

State of California  
State Water Resources Control Board  
**DIVISION OF WATER RIGHTS**  
**P.O. BOX 2000, Sacramento, Ca. 95812-2000**  
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**PROTEST – (Petitions)**

**BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS**

**Temporary Urgency Change Petition for  
Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512  
and 17514A, respectively) of the Department of Water Resources for the State Water  
Project 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 for the Central Valley Project.**

**We, Chris Shutes, Water Rights Advocate, California Sportfishing Protection Alliance (CSPA), 1608 Francisco St., Berkeley, CA 94703, [blancapaloma@msn.com](mailto:blancapaloma@msn.com), (510) 421-2405; Bill Jennings, Executive Director, CSPA, 3536 Rainier Ave, Stockton CA 95204, [deltakeep@me.com](mailto:deltakeep@me.com), (209) 464-5067; Barbara Vlamis, Executive Director, AquAlliance, P.O. Box 4024, Chico, CA 95927, [barbarav@aqualliance.net](mailto:barbarav@aqualliance.net), (530) 895-9420; Carolee Krieger, Executive Director, California Water Impact Network, 808 Romero Canyon Rd., Santa Barbara, CA 93108, [caroleekrieger7@gmail.com](mailto:caroleekrieger7@gmail.com), (805) 969-0824; and Michael Jackson, counsel to CSPA, CWIN and AquAlliance, P.O. Box 207, 429 W. Main St., Quincy, CA 95971, [mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net) (Protestants)**

have read carefully a notice relative to a petition for Temporary Urgency Change of the Department of Water Resources (DWR) and the Bureau of Reclamation (Bureau), The Executive Director issued an Order granting this petition on January 31, 2014 entitled *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*. Since this initial Order, DWR and the Bureau have submitted a series of requests for modifications of the Order, and for modifications of subsequent Orders. In general, these requests have been granted in full with the issuance of a Modification of Order or a Revised Order; in many cases, the Board acted within one day of receipt of the requests from DWR and the Bureau. The Board has not noticed requests for modification, and there has been no formal process for public comment, protest, or review of each iteration. Though requested by multiple parties, no hearings on matters related to these petitions and Orders have been noticed or held.

On April 18, 2014, the Board issued an “Announcement” of a Revised Order relative to a “Request” by DWR and the Bureau to revise the Order(s) of Temporary Urgency Change. of DWR and the Bureau. Protestants have carefully read this announcement, the request, the Order and the supporting materials. This April 18 Order is the immediate object of this Protest.

The Executive Director of the Board issued Revised or modified Orders on February 7, February 28, March 18, April 9, April 11, and April 18, 2014. On April 25, 2014, the Board issued a Notice of a Workshop relating to these petitions and Orders, to be held on May 6, 2014. In the April 25 Notice, the Board states that it will issue another Revised Order on or about May 1, 2014. In its April 25, 2014 Notice of Board meeting (of which the Workshop is an agenda item), the Board states that comments and Powerpoint presentations are due on May 1, 2014 at noon, effectively precluding comment on the revised Order that is promised for that date.

Protestants filed a protest on March 3, 2014 of the February 28, 2014 Revised Order. Protestants incorporate that protest into the present protest by reference. Protestants further protest against and object to the approval of all subsequent Revised Orders as enumerated above, because to the best of our information and belief:

The proposed petition for water will:

- (1) not be within the State Water Resources Control Board’s (SWRCB) jurisdiction** x
- (2) not best serve the public interest** x
- (3) be contrary to law** x
- (4) have an adverse environmental impact** x

**State Facts, which support the foregoing allegations:**

**Summary of relevant Orders since January 31, 2014**

In abbreviated summary, the Orders granting the Temporary Urgency Changes requested by DWR and the Bureau permitted the following:

The January 31 Order allowed DWR and the Bureau to limit Delta outflow to 3000 cfs in February and allowed them flexibility to open the Delta Cross Channel Gates from February 1 to May 20. It limited combined state and federal exports to 1500 cfs for purposes of health and safety, created a Real Time Drought Operations Management Team, required monitoring and reporting, and required water saved to be held in storage to maintain water supplies, improve water quality, and protect flows for fisheries.

The February 7 Order allowed exports of transferred water and allowing export of natural and abandoned flows greater than 1500 cfs when the D-1641 Table 3 flow requirement of 7100 cfs or e.c. of 2.64 mmhos at Collinsville and requirement to close the Delta Cross Channel Gates were being met .

The February 28 Modified Order, extended the terms of the February 7 Order through the month of March, 2014.

The March 18 Revised Order continued the flow requirements in the February 7 and February 28 Orders and continued to allow exports of transferred water and exports of natural and abandoned flows when D-1641 Table 3 conditions were not being met. It also allowed deliveries of

exported water for any project purposes provided that the same D-1641 Table 3 Conditions were being met, allowing such exports even if the D-1641 Table 4 flow requirements of 11,400 at Chipps Island or alternative salinity requirements at Collinsville were not being met.

