

PROTEST- PETITION

This form may also be used for objections

PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE OR TRANSFER ON

APPLICATION *Attached PERMIT *Attached LICENSE _____

OF DWR/USBR TUCP dated Jan. 23, 2015; Order Feb. 3, 2015

I (We) have carefully read the notice (state name): South Delta Water Agency by John Herrick, Esq.; Central Delta Water Agency by Dante J. Nomellini, Sr., Esq.; and Lafayette Ranch by John Herrick, Esq.
Address, email address and phone number of protestant or authorized agent: _____

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Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):

- the proposed action will not be within the State Water Resources Control Board's jurisdiction
- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations _____

See attached.

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)

See attached.

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: See attached.

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative or riparian right): License, pre-1914, and riparian.

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).
License No. 1063

Where is your diversion point located? SE ¼ of NW ¼ of Section 24, T 1S, R 5E, MD B&M

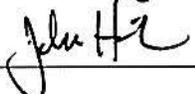
If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? _____

The extent of present and past use of water by protestant or his predecessors in interest is as follows:

- a. Source Middle River
- b. Approximate date first use made late 1800's
- c. Amount used (list units) Approximately 1 cfs per 80 acres
- d. Diversion season Mostly March - September, but sometimes all year
- e. Purpose(s) of use Agriculture

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

All protests must be signed by the protestant or authorized representative:

Signed:  Date: Feb. 12, 2015

All protests must be served on the petitioner. Provide the date served and method of service used:

¹ The petition was filed 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.

ATTACHMENT

Bases of Protest:

1. Not within the Jurisdiction of the SWRCB.

The Order approving the TUCP is not an authorization which allows the Petitioners to operate under their permits in light of emergency or urgent conditions (as allowed under the relevant statutes), but rather is a substantial change to both the current Bay-Delta Water Quality Control Plan and Water Rights Decision D-1641.

The Bay-Delta Plan is a mandatory obligation of the SWRCB wherein it sets objectives to protect beneficial uses in the Delta and surrounding waters. Such Plans must be done pursuant public notice, with public input and have accompanying CEQA-equivalent reviews. These Plans are to be reviewed every three years and cannot be changed under the SWRCB's water rights authority or processes; they can only be changed through a publically involved review under the SWRCB's quasi-legislative powers.

The TUCP and the Order granting it, now for the third year in a row, make fundamental changes to the water quality objectives of the Bay-Delta Plan by specifically altering flow and other objectives for the protection of fish and wildlife beneficial uses. Hence, the minimum protections for such fish and wildlife uses have been substantially changed for approximately a three year period during a drought. These changes, by allowing worse water quality and decreased flows will also adversely affect other legal users of water in the Delta and other places. No environmental review has examined these impacts. Neither emergency authority or urgency statutes allow the SWRCB to make such fundamental, long term changes to a Water Quality Control Plan and thus the SWRCB lacks the jurisdiction and power to make these changes via the urgency change statutes.

2. Not in the Public Interest.

The public interest generally includes the benefits the public derives from having a healthy environment, viable and healthy fisheries, and good water quality in public waterways to support and protect all beneficial uses. The TUCP and the Order granting it make fundamental changes to the legally adopted water quality objectives in a manner that decreases the water previously determined to be necessary to protect fisheries, decreases the water quality for all in-Delta beneficial uses, and authorizes exports for junior water right holders who are unable to meet their statutory and regulatory obligations.

The Order granting the TUCP is a method of providing specific benefits to permit holders who cannot comply with their permit conditions, by decreasing the amounts of water previously determined to be necessary to protect other beneficial uses/users. The Order confuses discrete, although large private interests with public interests and mandates by arguing a trade off or balancing is necessary to protect the private interests. The protection of private interests was previously determined during the processes that resulted in the Water Quality Control Plan and D-1641. Any "balancing" done now is simply a method of decreasing the public benefit (contrary to the public good) for the benefit of private interests. The public interest is in protecting the public trust, not in protecting private interests.

