



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

March 10, 2014

*Via U.S. Mail and E-mail
(Listed Below)*

Chairman Felicia Marcus and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Order Approving a Temporary Urgency Change in License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions (With Modifications Dated February 7, 2014 and February 8, 2014)

Dear Chairperson Marcus and Members of the Board:

The California Farm Bureau Federation ("Farm Bureau") provides the following objection to the above-referenced order ("Order"), and its modifications, in accordance with Water Code section 1438(d).

Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. Farm Bureau members use water for agricultural production under the auspices of a variety of rights, including contract rights for project water, direct appropriative rights, and riparian rights.

As the Board is aware, water is an essential and indispensable input for production agriculture. Production agriculture, in turn, is an essential and indispensable element of the public interest. California's farmers and ranchers serve the public interest through a robust farm economy that provides affordable food and fiber to the State of California, to the nation, and to the world. This public interest is also sustained by a \$44 billion farm economy and over a million jobs that are dependent upon it. The Board's actions with respect to the water resources under its jurisdiction implicate, on a continuing basis, this nexus between agricultural productivity and the public interest. Farm Bureau members are concerned about any Board

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN • KAREN NORENE MILLS • CHRISTIAN C. SCHEURING • KARI E. FISHER • JACK L. RICE

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action which may be taken in the name of undefined “health and safety” goals at the expense of this public interest.

We are aware that the Board is struggling with a difficult mission this year, as are water managers across the state. Farm Bureau members, perhaps more than any other constituency, are acutely aware of this year’s drought conditions and the poor outlook for water availability and delivery. Farm Bureau members also understand that California’s water rights system was designed from the outset to respond to shortage, and that it has a foundational role to play in response to the current crisis. Finally, while the current system of water infrastructure is inadequate and in need of large improvements, Farm Bureau members understand that it presently offers some ability to buffer the natural circumstances of this year’s drought, and believe that it should be operated accordingly. It is against this backdrop that the Board regulates.

Farm Bureau asks the Board to consider the following:

Jurisdiction. In implementation of the Order or promulgation of modifications to the Order, as well as ancillary water-rights actions, the Board must not adversely impact non-jurisdictional water rights, which is to say riparian and pre-1914 appropriative rights. We are aware of no authority, including Water Code section 275 or decisional law, which allows the Board to regulate or curtail anything other than appropriative water rights developed after the Water Commission Act of 1913 under the Board’s new jurisdiction.

Human Health & Safety. As alluded to above, we have serious questions about the Board’s direction with respect to health and safety, its relationship to the public interest, and its intersection with agriculture. To the extent that the Board has issued or continues to issue orders and modifications of orders in the name of human health and safety, the Board must outline its statutory authority to issue an order in the name of human health and safety, explain the specific uses that it entails, and ground any action in a solid evidentiary foundation. We respectfully request that the Board also outline any balancing of the public interest it undertakes in this regard, and specifically address agricultural needs in this balancing.

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Priority of Right. Alongside riparianism, the system of prior appropriation is the foundation of California water law. Among other things, it was designed to accommodate times of shortage through curtailment of junior rights, when necessary, until senior rights have first been satisfied. The Board's actions with respect to the Order and any modifications must give due respect to the priority system as a basic element of certainty in water rights administration. We respectfully request that the Board explain how any order, or modification thereof, conforms to the priority system.

Due Flexibility for Project Operators. Consistent with priority, any order of the Board should allow for due flexibility to the operators of the major state and federal projects. The Central Valley Project and the State Water Project serve millions of acres of productive farmland, and there is flexibility inherent in the operations of those projects - even in extremely short years such as this one - and the Board should recognize the expertise of the project operators in accommodating the current circumstances, as best as possible, to serve its customers.

Purposes of Central Valley Project. The purposes of the Central Valley Project include, as a cornerstone, service to agriculture. We agree with others who have noted that the Board cannot legally direct the Central Valley Project exclusively to serve purposes other than which were specifically authorized and directed under federal reclamation law, and which specifically exclude agriculture.

Due Process and Transparency. As others have called for, a transparent process simply must occur at the Board as it underwrites urgency orders that affect water availability and quality. The due process rights of water users may not be dispensed with, and those affected by the Board's orders must have an opportunity to be heard and respond to the Board's proposed actions. The Board's actions must also be underpinned by a solid evidentiary basis which is subject to review and cross-examination. We request that the Board hold adequately-noticed hearings that conform to all due process to which water users are entitled.

Chairman Felicia Marcus and Members

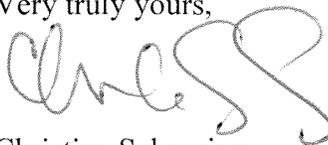
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Farm Bureau appreciates the Board's consideration of the foregoing, and urges the Board ensure that any further action is taken with the appropriate consideration of agriculture's role as a critical element of the public interest. Please feel free to call me directly in regard to this letter at (916) 561 – 5660.

Very truly yours,



Christian Scheuring
Managing Counsel
Legal Services Division
California Farm Bureau Federation

CCS:/dkc

Email originals sent to: felicia.marcus@waterboards.ca.gov
francis.spivy-weber@waterboards.ca.gov
tam.doduc@waterboards.ca.gov
steven.moore@waterboards.ca.gov
dorene.dadamo@waterboards.ca.gov

cc: Michael Buckman, Senior Environmental Scientist
Hearings Unit Chief, Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
michael.buckman@waterboards.ca.gov