



January 27, 2015

Tom Howard  
Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**RE: Protest and Opposition to Temporary Urgency Change Petition Filed by Bureau of Reclamation and Department of Water Resources**

Dear Mr. Howard:

On behalf of the Natural Resources Defense Council, which has more than 1 million members and activists, 250,000 of whom reside in California, I am writing to oppose and file a protest to the temporary urgency change petition (TUCP) filed by the Bureau of Reclamation and Department of Water Resources. We recognize that in light of the drought, there is a need to conserve upstream storage, particularly after last year's disastrous loss of temperature control at Shasta/Keswick resulted in an estimated 95% mortality of winter run Chinook salmon upstream of Red Bluff Diversion Dam. We also do not object to maintaining minimum 1,500 cfs CVP/SWP exports to ensure that health and safety uses of water can be met. However, we strongly object to the proposal to allow CVP/SWP exports in excess of 1,500 cfs when Delta outflow, X2 and/or DCC requirements under D-1641 are not being met. This proposal is biologically unjustified and will cause substantial and unreasonable injury to fish and wildlife. In addition, we protest and object to granting a TUCP for March operations at this time, and urge the SWRCB to wait until later in February to monitor hydrologic conditions before acting on the petition for March. In order to ensure that we can respond before the SWRCB takes action on the TUCP, each of these points are discussed briefly below.

**The SWRCB Should Reject the TUCP's Proposed Modification of D-1641 Export Limits**

The Bureau of Reclamation and Department of Water Resources have petitioned the SWRCB to allow for increased exports of up to 3,500 cfs when DCC gate closure requirements or Delta outflow/X2 requirements of D-1641 are not being met. This is a major departure from the 2014 TUCP orders and would further worsen outflow conditions in the estuary, unreasonably harming native fish and wildlife. The proposal effectively would allow exports in excess of 1,500 cfs if DCC gate operations and/or if outflow requirements of D-1641 are not being achieved. It also would allow the CVP/SWP to violate D-1641 outflow requirements when there

is sufficient natural flow to do so (e.g., without increased reservoir releases) while still providing minimum 1,500 cfs export pumping to meet critical health and safety needs. As an example, suppose that combined NDOI and exports amounts to 9,000 cfs: the CVP/SWP could meet a 7,100 cfs monthly outflow standard and still export 1,900 cfs under the approach taken in last year's orders on temporary urgency change petitions, but under the proposal in the TUCP they could reduce outflow to 5,500 cfs and export 3,500 cfs. In other words, under the TUCP, CVP and SWP exports would directly cause the failure to meet a 7,100 cfs outflow requirement, the minimum required under critically dry water year types.

The TUCP's proposed relaxation of outflow and export limits will cause unreasonable effects on fish and wildlife. The Board has already determined in the 1996 plan that the outflow and other standards in D-1641 are necessary for the reasonable protection of fish and wildlife. The 1996 Water Quality Control Plan explicitly states that, "*The water quality objectives in Table 3 are included for the reasonable protection of the following beneficial uses: EST, COLD, WARM, MIGR, SPWN, WILD, and RARE.*" SWRCB 1996 Bay Delta Water Quality Control Plan at 15 (emphasis added). Moreover, many salmon and other native fish populations are at or near record low levels of abundance as a result of drought and water project operations. The 2014 Fall Midwater Trawl resulted in a record low abundance index for delta smelt and the third lowest abundance estimate for longfin smelt, indicating that both species are at significant risk. Last year's loss of temperature control at Shasta Dam resulted in devastating impacts to winter run Chinook salmon, with the state and federal agencies estimating that 95% of eggs and juvenile fish died before passing Red Bluff Diversion Dam. As we discussed in our objections and protests last year, reducing outflow is likely to cause significant harm to these species, as Delta outflow plays a major role in the health of numerous fish species in the Delta.<sup>1</sup> The reduction in outflow is also likely to increase the risk of entrainment to these fish species of concern. The TUCP acknowledges that,

Unlike WY2014, winter-run Chinook salmon and Delta Smelt are currently at an elevated risk of entrainment impacts, due to their spatial distribution, abundance, and productivity. Spring-run Chinook and steelhead are predicted to have an increased risk of entrainment in the South Delta as their migration increases through February and March.