The April 9 Revised Order extended the reduced Delta outflow requirements allowed in the March 18 Revised Order. It allowed DWR and the Bureau to operate in the short term consistent with the Drought Operations Plan they issued on April 8, 2014; short term actions included installation of three channel barriers, changes to Delta salinity standards, and the ability to open the Delta Cross Channel Gates.

The April 11 Revised Order set April and May flows for the lower San Joaquin River, requiring a 700 cfs minimum flow until commencement of a pulse flow, a 15-day pulse flow (reduced from the 31 day requirement of D-1641) in April, and a 500 cfs minimum flow for the lower San Joaquin River following the completion of the pulse flow.

The April 18 Revised Order permitted export of the entire volume of the lower San Joaquin River pulse flow in April or May, even when the D-1641 Table 3 minimum flow conditions are not being met, or 1500 cfs, which is greater.

**The use of temporary urgency change orders to manage drought conditions is contrary to law and not in the public interest.**

Since the first Order on January 31, what we described in our March 3 protest as the “shotgun adjudication of water rights with no rules of evidence and no public accountability” has become a solidified routine. Due process regarding operation of the Projects has purely and simply been abolished. The Projects submit a request for modification pre-approved by the fisheries agencies, and within a day the Executive Director orders it so. The April petitions were not even made public before the deal was done. The limitation of exports to levels necessary for “health and safety” was abandoned on March 18. While export opportunities have expanded, outflow requirements have been reduced to levels that threaten the continued existence of listed species. The April 18 Order required a pulse flow in the San Joaquin River, but allowed export of every acre-foot of additional water released from the Stanislaus River. Protests have been filed after each new Revised Order; each has been dutifully posted to one of the Board’s drought webpages, a museum of dead letters. The Board has not defined its process in writing; no petition is noticed before the fact; no protests are responded to; no hearings are held. The deadline for “comment” on the April 18 Order was limited to ten days for no apparent reason; the actions allowed were implemented before the close of the comment period.

John Herrick of the South Delta Water Agency describes, in his March 28, 2014 letter to Tom Howard regarding the March 18 Order cited above, a suite of legal reasons for which the actions of the Board and fisheries agencies are contrary to law. We incorporate his comments by reference.

We describe in our March 3, 2014 Protest how the current conditions of SWP and CVP water supply, storage, and non-compliance with D-1641 Delta water quality conditions are the predictable practical result of : 1) permanent SWP and CVP over-allocation and over-delivery

water for water supply, insufficient carryover storage, and under-allocation of water needed to meet water quality requirements; and 2) failure of the fisheries agencies and the Board to enforce existing standards (let alone create more appropriately protective standards). The state of “emergency” declared by the Governor (and reaffirmed by him on April 25) is equally the predictable practical result of the combination of drought conditions and standard operating procedure. Sequences of dry years occur forty percent of the time in California. As we pointed out in our March 3 Protest, the current situation is not an emergency, defined as a “sudden, unexpected occurrence, involving a clear and imminent danger, involving immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services.”

This systemic mismanagement of the state’s water resources is not an emergency justifying the suspension of standards established to protect water quality and public trust fisheries. It is a decision. It is not appropriately or legally addressed by temporary urgency orders that eviscerate promulgated long-standing water quality standards developed through due process specifically for Critically Dry year situations.

**The Drought Operations Plan<sup>1</sup> published on April 8, 2014 by DWR and the Bureau illegally plans next year’s operations of the SWP and CVP to meet the same conditions of non-compliance as this year.**

The Drought Operations Plan published on April 8 by DWR and the Bureau describes on page 8 the outcome of this year’s action on carryover storage should next year also be a dry year: “This level of carryover storage would also be sufficient under even drier conditions assuming the implementation of management actions in 2015 similar to those being put into practice this year. These actions have included modifications to implementation of D-1641 standards... .”

As stated previously, it is not in the public interest and contrary to law for DWR and the Bureau to routinely operate the SWP and CVP to violate D-1641 standards, and for the fisheries agencies and the Board to allow such operation. It would be equally not in the public interest and contrary to law for the Board to allow operations this year that will allow compliance only if next year is not a dry year. This construct reveals in a different way that this year’s operations are not temporary, but are being promulgated as a new default for multiple dry year operations.

The Board has announced (in its April 25, 2014 Notice of Public Workshop relating to the Temporary Urgency Changes) its intent to issue an Order relating to SWP and CVP summer operations on or about May 1. The Board should require operations that incorporate plans to comply with D-1641, should next year also be a dry year. Since the Board, in determining summer operations, will be defining next year’s operation if next year is a dry year, the Board should also compel the Projects and the fisheries agencies to defend their planned operations in a public Board process, before the Board determines operations for this summer.

Protestants object to any determination by the Board of this year’s summer operations in the absence of public due process.

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<sup>1</sup> “Central Valley Project and State Water Project Drought Operations Plan and Operational Forecast, April 1, 2014 through November 15, 2014,” cited in the April 9, 11 and 18 Revised Orders.

