



*To advance the economic, social and environmental sustainability of Northern California
by enhancing and preserving the water rights, supplies and water quality.*

February 13, 2015

Ms. Felicia Marcus, Chair
Members of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: February 3, 2015 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

Dear Chair Marcus and Board Members:

These comments/protest are submitted on behalf of the Northern California Water Association (NCWA). NCWA is concerned with language contained in the first paragraph of page 23 of the February 3, 2015 "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" (hereafter, the "Order"). The language in that paragraph purports to empower the Executive Director of the State Water Resources Control Board (SWRCB) to reallocate, at his sole discretion, water retained in upper watershed State and Federal reservoirs that would otherwise have been released to meet Delta water quality objectives. As set forth below, this unprecedented empowerment of the Executive Director lacks legal authority and raises significant concerns about injury to those water rights that are senior in nature to the rights relied upon by the projects. In addition, doing so may result in breaches to various contractual rights to water from the projects.

The first paragraph of page 23 of the Order states:

DWR and Reclamation shall calculate and maintain a record of the amount of water conserved through the changes authorized by this Order, as well as a record of where that water was conserved, and shall submit such records on a monthly basis to the State Water Board and fisheries agencies within 20 working days after the first day of the following month. The use of such water shall be determined by the Executive Director or his representative, taking into consideration input from DWR, Reclamation, the fishery agencies, and other interested persons." (Order, p. 23, emphasis added)

Contrary to law, the bolded language from the Order suggests that the Executive Director may reallocate water that would otherwise be released to meet Delta water quality standards. The state and federal water projects operate under a complicated set of laws and regulations governing when water is released. Pursuant to these laws and regulations, water is released from upstream reservoirs to: satisfy downstream water rights; maintain adequate water quality; generate hydropower; protect the environment; and for

other recognized beneficial uses. No California law, however, authorizes the Executive Director of the SWRCB to make water use determinations outside the authorities that govern releases for the above-referenced reasons. All decisions regarding impounding/releasing water from California's reservoirs must comply with applicable laws and the Executive Director is not authorized to create a separate pool of "conserved" water not subject to prior rights and other legally entitled existing demands.¹

NCWA understands and recognizes the severity and significance of the current drought situation, and remains committed to continue working with the SWRCB to find lawful solutions that will help mitigate the effects of the drought. The Order's cited language improperly expands the authority and jurisdiction of the Executive Director, and in a manner that is likely to violate the water rights rule of priority, among other authorities.

For these reasons, NCWA respectfully requests removal of the Order's first paragraph of page 23. Thank you for your consideration of this matter.

Sincerely,



David J. Guy
President

cc: SWRCB Board Members
Department of Water Resources
Bureau of Reclamation

¹ It is noteworthy that the Order contains no discussion of, nor citation to, any alleged authority that could support paragraph 3 of the Order.