TUCP at 11. Given these increased risks to the species and their record low abundances, the SWRCB should find that the proposed modification to export limits would cause unreasonable effects on fish and wildlife.

In addition, the SWRCB should find that the proposed modification of the export limits is not in the public interest. The TUCP claims that these changes are in the public interest because,

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<sup>1</sup> See NRDC et al, March 17, 2014 Protest, available online at: [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/comments/nrdcetal\\_poole031714.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/comments/nrdcetal_poole031714.pdf)

The requested changes are in the public interest by preserving water supplies to meet critical water supply needs, by increasing the duration and likelihood of maintaining minimal salinity control, and by increasing the duration and likelihood of success of maintaining a cold water pool sufficient for sensitive aquatic species through the remainder of the year.

TUCP at 12. Yet the proposed modification of export limits does not further these requirements, and the public interest tips sharply in favor of rejecting the TUCP proposal. The proposed modification of the export limits does not conserve upstream reservoir storage to protect salmon, does not impact the ability to provide minimal salinity control in the Delta, and is not necessary to provide critical water supply needs (health and safety). Relaxing the Delta outflow/X2 standard arguably does conserve upstream storage to ensure some cold water is available to benefit salmon and to ensure maintenance of salinity control in the Delta, and permitting 1,500 cfs minimum pumping even when outflow or other D-1641 requirements are not being met ensures the projects can help meet critical health and safety water supply needs.

Despite the record low abundances of native fish species in the Delta as compared to last year, DWR and USBR propose to further weaken outflow and export standards as compared to the 2014 TUCP orders. At the same time, water supply projections for CVP and SWP contractors have improved as compared to those in 2014. The SWP has already announced a 15% allocation, substantially higher than last year's allocation.<sup>2</sup> The State Water Contractors have estimated a 17-23% allocation under the 90% exceedence forecast with D-1641 and biological opinions fully implemented, with substantially higher allocations under the 50% exceedence forecast (27-39%). On January 14, 2015, the San Luis and Delta Mendota Water Authority notified its member agencies that with respect to water supplies for the Exchange Contractors, "the need to call on supplemental releases from Friant to the Mendota Pool appears unlikely [sp]."<sup>3</sup> In addition, without relaxing D-1641 standards, the CVP and SWP will likely deliver several million acre feet of water to senior contractors in the Sacramento and San Joaquin basins. Given the improved water supply allocations, the worsening conditions for fish and wildlife, and the fact that modifying the export limits does not help conserve storage or protect against salinity intrusion, the SWRCB should reject the modification of export limits as not being in the public interest.

For these reasons, we urge the SWRCB to reject the TUCP proposal to modify export limits, and substitute the following instead (additions underlined, deletions in strikethrough):

The maximum Export Limits included in Table 3 of D-1641 be modified as follows: During February ~~and March~~ when footnote 10 of Table 3 of D-1641 is not being met, ~~the combined maximum SWP and CVP export rate for SWP and~~

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<sup>2</sup> DWR's January 15, 2015 notice to contractors is available online at: <http://www.water.ca.gov/swpao/docs/notices/15-01.pdf>. It is incorporated by reference.

<sup>3</sup> The January 14, 2015 "January Project Operations Update" by SLDMWA is available online at: [http://www.sldmwa.org/OHTDocs/pdf\\_documents/Tom%20Boardman/Jan15\\_fc.pdf](http://www.sldmwa.org/OHTDocs/pdf_documents/Tom%20Boardman/Jan15_fc.pdf). It is incorporated by reference.