**The operations approved in the April 18, 2014 Order will have an unreasonable effect on fish and wildlife.**

Allowing export equivalent to the entire volume of the San Joaquin pulse flow will lead to the loss of the vast majority of outmigrating San Joaquin juvenile salmon and steelhead, because these juveniles will be pulled into south of the San Joaquin River towards the Delta pumps. This is described succinctly on pages 1-3 of the April 21 protest by National Resources Defense Council and the Bay Institute of the April 11 Order. We incorporate that analysis by reference.

Allowing continued export greater than volumes required for health and safety while not meeting D-1641 Table 3 and/or Table 4 requirements will have unreasonable effects on salmon and steelhead and also on pelagic species. Please see our March 3 Protest for discussion. Allowing transfer of non-Project water through export facilities over and above limitations on Project exports will have unreasonable effects on salmon and steelhead and also on pelagic species. Please see our March 3 Protest for discussion.

CSPA is preparing an analysis of impacts to pelagic and anadromous fisheries of the Temporary Urgency Change Orders and DWR's and the Bureau's Drought Operations Plan. CSPA plans to present this analysis to the Board at the Board's May 6, 2014 workshop.

**Under what conditions may this protest be disregarded and dismissed?**

1. The Order must be modified to define conditions under which it will be cancelled.
2. The Order must be modified to forbid Project exports of water through south Delta Project facilities of any sort, including water secured through groundwater substitution, except for those quantities of water required for health and safety, until D-1641 requirements have been met for sixty consecutive days or until the Order is cancelled or expires.
3. The Order must be modified to forbid export of transferred water except that needed for health and safety until D-1641 requirements have been met for sixty consecutive days or until the Order is cancelled or expires. Water transferred for health and safety must be transferred within at a rate that does not raise the overall amount of export water beyond the restrictions applicable to water delivered by the Projects.
4. The Board must make a finding on the adequacy of the April 8, 2014 document by DWR and the Bureau entitled "Updated Report to SWRCB on Export Amounts to Maintain Health and Safety during Drought" and must determine how health and safety is defined for the purposes of the Order. The Board must also require quantification and location of deliveries for health and safety.
5. The Board must require quantification of conserved water held in Project storage pursuant to the terms of the Order.
6. In order to plan for compliance in 2015, as stated above, the Board must hold a hearing to determine summer 2014 operations for the Projects.
7. The Board must require that water held in Project storage pursuant to the terms of the Order be prioritized for cold water and carryover storage management, and for fisheries management in the fall of 2014.

8. The Board must immediately hold a hearing to determine how much inflow to Project reservoirs greater than reservoir releases can be stored to meet the public interest, and how much must be released to senior water rights holders downstream. The hearing must also address other issues related to existing and potential conflicts between the Order and the water rights priority system.
9. The Board must hold a hearing to determine how Project storage will be managed on an interim basis to protect fish and wildlife until the update of the Water Quality Control Plan is completed. This hearing must result in carryover storage requirements for Project storage reservoirs. This hearing must also define how the Board will require operation of the Projects to actually meet Delta water quality standards.
10. The Real-Time Drought Operations Management Team must be expanded to include two qualified members from environmental NGO's.
11. The Board must post a comprehensive update of the actions of the Real-Time Drought Operations Management Team to the public on the State Board's drought web page, no less frequently than once a week, as long as the Order is in effect.
12. The State Board must include an operations update from the Real-Time Drought Operations Management Team at the beginning of each Board meeting as long as the Order is in effect.

A true copy of this protest has been served upon the petitioners by e-mail (see below).

Date April 28, 2014

Chris Shutes, Water Rights Advocate  
California Sportfishing Protection Alliance



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Bill Jennings, Executive Director  
California Sportfishing Protection Alliance



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Barbara Vlamis, Executive Director  
AquAlliance



Carolee Krieger, Executive Director  
California Water Impact Network



Michael Jackson  
Counsel to California Sportfishing Protection Alliance,  
AquAlliance, and  
California Water Impact Network

/s/ Michael Jackson

Pursuant to page 2 of the January 31, 2014 Notice of Temporary Urgency Change Petition and to the April 18, 2014 Announcement of the April 18 Revised Order, we have used the State Board's protest form for petitions, and have filed these objections via e-mail to:

[Michael.Buckman@waterboards.ca.gov](mailto:Michael.Buckman@waterboards.ca.gov)

Also pursuant to page 2 of the January 31, 2014 Notice of Temporary Urgency Change Petition, we have served these objections via e-mail to the following:

Department of Water Resources, c/o James Mizell: [James.Mizell@water.ca.gov](mailto:James.Mizell@water.ca.gov)

Regional Solicitor's Office, c/o Amy Aufdemberge: [Amy.Aufdemberge@sol.doi.gov](mailto:Amy.Aufdemberge@sol.doi.gov)

U.S. Bureau of Reclamation, Paul Fujitani: [pfujitani@usbr.gov](mailto:pfujitani@usbr.gov)