

February 6, 2015

VIA E-MAIL

State Water Resources Control Board
c/o Rich Satkowski
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Rich.Satkowski@waterboards.ca.gov

Re: **Objections to Order Approving In Part And Denying In Part A Petition For Temporary Urgency Changes To License And Permit Terms And Conditions Requiring Compliance With Delta Water Quality Objectives In Response To Drought Conditions** (In the Matter of Specified License and Permits of the Department of Water Resources and U.S. Bureau of Reclamation for the State Water Project and Central Valley Project)

Dear State Water Resources Control Board Members and Agency Staff:

The undersigned Central Valley Project ("CVP") and State Water Project ("SWP") contractors submit the following objection to the "Order Approving In Part And Denying In Part A Petition For Temporary Urgency Changes To License And Permit Terms And Conditions Requiring Compliance With Delta Water Quality Objectives In Response To Drought Conditions," ("Order") issued on February 3, 2015. The Order reversed the policy decisions, informed by science, made by the United States Bureau of Reclamation ("Reclamation") and the California Department of Water Resources ("DWR") and supported by the United States Fish and Wildlife Service ("FWS"), National Marine Fisheries Service ("NMFS"), and California Department of Fish and Wildlife ("DFW"). The Order exacerbates the effects of the severe drought conditions in California without any meaningful justification.

On January 23, 2015, Reclamation and DWR jointly filed a Temporary Urgency Change Petition ("TUCP") to temporarily modify requirements in their water rights for the CVP and SWP. As the Executive Director recognized, Reclamation and DWR filed the TUCP to:

1) conserve storage in upstream reservoirs for use later in the year if the drought continues; 2) ensure that salinity levels in the Delta are maintained at levels that protect public health and safety; and 3) lessen critical economic losses to agricultural, municipal, and industrial uses due to water shortages..."

(Order, p. 2.) To accomplish those objectives, Reclamation and DWR included in their petition intermediate rates for pumping for the CVP and SWP of 3,500 cfs when the Net Delta Outflow Index is between 5,500 and 7,100 cfs and the Delta Cross Channel gates are closed. The FWS, NMFS, and DFW evaluated the TUCP including data on fish abundance, distribution, and entrainment risk and supported the proposed actions, including the intermediate pumping rate.

The Order approved each change requested in the TUCP, with a single exception. The Order denied the 3,500 cfs intermediate pumping rate, explaining “there is not currently adequate information to indicate that this export level is reasonable.” The Order does not cite specific biological risks. The Order only expressed concern with the intermediate pumping rate because of “the current status of species and their distribution in the Delta and the potential additional risk of entrainment from the interim pumping level on various species.” This conclusion is largely based on inaccurate and outdated information, which raises significant questions about the veracity of the decision.

The Order does not give proper consideration to the additional protections for the ESA and CESA covered species under the respective biological opinions and as described in the Drought Contingency Plan that will continue to govern CVP and SWP operations to manage entrainment risk under the TUCP proposed actions.

It is also perplexing that the Order did not appropriately balance beneficial uses. First, the Order overstates the benefits of the proposed actions to the water users by concluding that “the primary beneficiaries of the changes will be the water users” (Order, p.16), claiming that impacts to temperature control without the TUCP are “not a given” (Order, p. 16.) despite NMFS’s determination “that given the current and forecasted hydrology, Reclamation will not likely meet the Shasta Reservoir storage requirements...” (NMFS letter, p. 2) and NMFS’s conclusion that “[m]ost of the adverse effects to the species identified in the Biological Review...are the consequences of actions intended to result in conditions...that will preempt more severe adverse effects to the species...” (NMFS letter, p. 6.)

The Order also ignores the significant and devastating impacts to the agricultural and urban areas that would be mitigated by intermediate pumping rates, based on the odd excuse that the allocations of water to CVP and SWP contractors are “unknown.” (Order, p. 19.) This explanation ignores reality. As the Governor expressed in his December 22, 2014 Executive Order:

[A]dditional expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought,” and

...[T]he magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat.

Further, DWR has announced an initial SWP allocation of 15 percent. Although Reclamation has not formally announced allocations to the CVP contractors, it is widely believed that, in late February, Reclamation will announce an unprecedented second year of no CVP water for its agricultural water service contractors, and a 50 percent allocation to its municipal and

State Water Resources Control Board,
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February 6, 2015
Page 3

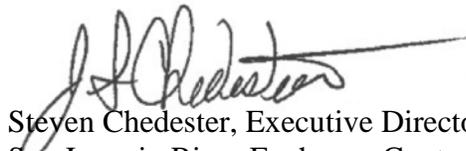
industrial water service contractors. The extent to which Reclamation will be able to meet its obligations to senior water rights holders and wildlife refuges is unknown, but the risk of another call for water from Millerton Lake increases with each passing day.

In sum, the Order reflects a policy decision to deny the intermediate pumping rates, which was requested by Reclamation and DWR and supported by FWS, NMFS and DFW. That policy decision was based on concerns with the same data that were evaluated by Reclamation, DWR, FWS, NMFS or DFW and upon which they drew opposite conclusions. It was also based on an apparent lack of appreciation of the crises facing the communities served by the CVP and SWP. For these reasons, and others that we will address in more detail in subsequent objections, the poorly supported policy decision must be immediately reconsidered. The workshop notice for February 18th does not reflect the urgency of the situation nor appreciate the dire consequences being suffered south of the Delta. The State Water Board itself must reconsider the Order at the first available date.

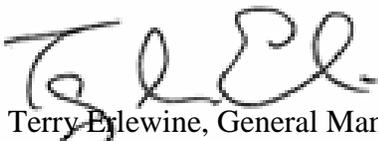
Sincerely,



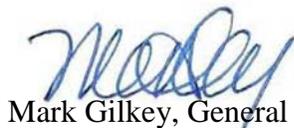
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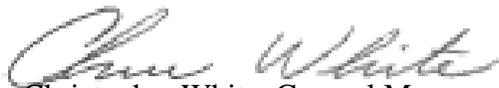
State Water Resources Control Board,
c/o Rick Satkowski
February 6, 2015
Page 4



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