of this Order. If the State Water Board approves any additional temporary urgency changes pursuant to the temporary urgency change petition that is the subject of this Order, or otherwise modifies this Order, the State Water Board will provide notice and an opportunity for interested persons to comment or object. Based on public comments or objections, further changes may be made to this Order. Information concerning changes to this Order will be posted on the State Water Board's website within 24 hours.
4. DWR and Reclamation shall calculate and maintain a record of the amount of water conserved through the changes authorized by this Order and shall submit such records on a monthly basis to the State Water Board **by the end within 10 working days after the first day** of the following month. The water conserved shall be maintained in storage to protect flows for fisheries, used to maintain water supplies, or used to improve water quality. The use of such water shall be determined through the Real-Time Drought Operations Management Team Process described above.
5. DWR and Reclamation shall develop monthly water balance estimates indicating actual and proposed operations through the end of the water year. Specifically, actual and projected inflows, north of Delta contract deliveries, other channel depletions, exports, and Delta outflows shall be identified. The water balance shall be posted on DWR's website and updated as necessary based on changed conditions. Monthly updates shall be posted and provided to the State Water Board **by the end within 10 working days after the first day** of the following month.

6. DWR and Reclamation shall consult with the fisheries agencies and the State Water Board on a weekly basis regarding operational decisions that may affect listed species and other beneficial uses of water. DWR and Reclamation shall conduct necessary modeling and monitoring and prepare other necessary technical information to inform ~~real-time~~ operational decisions. ~~Required modeling and monitoring shall be determined through the Real-Time Drought Operations Management Team Process or as may be required pursuant to any modification to this Order.~~ DWR and Reclamation shall make available, upon request of State Water Board or fisheries agency staff, technical information to inform these operational decisions, including planned operations, temperature modeling and monitoring information, water quality modeling and monitoring information, and information about potential impacts of operational changes on other water users. DWR and Reclamation shall report to the Board monthly at its Board meetings on their drought operations and the information discussed above beginning with the first October Board meeting.

7. While DWR and Reclamation are operating under the changes approved by this order, they shall bypass natural and abandoned flows in order to prevent injury to other lawful users of water.

8. This Order may be further modified by the Executive Director based on additional public input or changed circumstances.

9. This Order does not authorize any act that results in the taking of a candidate, threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the Petitioners shall obtain authorization for an incidental take permit prior to construction or operation of the project. Petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.