Further, the public interest includes the lawful and correct application of the water right rules of priority to insure that those entitled to receive water do so when the available supply is insufficient for junior users. The Order allows exports to occur when there is no surplus water in

the system and when stored water is insufficient to meet the obligations under the permits which allow such storage. Water Code Section 12200 et .seq. Describes some of these rules regarding priorities. Section 12202 specifies that the projects are mandated to provide a water supply and adequate water quality for the users of water in the Delta. Section 12204 precludes the export of any water from the Delta needed to comply with Section 12202. Thus, if the projects cannot meet existing water quality objectives, and cannot insure in-Delta users a full supply, there is no surplus water available to export. Relaxing water quality objectives and seeking to curtail in-Delta users while allowing continued exports is directly and undeniably contrary to the law and of course contrary to the public interest. Whether the SWRCB believes Section 12200 et. seq are not to be implemented by them, they cannot assert they can undertake actions which are directly contrary to the statutes.

In addition, the TUCP and Order attempt to call out the protection health and safety as a justifiable public interest provided for under the Order. Thus, continued exports of no less than 1500 cfs are allowed so that municipal uses can be protected. However, this same sort of argument was made last year for the Order granted then. At the time, various parties, including SWRCB Board members sought specifics about where and who needed this 1500 cfs. Neither DWR or USBR was able to provide any specifics about this claimed need; they simply stated the CVP was too complex to separate out how any water got to any particular municipal need. Although there may certainly be municipal areas in need of water, the USBR cannot claim a health and safety need for exports unless they can identify the urban user who relies on and needs this particular 1500 cfs diversion. Absent such need or some other over-riding need, there is no basis for allowing exports to benefit a permittee who cannot meet its permit condition.

The projects have diverted at least 1 million acre feet since last September; a time when they were in the bottom of a two year drought and estimated they could not meet 2015 obligations even with a year of "normal" rainfall. Much of this water ended up in San Luis Reservoir, a facility of both the CVP and SWP. The permits for San Luis are also burdened with the responsibility for meeting all of the water quality objectives in the Bay-Delta Plan, as implemented by D-1641. Thus the water in San Luis could be released back into the San Joaquin River, re-enter the Delta and provide outflow and other water quality benefits. The public interest is better served by meeting the minimum water quality objectives; it is not served by intentionally violating those objectives so that private interests can get water when no supply exists for them.

The Order is thus contrary to the public interest.

3. Contrary to Law.

In addition to the above references to the Order being contrary to law, the Order, like those in the past two years ignores one of the requirements in Water Code Section 1425 (c). This subsection of the statutes which allow for urgency changes to permits requires the SWRCB to determine that the petitioner has acted with "due diligence" in pursuing the sought after permit changes. A lack of due diligence is evidenced by the failure of the petitioner from seeking the permit changes under the non-urgency statutes. The "normal" process allows for the participation of the public and an evidentiary hearing. The purpose of this condition is to ensure that petitioners seeking changes do not wait until the last minute and avoid the involvement of the public or the necessity of having their petition scrutinized in a hearing.

This is the third year in a row that DWR and USBR have waited until the very last minute to petition for "urgency changes" so they can escape their obligation to meet X2 and other permit and Plan conditions. The projects as well as the SWRCB Board and staff are well aware that droughts are regularly occurring conditions in California. The are also aware that the previous years' conditions all but guaranteed that insufficient supplies would be available this year to meet

minimum water quality obligations of DWR and USBR. Instead of DWR and USBR having any sort of drought planning or the SWRCB having mandated such planning or an evidentiary hearing on the issue, the projected again waited until the very last minute to submit their TUCP.

Such lack of planning by the DWR and USBR, and the failure of the SWRCB to address this issue in a timely and public manner precludes the SWRCB from finding the petitioners acted with due diligence. It is noteworthy that the Order, as previous orders, does not even mention this statutory obligation regarding due diligence. The argument that the statute allows the SWRCB to choose to not address the due diligence mandate is unsupported by any legal theory or allowable statutory interpretation. The SWRCB cannot simply state “there is a drought” and excuse compliance with the urgency change statutes.

