



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

March 3, 2014

VIA U.S. MAIL AND E-MAIL:

MICHAEL.BUCKMAN@WATERBOARDS.CA.GOV

Mr. Michael Buckman
California State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812-2000

Re: Objections to 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 28, 2014)

Dear Mr. Buckman:

In accordance with California Water Code section 1438(d), the Northern California Water Association, and various upstream senior water rights holders and water users identified on the attached Exhibit 1 (collectively "Upstream Parties"), respectfully submit these objections to the above-referenced 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 28, 2014) ("Order").

The Upstream Parties fully recognize that the State of California is facing an extraordinary water supply situation in 2014. Since the inception of the current drought, the Upstream Parties have worked cooperatively with the State Water Resources Control Board (SWRCB), the Department of Water Resources ("DWR") and the Bureau of Reclamation ("Reclamation") to develop solutions to the current water supply crisis, and they will continue to do so. These Objections seek to better focus the current proceedings on what we believe are the important issues yet to be appropriately addressed by DWR, Reclamation and the SWRCB.

The Upstream Parties' primary Objections are to paragraph 1.b of the Order, which allows the continued export of up to 1,500 cubic feet per second (cfs) of water from the Delta for "health and safety" purposes. Simply stated, the Upstream Parties do not believe that DWR and Reclamation have made an adequate showing, as required under Condition 2 of the Order, of the amount of water needed for "health and safety" purposes. Nor have they documented where the 1,500 cfs of export water is currently being delivered and used. As a result, DWR and Reclamation have failed to satisfy the explicit requirements of the Order. The Upstream Parties, as senior water right holders, as well as others (including the general

public) are entitled to know how DWR and Reclamation are operating the State Water Project and the Central Valley Project, and whether water rights priorities are being honored.

Similarly, the SWRCB's February 28, 2014 Notice of Modifications to the Order states in pertinent part, The Executive Director intends to make additional revisions to the Order no later than March 7, 2014 . . . [and] [t]hese revisions will include:

- Clarification on the allowable uses of water pumped under the health and safety export provisions of the Order, and a requirement to report where this water is delivered and how it is used.
- A requirement to record the quantity of water that is stored in Project reservoirs as a result of changes allowed under the Order.
- A requirement to maintain a minimum quantity of water in Project reservoirs at the end of September sufficient to meet health and safety needs in the event of continued drought next year.

The Upstream Parties have significant concerns about the actions of DWR and Reclamation under the Order, and the SWRCB's proposed actions. Among other things, these actions ignore vested property rights in water that are protected by State law, Federal law and contracts, as well as by the State and Federal constitutions. While we recognize the critical nature of the current drought, there is no legal or constitutional basis that would allow DWR, Reclamation or the SWRCB to proceed without regard to those rights. In particular, the following have not, but must be, accounted for:

- "Public Health & Safety" is a term that is not defined in the law. As a consequence, the notion that one can abrogate long standing vested property rights based upon a mere assertion of "Public Health & Safety" needs is a dubious proposition, at best. We believe that there are better approaches to help accomplish these objectives, including working with Upstream Parties on collaborative solutions. At a minimum, DWR, Reclamation and the SWRCB must explain what they mean by this term, and must account for the means that they intend to rely upon to take vested property rights from those who hold them in order to meet "Public Health & Safety" needs.
- DWR, Reclamation and the SWRCB must publicly provide detailed technical analysis to support the proposed action or any action that the SWRCB undertakes to address the current situation. This should include an explanation of proposed uses of water, including the 1,500 cfs exported across the Delta, and projections of end of the year storage in upstream reservoirs. The SWRCB must also explain its intended requirement that DWR and Reclamation maintain minimum amounts of water in their Project reservoirs at the end of September, without apparently taking into account the existing stored water supplies in other reservoirs that could be used for Public Health & Safety needs.
- DWR, Reclamation and the SWRCB must explain the basis of any decision that has an adverse effect on those with water rights priorities. In this context, Upstream Users and others with senior water rights have certain due process rights that, thus far, have been ignored and violated by DWR, Reclamation and the SWRCB. The United States and California Constitutions and due process require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest.

For the reasons stated, the Upstream Parties request that the SWRCB promptly hold an evidentiary hearing on the Order and these Objections in accordance with Water Code Section 1438(e). In the alternative and without waiving their request for an evidentiary hearing, the Upstream Parties are willing to participate in an alternative dispute resolution process under the authority and direction of the SWRCB the purposes of which would be to ensure (i) compliance by DWR and Reclamation with paragraph 1.b and Condition 2 of the Order; and (ii) protection of the senior water rights of the Upstream Parties in accordance with state and federal law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Fujitani".

President

cc: (via email)
Thomas Howard, SWRCB
James Mizell, DWR
Amy Aufdemberge, USBR Regional Solicitor
Paul Fujitani, USBR
Upstream Parties

DRAFT
EXHIBIT 1

Upstream Parties

ANDERSON-COTTONWOOD IRRIGATION DISTRICT
BIGGS-WEST GRIDLEY WATER DISTRICT
CARTER MUTUAL WATER COMPANY
CITY OF REDDING
CONAWAY PRESERVATION GROUP, LLC
GARDEN HIGHWAY MUTUAL WATER COMPANY
GLENN-COLUSA IRRIGATION DISTRICT
HOWALD FARMS, INC.
MAXWELL IRRIGATION DISTRICT
MERIDIAN FARMS WATER COMPANY
NATOMAS CENTRAL MUTUAL WATER COMPANY
OJI BROTHERS FARMS, INC.
OJI FAMILY PARTNERSHIP
PACIFIC REALTY ASSOCIATES (aka M & T CHICO RANCH)
PELGER MUTUAL WATER COMPANY
PLEASANT GROVE-VERONA MUTUAL WATER COMPANY
PRINCETON-CODORA-GLENN IRRIGATION DISTRICT
PROVIDENT IRRIGATION DISTRICT
RECLAMATION DISTRICT NO. 1004
RECLAMATION DISTRICT NO. 108
RICHTER, HENRY D., ET AL.
RIVER GARDEN FARMS COMPANY
SUTTER MUTUAL WATER COMPANY
TISDALE IRRIGATION AND DRAINAGE COMPANY
WINDSWEPT LAND AND LIVESTOCK COMPANY