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March 28, 2014

**VIA ELECTRONIC MAIL ONLY**

State Water Resources Control Board,  
c/o Michael Buckman  
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Department of Water Resources,  
c/o James Mizell  
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Regional Solicitor's Office,  
c/o Amy Aufdemberge  
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U.S. Bureau of Reclamation,  
Paul Fujitani  
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Re: **Comments and Objections Regarding the March 18, 2014 Order Modifying an Order That Approved a Temporary Urgency Change in License and Permit Terms and Conditions Requiring Compliance With Delta Water Quality Objectives in Response to Drought Conditions (In the Matter of Specified License and Permits of the Department of Water Resources and U.S. Bureau of Reclamation for the State Water Project and Central Valley Project)**

Dear State Water Resources Control Board Members and Agency Staff:

This letter is submitted on behalf of the San Luis & Delta-Mendota Water Authority ("Authority"). The Authority appreciates this opportunity to submit comments and objections in response to the March 18, 2014 Order Modifying an Order that Approved a Temporary Urgency Change in License and Permit Terms and Conditions Requiring Compliance With Delta Water Quality Objectives in Response to Drought Conditions (hereafter, "Order").<sup>1</sup>

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<sup>1</sup> The Authority has submitted comments and objections in response to previous related orders (dated January 31, February 7, and February 28, collectively "prior orders") regarding this matter and hereby incorporates those prior submittals by reference. In addition, the Authority

State Water Resources Control Board,  
c/o Michael Buckman  
March 28, 2014  
Page 2

The Order makes several necessary and appropriate changes to the prior orders, and is responsive in part to the Authority's prior comments and objections. In particular, the Authority commends the State Water Resources Control Board ("Water Board") for revising Condition 1.b to modify limitations on project pumping and deliveries based on "health and safety" needs. The Order clarifies that the Department of Water Resources ("DWR") and the Bureau of Reclamation ("Reclamation") may export and deliver water to serve all State Water Project ("SWP") and Central Valley Project ("CVP") authorized uses, if health and safety needs are met. The Authority is monitoring ongoing developments relating to defining those health and safety needs, and may have further comments or concerns as that process unfolds. In addition, the Authority supports the Order's continued and additional relief from D-1641's Delta outflow requirements, to help conserve scarce water supplies and maximize beneficial use of water as this extreme drought persists.

The Authority wishes to acknowledge, and appreciates, the substantial effort and commitment of resources by the Water Board, Reclamation, DWR and others to increase flexibility in project operations and to balance among beneficial uses in this extraordinary drought. Respectfully, however, the Order should be modified to further enhance opportunities to improve water supply south-of-the-Delta in 2014. To best serve the public interest in 2014, the CVP should be allowed to take maximum advantage of every reasonable opportunity to capture water available in the Delta for export pumping.

Additional actions by the Water Board and other agencies will likely be necessary as we go through the year, as the impacts of the drought become more widespread and more severe, and impacts that may not even be anticipated today are realized. It will require flexibility and adaptation, as conditions change and opportunities arise, to fulfill the fundamental state policy established in Water Code section 100 that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, in the interest of the people, and for the public welfare. The Authority acknowledges the difficult challenges the drought creates, and urges the Water Board to continue to take all necessary actions to mitigate the drought's impacts on beneficial uses. The Authority offers these comments and objections in an effort to assist the Water Board in its decision making in this difficult time.

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has submitted a Petition for Reconsideration of the orders as modified through February 7, and concurrently is submitting another petition regarding the orders as modified through March 18, 2014. The Authority's Petition for Reconsideration is available at [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/comments/sldmwa\\_ohanlon022814.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/comments/sldmwa_ohanlon022814.pdf). The Authority's March 3rd comments and objections are available at [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/comments/sldmwa\\_nelson030314.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/comments/sldmwa_nelson030314.pdf). The Authority's March 10th comments and objections are available at [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/drought/docs/tucp/comments/sldmwa\\_ohanlon031014.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/comments/sldmwa_ohanlon031014.pdf).

1. The Order Makes Significant Improvements Regarding Health And Safety Limitations, And The Authority Is Vitally Interested In The Results Of The Ongoing Process To Define Health And Safety Needs

The Authority's prior letters expressed concern about and objected to a limitation on the permissible delivery and use of project water to undefined "health and safety" needs. The Order makes necessary and appropriate revisions to Condition 1.b by removing this limitation. The Authority supports and appreciates this change.