4. Adverse Environmental Impacts.

The TUCP and the Order granting it allow for a lesser amount outflow than is mandated by the Bay-Delta Water Quality Control Plan and D-1641. The outflow objective is to specifically protect the fisheries (by providing a certain area of habitat of a certain quality) and generally protects all other in-Delta beneficial uses in general. The latter is due to the fact that outflow, by creating certain quality conditions protects any and all other users/uses who may be affected by water quality. By decreasing the necessary habitat for fish during a drought (for the third year in a row) there will necessarily be a corresponding adverse impact to those fisheries (and other beneficial users). The Order attempts to make findings about the effects of this change to the Bay-Delta Plan requirements through an examination of fishery agency comments and other data. However, the SWRCB can only make or amend water quality objectives through the public process associated with its quasi-legislative powers; it cannot make them in some non-public, urgency water rights process under its quasi-judicial powers. Water quality objectives are too important to be pushed aside and easily changed. Without the ability of the public to provide contrary data, arguments and to cross-examine the proponents of the changes, the process devolves to the judgment call of one individual without any other critical thought or input. The statutes mandating water quality control plans and objectives to protect beneficial uses do not allow such singular power.

Given the proper procedure for making such changes, there can be no other conclusion but that decreasing the extent and quality of minimum fishery habitat in the third year of a drought can only be adverse to all fisheries, especially those that are already at dangerously low population levels and are considered “endangered” or “threatened.”

5. Adversely affect Other and Senior Water Rights.

The Delta is a complex mixing of inflow, tidal intrusions and natural and artificial flow directions. The decrease in X2 allowed by the Order means that to an unexamined degree more salts from the west (mostly derived from the ocean) intrude on the flood tide. Increased salt intrusion from the west affects many things like the Western Delta Agricultural standard as well as the three Interior Southern Delta standards. The decreased outflow per the Order’s relaxation of the X2 standard will cause a decrease in quality in the Central Delta and in the Southern Delta.

The Central Delta, due to its unique situation of mostly being below sea level, requires a very good water quality in order to protect local agriculture. A decreased X2 will deteriorate the Central Delta water to some unknown degree.

The Southern Delta also receives vast amounts of salts from the San Joaquin River, which salts originate from CVP service area drainage (both surface and subsurface) into that River. Recently all three southern Delta salinity standards were being violated as well as the Vernalis

standard. Some violations continue as of this day. The salts causing these violates are collecting in various null zones in the southern Delta. Those zones, as well as the other portions of channels in the southern Delta are twice daily diluted to some extent by the incoming tide which pushes the better quality water into the area. By decreasing X2, more salt will now be in the "dilution" water and thus provide less dilution. This increase in salt concentrations in the southern Delta can only prolong or increase the degree of violations. By definition, longer violations and/or a higher degree of violation of a water quality objectives (objectives to protect agricultural beneficial uses) can only result in adverse impacts to the agricultural users supposed to be protected by the objective.

Neither the TUCP nor the Order examines or discusses these undeniable consequences. Thus the TUCP and Order will result in adverse effects to other water right holders.

Included with this Petition is the comment letter of SDWA which further expounds on these and other issues.

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13 SOUTH DELTA WATER AGENCY,
CENTRAL DELTA WATER AGENCY
14 and LAFAYETTE RANCH

15
16 STATE OF CALIFORNIA

17 STATE WATER RESOURCES CONTROL BOARD

18 In the matter of DWR and USBR) **PROTEST OF PETITION**
19 Petition to Consolidate Certain)
20 Places of Use)

21 The CENTRAL DELTA WATER AGENCY, a body politic and corporate of the State of
22 California, SOUTH DELTA WATER AGENCY, a body politic and corporate of the State of
23 California, and LAFAYETTE RANCH, a California corporation, herein protest the above-named
24 Petition Requesting Change in Place of Use for Certain Water Rights of the Department of Water
25 Resources and the Bureau of Reclamation and in support of this Protest respectfully allege and state
26 as follows:

