



April 21, 2014

Diane Riddle
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Sent via email to: diane.riddle@waterboards.ca.gov

RE: Protest of April 11, 2014 Order Approving Modification of Vernalis Minimum Flow Requirements

Dear Ms. Riddle:

On behalf of the Natural Resources Defense Council and the Bay Institute, we are writing to protest the State Water Resources Control Board's April 11, 2014 Order approving the Bureau of Reclamation's temporary urgency change petition regarding minimum flows at Vernalis ("Order"). Contrary to the findings in the Order, the proposal to relax base and pulse flows in April and May is not justified, will cause unreasonable effects on fish and wildlife, and is not in the public interest.

I. The Order Will Result in Unreasonable Effects on Fish and Wildlife

Contrary to the Executive Director's findings in the Order, the reduction in Vernalis flows pursuant to the Order will result in unreasonable effects on fish and wildlife, particularly salmon and steelhead.

First, neither the Order nor any of the materials submitted by the Bureau of Reclamation with the petition even analyzes the impacts of the order on fall run Chinook salmon, spring run Chinook salmon in the Stanislaus River, or to other species that are not listed under the state and federal Endangered Species Acts. Fall run Chinook is the backbone of the state's salmon fishery, and these and other species that are not listed under the ESA are critically important fishery resources that are beneficial uses protected under the water quality control plan. Although the order does not analyze the effects, it is clear that these species will be adversely affected by this proposed temporary urgency change. Decision 1641 imposes minimum San Joaquin River flows at Vernalis to protect fall run Chinook salmon and other native fisheries. Absent any analysis of the impacts or reducing Vernalis pulse flows on fall run Chinook salmon, spring run Chinook salmon in the Stanislaus River, or other fish and wildlife that are not listed

under state and federal endangered species acts, the State Water Resources Control Board cannot determine that the order will not result in unreasonable effects on fish and wildlife.

Second, with respect to fisheries listed under the state and federal Endangered Species Acts, it is clear that reducing flows will significantly harm salmon and steelhead. The documents provided by the fishery agencies acknowledge that the Stanislaus River steelhead are in a very precarious state (only 25 adult steelhead were counted at the weir on the Stanislaus River since October 2013, and only 21 juvenile steelhead were estimated to have migrated downstream through March 26, 2014). See Attachment E, pages 14, 26-27. These documents also acknowledge that reductions in San Joaquin inflow to the Delta, and increased pumping in the Delta, will substantially reduce steelhead survival through the Delta:

The low quality habitat along routes to the ocean likely results in low emigration survival, especially in critically dry years such as this and is likely a large contributor to why the steelhead component of the *O. mykiss* population in the San Joaquin basin is small. It is hypothesized that steelhead escapement in two years will be lower than during previous wetter years due to poorer steelhead survival through the lower San Joaquin River between Durham Ferry (proximal to the confluence of the Stanislaus River) and Lathrop than during previous wetter years (see San Joaquin River I:E ratio and San Joaquin River flow downstream of the Head of Old River section).

Attachment E, page 27; see *id.*, page 41-42 (describing cumulative effects of the proposed plan as reducing survival of steelhead and other salmonids).

Third, the SWRCB's Phase I proceeding regarding lower San Joaquin River flow objectives is replete with scientific information, published scientific papers, and testimony and submissions from numerous fishery agencies, independent scientific reviews, and conservation groups (including NRDC) demonstrating that current flows on the San Joaquin River under D-1641 are inadequate to protect Public Trust fishery resources, and that increased flows in the Lower San Joaquin River are necessary to adequately protect instream beneficial uses.¹ Because the scientific evidence overwhelming shows that existing flows at Vernalis are inadequate to

¹ See, e.g., State Water Resources Control Board. 2010. Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem. August 3, 2010. Available online at: http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf; State Water Resources Control Board. 2012. Public Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. December 2012. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/; California Department of Fish and Wildlife. 2013. Comments regarding the Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay – Sacramento / San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. March 28, 2013. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/baydelta_pdsed/docs/comments032913/scott_cantrell.pdf

protect fishery resources, and because the Order substantially reduces Vernalis pulse flows, the Order will have unreasonable effects on fish and wildlife.

Therefore, the Board's conclusion that the order will not unreasonably affect fish and wildlife is not supported by the Record and is contrary to the available scientific information.

II. The Order is Not in the Public Interest

In addition to causing unreasonable effects on fish and wildlife, the Order is also not in the public interest. As the letter acknowledges, not only is the Bureau making substantial water deliveries to senior water rights holders on the Stanislaus (355,000 acre feet per the initial allocation), but they are also planning a significant allocation of water (55%, over 85,000 acre feet) to junior water service contractors on the Stanislaus River. See petition, page 2; USBR, 2014 CVP Water Quantities and Allocation, available online at: http://www.usbr.gov/mp/PA/water/docs/1_CVP_Water_Quantities_Allocation.pdf. Of the maximum 155,000 acre feet contract amounts for these junior East Side water service contractors (Stockton East Water District and Central San Joaquin Water Conservation District), it is our understanding that only 10,000 acre feet is for Municipal and Industrial supply, with the remainder for agricultural uses.

In addition, under existing biological opinions and SWRCB requirements, 100% of the San Joaquin River inflow during the pulse flow period can be captured by the CVP and SWP. This can provide water supply for human health and safety needs or for contract supply in 2014 and/or 2015. Providing full Vernalis pulse and base flows thus provides critical benefits for fish and wildlife, as well as the potential for the CVP and SWP to capture 100% of that water for water supply. In addition, neither USBR's petition nor the Order provide any evidence, other than conclusory statements, that reducing Vernalis flows pursuant to the Order would substantially improve reservoir storage at the end of the year; there is no modeling or other analysis to support such conclusory statements.

Therefore, meeting full Vernalis flows under D-1641 likely would not reduce water deliveries to CVP contractors, although it may change the contractors who would receive such deliveries. Because the Order will unreasonably affect fish and wildlife, and would not reduce water deliveries by the CVP, the Order is not in the public interest.

III. Conclusion

NRDC and the Bay Institute protest the Order because it will cause unreasonable effects on fish and wildlife and is not in the public interest. We request that the State Water Resources Control Board consider this protest at the May 6, 2014 workshop, if not earlier, in order to allow for timely modifications of the Order.

Please contact us at your convenience if you have any questions or need additional information.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Jon Rosenfield, Ph.D.
The Bay Institute