Under Condition 1.b as modified by the Order, use of water pumped by the projects "is conditioned on DWR and Reclamation following the process described in their March 18, 2014 letter." We understand the "process" referred to is the one described in the final paragraph of a March 18, 2014 letter from DWR to the Water Board. The scope of "health and safety" needs remains critical to the Order's effect, because together the Order and letter require that such needs be met before project water is pumped and delivered to serve other SWP and CVP authorized uses.

The Authority anticipates that what is meant by "health and safety" needs, as well as the volume of water necessary to meet those needs in 2014, will be further clarified through additional information to be provided to the Water Board by Reclamation and DWR. The Authority may have additional comments, and potentially concerns, once that information and the Water Board's response become publically available.

2. The 1,500 CFS Cap In Condition 1.b Should Be Removed So That Available Water Can Be Moved South-of-the-Delta

The Authority appreciates that the Order allows exports greater than 1,500 cfs in some circumstances, but continues to object to the 1,500 cfs limit on exports in Condition 1.b when footnote 10 of D-1641 is not being met or the Delta Cross Channel ("DCC") Gates are open. It is critical the Water Board allow and the CVP take every opportunity to mitigate the drought's impacts, particularly the impacts to south-of-Delta beneficial uses. To protect south-of-Delta beneficial uses, it is imperative that the Water Board consider and look to optimize opportunities to allow for export pumping. For example, when rain events occur and boost surface flows, increased export pumping should be allowed, to capture what limited water is available. At this point, every available acre-foot of water has value and can help to mitigate the impacts to the farms, families, and communities that depend on the CVP for their water supply. The Authority renews its request that the Water Board remove this cap on the pumping rate.

3. Condition 2 Of The Order Should Be Removed So That More Available Water Can Be Moved South-of-the-Delta

The Authority likewise renews its request that the Water Board remove Condition 2 of the Order. Condition 2 requires the projects to comply with the Delta outflow and DCC Gate Closure requirements contained in Table 3 of D-1641 when precipitation events occur that enable the projects to meet those requirements. (Order, p. 8.) It does allow the project pumping to exceed 1,500 cfs to pump natural and abandoned flow available after meeting those requirements, but having to meet those requirements may reduce the volume of water that can be pumped. The Authority objects to Condition 2, because requiring compliance with the objectives this year is not in the public interest, given the very limited water supplies available to support beneficial uses.

4. Relief From Delta Outflow Requirements Will Be Needed After March

While the Order is effective until July 30, 2014, Conditions 1.a and 1.b provide relief from the Delta outflow requirements only through March. The Order will need to be revised to provide relief from Delta outflow requirements after March as well, to conserve stored water and ensure that water is available later in the year to meet critical water needs and protect water quality.

5. Additional Actions Will Likely Be Needed To Mitigate Drought Impacts

The Water Board should issue Water Diversion Curtailment Notices to prevent diversions that are unsupported by water rights under the current hydrological conditions. The February 7th order stated that “[f]ollowing persistent dry hydrologic conditions, the Board plans to issue Water Diversion Curtailment Notices to water right holders in water short areas in the near future.” (February 7th Order, p. 4.) The Water Board has not yet issued any Curtailment Notices. The Authority urges the Water Board to issue such Curtailment Notices as soon as possible. In these extreme hydrological conditions, there is very little, if any, “natural flow” to support appropriative and riparian water rights and it is likely that many diversions are relying on the projects’ release of stored water. In these conditions, the Water Board has a critical role in providing diverters with information regarding what flow is or is not available to them under their rights. In addition to Curtailment Notices, the Water Board will likely need to increase enforcement actions to ensure water is available for its intended and authorized uses.

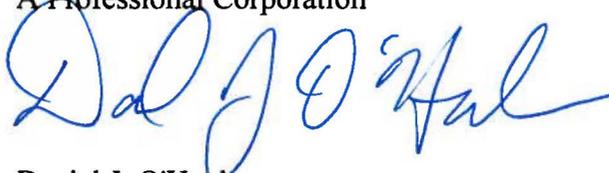
In sum, the Authority appreciates the swift actions of the Water Board, DWR and Reclamation to mitigate the drought’s impacts and conserve scarce water supplies. The Authority is encouraged by the changes made in the Order and urges the Water Board to make even further changes to maximize the capture, delivery and use of scarce water supplies, as described above. The current extreme hydrological conditions present challenges for the entire

State Water Resources Control Board,  
c/o Michael Buckman  
March 28, 2014  
Page 5

State and the Water Board has the critical task of determining what is reasonable and in the public interest when so little water is available to support beneficial uses. We respectfully ask that when striking that balance, the Water Board give greater weight to the needs of the farms, families, and communities that depend upon CVP water supply.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



Daniel J. O'Hanlon

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