27 **BACKGROUND**

28 Protestant SOUTH DELTA WATER AGENCY (hereinafter referred to as SDWA") is a body

1 politic and corporate of the State of California created by Chapter 1089 of the Statutes of 1973 of
2 the State of California (South Delta Water Agency Act). The boundaries of SDWA are described
3 in Section 9.1 of the South Delta Water Agency Act (Stats. 1973, c. 1089). The area included within
4 SDWA is located within the Sacramento-San Joaquin Delta as defined in California Water Code
5 Section 12220 and is generally referred to as the southern Delta. The purposes and powers of the
6 SDWA are set forth in Article 4 of the South Delta Water Agency Act. The principal purposes of
7 SDWA are to protect the water supply of the lands within its boundaries against intrusion of ocean
8 salinity and to assure those lands a dependable in-channel supply of water of suitable quality
9 sufficient to meet present and future needs.

10 Regarding the areas within its boundaries, SDWA is a partial successor in interest of the
11 Delta Water Agency, a body politic and corporate of the State of California.

12 The area within the boundaries of SDWA is approximately 148,000 acres in size, is primarily
13 devoted to agriculture and is dependent on the in-channel water supply in the southern Delta for
14 irrigation water and other beneficial uses. The in-channel water supply in the southern Delta is
15 principally dependent upon the inflow of the San Joaquin and Sacramento River systems to the Delta
16 for its source of water.

17 Protestant SDWA's boundaries encompass some municipal use, but mostly agricultural
18 diversions. These diversions represent both riparian and appropriative rights. The United States
19 Bureau of Reclamation, California Department of Water Resources, and the State Water Resources
20 Control Board have all previously assumed that all lands within the Delta lowlands are riparian to
21 the channels of the Delta (see Central Valley Project California, Delta Lowlands Service Area
22 Investigations January 1964). Attached hereto is a 1964 USBR listing of then current permit holders
23 indicating that virtually all land within the South Delta has appropriative water rights. The
24 SWRCB's records contain the current information. The Agency's authorizing statutes in
25 combination with Delta Protection Act (Water Code § 12200 et seq.) require that sufficient water
26 of sufficient quality be maintained in the Delta channels to support current and future beneficial uses.

27 Protestant CENTRAL DELTA WATER AGENCY ("CDWA") is a political subdivision of
28 the State of California created by the California Legislature under the Central Delta Water Agency

1 Act, chapter 1133 of the statutes of 1972. The CDWA came into existence under this act in 1974.
2 The CDWA encompasses approximately 120,000 acres in within the San Joaquin County, all of
3 which is within the Sacramento-San Joaquin Delta, also known as the "San Francisco Bay-Delta
4 Estuary" or the "Bay Delta" (the "Delta"). The lands within the CDWA jurisdiction ate primarily
5 agricultural but also contain recreational developments and significant wildlife habitat areas. The
6 lands within the CDWA jurisdiction are dependent upon the water supply in the channel of the Delta
7 ("in-channel" water supply) for irrigation and other beneficial uses. The CDWA's in-channel water
8 supply is dependent upon the flow and quality of both the Sacramento and San Joaquin River
9 systems, which are the principle focus of the BDCP process, as explained below. All of the lands
10 within the CDWA are contiguous to the channels within the CDWA and/or to the underground flow
11 of water of those channels. The water rights pertaining to those lands are riparian. In some
12 instances, however, the water rights are also covered by permits and licenses for appropriation.
13 There may be some instances of pre-1914 filings. The water rights of those lands in every case
14 known to Plaintiffs are considered "prior vested" water rights in relationship to the water rights of
15 the United States Bureau of Reclamation and Department of Water Resources. CDWA is
16 empowered to assist landowners to protect and assure a dependable supply of water of suitable
17 quality sufficient to meet personal and future needs.

