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March 3, 2014

State Water Resources Control Board  
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Paul Fujitani  
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email to [pfujitani@usbr.gov](mailto:pfujitani@usbr.gov)

Re: **PROTEST AND PETITION FOR RECONSIDERATION OF WESTERN CANAL WATER DISTRICT,  
PLUMAS MUTUAL WATER COMPANY AND THE JOINT WATER DISTRICTS BOARD RELATING  
TO THE DROUGHT TEMPORARY URGENCY CHANGE ORDER**, Water Code §§ 1122, 1126,  
1438; 23 CCR § 768 et seq.

Dear Members of the State Water Resources Control Board:

Western Canal Water District ("Western"), Plumas Mutual Water Company ("Plumas"), and the Joint Water Districts Board (composed of Biggs-West Gridley Water District, Butte Water District, Richvale Irrigation District, and Sutter Extension Water District) ("Joint Districts") (collectively "Petitioners") hereby protest and seek reconsideration of the State Board's temporary urgency change order dated January 31, 2014, and modified on February 7, 2014, and February 28, 2014.

1. Name and Address of Petitioners

Joint Water Districts Board  
(Composed of Biggs-West Gridley Water District, Butte  
Water District, Richvale Irrigation District and Sutter  
Extension Water District)  
735 Virginia Street  
Gridley, CA 95948

State Water Resources Control Board

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Re: **PROTEST AND PETITION FOR RECONSIDERATION OF WESTERN CANAL WATER DISTRICT, RICHVALE IRRIGATION DISTRICT, BUTTE WATER DISTRICT, AND PLUMAS MUTUAL WATER COMPANY RELATING TO THE DROUGHT TEMPORARY URGENCY CHANGE ORDER**, Water Code §§ 1122, 1126, 1438; 23 CCR § 768 et seq.

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Plumas Mutual Water Company  
P.O. Box 729  
Yuba City, CA 95992

Western Canal Water District  
P.O. Box 190  
Richvale, CA 95974

2. Specific Board Action of Which Petitioners Request Reconsideration

Notice of and 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”).

3. The Date on Which the Order or Decision was Made by the Board

January 31, 2014, with modifications dated February 7, 2014 and February 28, 2014.

4. The Reason the Action was Inappropriate or Improper

a. *Background*

Petitioners are senior water right holders in the Feather River watershed and hold agreements with the State of California, by and through its Department of Water Resources (“DWR”), governing the diversion of water from the Feather River. Due to the fact that construction of the Oroville-Thermalito Project would alter the facilities and flows in the Feather River, it was necessary to quantify the prior water rights of Petitioners, and the terms of delivery of water to them. Accordingly, Petitioners entered into agreements with the State of California to accommodate the construction of Oroville-Thermalito Project as part of the State Water Project. The agreements specify the circumstances under which Petitioners’ senior water rights may be curtailed up to a maximum of 50% as a result of “drought”, as defined in the agreements. As applicable in 2014, Petitioners’ senior water rights may be curtailed if the forecasted April-July unimpaired runoff to Lake Oroville is equal to or less than six hundred thousand (600,000) acre feet. Petitioners have been preliminarily notified by the DWR that curtailment is possible; however, the final forecast will not occur until April 10.

The Order limits Delta exports and allows a reduced level of Delta outflow so that DWR and the Bureau of Reclamation (“Reclamation”) can conserve water in upstream reservoirs, including Lake Oroville. According to the State Board’s February 28, 2014, Notice of Modifications to the Order, the State Board states that the Order “Requires that water saved as a result of this action remain in storage

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to release later in the season for health and safety and ecosystem protection.” On March 2, 2014, the State Board issued a revision to the Order and stated that the State Board’s Executive Director intends to make additional revisions to the Order no later than March 7, 2014, including “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.” Petitioners have also received information advising that DWR may consider curtailment of deliveries to Petitioners, not in accordance with their agreements, but due to the DWR’s desire to preserve carryover water as directed by the Order. No such authority is contained in Petitioners’ agreements with the State. Thus, Petitioners are directly affected, and potentially harmed by the Order, and any successor amendments thereto that may build on the Order.

- b. *By Not Defining “Health and Safety”, the State Board Is or May Violate Petitioners’ Agreements and Water Right Priorities, all Without the Benefit of Notice and Hearing, and Is or May Authorize DWR to Deviate from Established Contracts Resulting in Injury to Petitioners and Others.*

The phrase “health and safety” is undefined in the Order and in California law. Yet DWR is instructed to color water saved as a result of the Order strictly for future “health and safety” uses, including limiting diversions and releases from Project supplies to maintain end-of-year storage at undefined “health and safety” levels. The lack of definition and guidance has unleashed a flood of differing interpretations and threats of interpretations, suggesting that water right priority and contracts can be ignored with impunity.