~~CVP contractors at the Clifton Court Forebay Intake and C.W. “Bill” Jones Pumping Plant will be no greater than 3,500 cfs on a 3-day running average. During February and March when an NDOI of at least 5,500 cfs is not being met, or the DCC gates are open during a period inconsistent with footnote 23 of Table 3 of D-1641, the combined maximum SWP and CVP export rate will be no greater than 1,500 cfs. When precipitation and runoff events occur that allow the DCC gates to be closed and footnote 10 of Table 3 of D-1641 is being met [3-day average Delta Outflow of 7,100 cfs, or electrical conductivity of 2.64 millimhos per centimeter on a daily or 14-day running average at the confluence of the Sacramento and the San Joaquin rivers (Collinsville station C2) if applicable], but any additional Delta Outflow requirements contained in Table 4 of D-1641 are not being met, then exports of natural and abandoned flows are permitted up to D-1641 Export Limits contained in Table 3 and, in compliance with applicable laws and regulations including federal Endangered Species Act (ESA) and California ESA (CESA). If precipitation events occur that enable DWR and Reclamation to fully comply with Decision 1641, then Decision 1641 requirements shall be operative, except that any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flow.~~<sup>4</sup>

This language is similar to the language adopted by the SWRCB in its final order on reconsideration last year. See Water Rights Order 2014-0029 at 52-54.

### **The SWRCB Should Not Grant the TUCP for March**

We greatly appreciate that the agencies in 2015 have provided more advance notice than last year regarding potential changes to water quality and other standards protecting fish and wildlife and other beneficial uses. However, because many of D-1641's water quality standards are based on hydrology from the prior month, we request that the SWRCB not act on the TUCP for the month of March. Storms in February may substantially change operational, water supply, and environmental conditions (as well as changing the potentially applicable standards). The water quality standards under D-1641 already include standards for critically dry and dry water years, and any modification of the standards must be based on extraordinary circumstances.

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<sup>4</sup> In addition, we strongly object to modification of the averaging periods under the D-1641 inflow:export ratio, as was permitted in 2014. See TUCP at 6. Because USBR and DWR did not seek a TUCP permitting this modification of D-1641, it is our understanding that they cannot use the modified calculation that was utilized last year. We also request that the SWRCB condition any TUCP to require the projects to shift pumping operations to Jones pumping plant in order to better protect salmon and other native fisheries, in light of the substantial pre-screen mortality in the Clifton Court Forebay. See TUCP at 6. This would not have a water supply impact but would provide greater protections for fish and wildlife. Finally, the SWRCB should also continue to require accounting of conserved water as a result of reduced Delta outflow requirements and should ensure that all conserved flows actually improve upstream storage and water temperature control for salmon, and continue to require reporting of monthly water balance updates (which are posted online at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/waterbalance\\_nov2014.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/waterbalance_nov2014.pdf)) for the duration of the drought.

While continuing drought conditions in February must justify some relaxation of standards for March, it is also possible that hydrologic conditions improve. DWR has reported that as of January 1, 2015, the 50% exceedence forecast for the Sacramento Valley would result in a Below Normal water year type, and the 75% exceedence forecast would result in a Dry water year type.<sup>5</sup> While hydrologic conditions have worsened since January 1, the SWRCB should ensure that D-1641 standards are met if conditions result in a Dry or better water year classification. For these reasons we urge the SWRCB to not act on the TUCP for March until later in February.<sup>6</sup>

**Conclusion:**

Thank you for consideration of our views. We greatly appreciate the SWRCB's efforts to require better planning for drought this year, and to balance competing uses for scarce water during the drought. Please contact us at your convenience if you have any questions or would like to discuss this further.

Sincerely,

/s

Doug Obegi  
Senior Attorney

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<sup>5</sup> DWR's latest Water Supply Indices (WSI) is available online at: <http://cdec.water.ca.gov/cgi-progs/ioidir/WSI> and is incorporated by reference.

<sup>6</sup> Should the SWRCB tentatively grant the TUCP for the month of March, any such order should include a mandatory reopener clause should hydrologic conditions improve.