18 Protestant LAFAYETTE RANCH is a California corporation which owns approximately 340
19 acres on Union Island in San Joaquin County. This acreage abuts Middle River and is located within
20 Sections 25 of Township 1 South, Range 5 East, Mount Diablo Base and Meridian. Protestant
21 LAFAYETTE RANCH farms said property which has in the past included row crops and alfalfa.
22 Such land is riparian to Middle River, and Protestant also has appropriative rights under license 3677
23 (Application #11694). The land has been under irrigation for most of the past century. Protestant
24 is already being damaged by reduced water flows and quality from the San Joaquin River and may
25 suffer further injury in reduced crop values and impaired land as further alleged herein if the Petition
26 is granted.

27 The Protestants have read the notice of the Temporary Urgency Change Petition and Order
28 thereon and may be contacted at the address listed on Protest form.

1 The proposed changes to permits could delay or preclude remediation of the present
2 degradation of water levels, supply and quality (described below), cause further degradation, and
3 contribute to the damage to the public trust, the public interest and the above listed public uses of
4 Protestants. Damage to the public trust and public interest thereby will include damage to fish
5 populations and migration, fishing, hindrance of boating and other recreational uses, and damage
6 to commercial uses protected by the public trust, including the agricultural economy which sustains
7 the surrounding area.

8 BENEFICIAL USES IN THE DELTA AREA

9 From time immemorial, the flows of both the San Joaquin River System and the Sacramento
10 River System have varied greatly from year to year and from season to season within each year. In
11 the late summer and early fall, the flow is usually low and it rises in the winter, spring, and early
12 summer as a result of rains and run-off from the melting snow.

13 All of the lands within the boundaries of the Central Delta Water Agency ("CDWA") and
14 SDWA are riparian to the channels of the Sacramento-San Joaquin Delta and the Sacramento and San
15 Joaquin Rivers. The individual Protestant and the owners of the land contained in and represented
16 by CDWA and SDWA claim the right to the waters flowing in the rivers, channels, canals, and
17 sloughs in the Delta by virtue of riparian rights, prescriptive rights, pre-1914 rights, overlying,
18 statutory, and appropriator's rights based on applications made and permits granted. These
19 landowners and the individual Protestant also claim vested rights in the underground water supply
20 where it is available and which is fed by the rivers, channels, canals and sloughs in the Delta Area.
21 If the surface water quality is degraded, the ground water is also gradually degraded. A change
22 in the flows in the rivers, channels, canals and sloughs in or tributary to the Delta Area will have a
23 material effect on the farming operations conducted on the lands irrigated from these sources. If the
24 flow is too low, the lands are without adequate source of irrigation from the standpoint of quantity
25 of water, quality of water, and adequate draft for diversion pumps. At times of low flows, the source
26 of irrigation water may become unfit because of (1) the drainage water from lands lying upstream
27 and (2) the incursion of salt water from San Francisco Bay. At such times, the poor quality causes
28 reduction in crop yields and values and increased leaching costs. Further, when the flow is low, the

1 cost of operating irrigation pumps is increased.

2 **CURRENT STATUS OF UPSTREAM WATERSHEDS**

3 The operation of the Friant Unit of the Central Valley Project (“CVP”) severs the hydraulic
4 connection between the upper San Joaquin River and the lower San Joaquin River and Sacramento-
5 San Joaquin Delta (“Delta”) for much of the year. The Friant Unit stores and diverts water from the
6 upper San Joaquin River for delivery to places such as Kern County which is outside the watershed
7 of the San Joaquin River.

8 These diversions and deliveries reduce the average annual flow into the Delta by
9 approximately 544-943 TAF, with reductions in April-September of 347-526 TAF. This decrease
10 in flow deprives downstream riparian and senior appropriators of water at times when there is
11 inadequate supply, quality, and level for their beneficial needs.

12 In addition, the Friant Unit makes no downstream releases towards meeting Water Quality
13 Objectives for Agricultural Beneficial Uses on the San Joaquin River or in the Delta as set forth in
14 the 1995 Water Quality Control Plan. This results in the burden of meeting such Objectives being
15 shifted to New Melones Dam/Reservoir which is incapable of meeting those Objectives on a regular
16 and sustained basis.

17 Further, the operation of the Friant Unit deprives the San Joaquin River below Friant Dam
18 of sufficient flow to sustain indigenous fisheries, including anadromous fish, especially that portion
19 of the river above the Mendota pool.