Petitioners’ agreements are with the State of California, which includes the State Board. The State Board must honor the terms of the agreements as an arm of the State and is restricted by the federal and State Constitutions from inserting new terms and conditions into Petitioners’ agreements, which effectively abridge the terms of those contracts. Petitioners’ agreements, bargained in good faith, define the parameters under which its supplies may be curtailed in the event of drought. The State Board and DWR are suggesting that these contract provisions may be breached and the seniority of water rights upended for an undefined “health and safety” purpose of use. Even assuming such changes did not abridge the agreements, the establishment of a new, high priority purpose of use may only be taken following notice and a hearing to define the phrase, to determine if substantial evidence supports its imposition, and to allow for consideration of competing health and safety considerations of Petitioners and others. (See, e.g., *El Dorado Irrigation Dist. v. SWRCB* (2006) 142 Cal.App.4th 937). Otherwise, the State Board and DWR should make clear that the terms of Petitioners’ water supply contracts will be respected and enforced.

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c. *Interpreting “Health and Safety” In a Manner that Would Violate the Terms of Petitioners’ Water Supply Agreements Exceeds the Limited CEQA Suspension Set forth in Governor Brown’s Emergency Proclamation and, therefore, Would be Subject to CEQA*

On January 17, 2014, Governor Brown issued a Drought Emergency Proclamation. Paragraph 9 of the Proclamation suspends CEQA and Water Code section 13247 for the limited purposes of carrying out the directives set forth in paragraphs 5 and 8. As applicable here, paragraph 8 states that “The Water Board will consider modifying requirements for reservoir releases or diversion limitations, where existing requirements were established to implement a water quality control plan.” (Underlining added.)

The terms and conditions of Petitioners’ water supply agreements, including the provisions related to curtailment, were not established to implement a water quality control plan. Petitioners’ agreements were entered into to permit the construction and operation of the Oroville-Thermalito Project and water storage and diversion by the State, while also recognizing and allowing for the diversion of water under Petitioners’ senior water rights. The State Board, under the guise of “health and safety”, may not order modifications to reservoir releases or impose diversion limitations in a manner that would violate the terms of Petitioners’ agreements without first complying with CEQA and analyzing the significant environmental impacts resulting therefrom, including increased land idling and reliance on groundwater pumping, and related impacts to biological resources.

The State Board’s Order incorrectly interprets the breadth of the Governor’s limited CEQA suspension by claiming that it applies to “specified actions necessary to mitigate the effects of the drought, including the State Water Board’s action on the TUCP.” (Order, § 4, p. 6). The Governor did not suspend CEQA to allow the State Board to implement all manner of projects to mitigate the effects of drought. Rather, the suspension applies only to modifying reservoir releases or diversion limitations where those existing requirements were established to implement a water quality control plan. If the State Board intends to either directly or indirectly violate the terms of Petitioners’ agreements, it must first comply with CEQA. (23 CCR § 805, subd. (b)).

#### 5. The Specific Actions Petitioners Request

Petitioners request:

(a) that the State Board notice and hold a hearing to consider the position of interested parties and applicable legal requirements under pre-existing water rights and agreements such

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as those of Petitioners before defining the phrase “health and safety” and imposing health and safety limitations on releases and minimum carryover storage requirements;

(b) in defining “health and safety”, that the State Board not interfere with or breach the terms of Petitioners’ agreements with the State of California or other water users’ agreements with the State of California; and

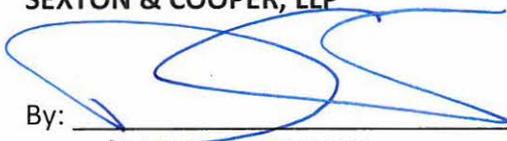
(c) that the State Board comply with CEQA prior to adopting any temporary urgency change order that, in whole or in part, adopts measures addressing issues outside the parameters of the Governor’s limited CEQA suspension. If the State Board defines “health and safety” in a manner that would interfere with or breach the terms of Petitioners’ and other parties’ water supply agreements, the State Board must first analyze the environmental impacts of such an order.

6. A Statement that Copies of the Petition and Accompanying Materials Have been Sent to All interested Parties

This protest and petition for reconsideration is served on the parties identified in the Notice to the Order dated January 31, 2014. Petitioners do not believe that this protest and petition is required to be sent to any other interested party.

Very truly yours,

**MINASIAN, MEITH, SOARES,  
SEXTON & COOPER, LLP**

By: 

**DUSTIN C. COOPER**

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