20 The operation of the CVP causes other adverse effects in the South Delta. The operation of
21 the CVP export pumps in the Delta substantially decreases the height of the water levels, especially
22 the low tide level to the point where local syphons and pumps are sometimes incapable of operating.
23 Although other factors affect channel morphology, only the export pumps decrease the height of the
24 water.

25 The operation of the CVP and State Water Project (“SWP”) export pumps also alter the flow
26 in the channels creating reverse flows and stagnant zones. This results in insufficient flushing of
27 Delta waters and the concentration of all constituents, including municipal effluent and salts from
28 upstream return flows.

1 The CVP by delivering Delta water to its San Joaquin Valley service area results in the
2 importation thereto of upwards of 100,000,000 tons of salt into the San Joaquin Valley. After this
3 exported water is used, much of the salt is delivered to the San Joaquin River in concentrations
4 which exceed downstream Water Quality Objectives. This drainage also includes high levels of
5 other constituents such as selenium and boron.

6 **BASIS OF PROTEST**

7 The San Joaquin and Sacramento River systems are connected in the San Joaquin-
8 Sacramento River Delta by a myriad of rivers, channels, canals, and sloughs. Some Delta channels
9 are historically fed by a single river system. However, by means of those interconnecting channels,
10 rivers, canals, and sloughs, the water of the San Joaquin River and Sacramento River systems
11 flowing into the Delta Area are co-mingled, mixed and moved through tidal action. The combined
12 flows of these two river systems furnishes the water supply in the Delta Area including the
13 underground water supply.

14 To the extent that Delta related water quality objectives are relaxed, upstream uses are
15 changed or water is diverted or taken from either river system, or from any channel, slough or canal
16 in the Delta, or from any of the tributaries of either river system, the water supply flowing in the
17 rivers, channels, canals and sloughs in the Delta Area, and the underground supply in the Delta Area,
18 may be adversely affected as to level, quantity and quality, thereby depriving the members of
19 SDWA, CDWA, the individual Protestant, and the owners of land lying within the Delta Area of
20 valuable property and water rights.

21 Petitioners' proposed changes, unless properly conditioned, would adversely affect and
22 therefore violate riparian and prior appropriative rights of the individual Protestants and the water
23 users and land owners within in the CDWA and SDWA as established by California law, and would
24 further violate the Delta Protection Statutes (Water Code § 12200-12205) and the Statutes protecting
25 the San Joaquin River and its tributaries (Water Code Sections 12230-12232).

26 Current Water Quality Objectives require upstream releases to meet the 1.0/0.7 EC water
27 quality standard at Vernalis and the three interior South Delta locations. Releases by the USBR to
28 meet the Objectives are and have been inadequate, and no releases are made to protect prior vested

1 rights in portions of the southern Delta or upstream including those of the individual protestant. In
2 addition, the Bureau and DWR have refused to continue settlement negotiations with SDWA
3 regarding the issue of San Joaquin River flows. [Issues of flows, quality, channel levels, reverse
4 flows, etc., were raised in the suit SDWA brought in 1982 against USBR & DWR.] Thus, the prior
5 vested rights of SDWA members are not fully protected. In addition, said change and additional use
6 by Petitioners may at times be made when there is no net downstream flow in the channels of the
7 southern Delta or when there is subsurface but not surface hydraulic continuity between the point
8 of diversion and the Protestants, thus further damaging and violating prior vested rights or
9 Protestants. Reservation of Board jurisdiction over said Petition would not prevent present and
10 immediate damage to prior vested rights by said proposed changes of use.

11 Although the tidal barrier program in the southern Delta can address some of the harm caused
12 by the State and Federal projects, those barriers are not allowed to operate at all times needed. The
13 barrier project is also subject to State and Federal funding.

14 The system is currently over-committed and unable to provide all legal users with the amount
15 of water desired or needed, and granting the Petition will decrease the supply. This will necessarily
16 cause harm to other legal users. Pursuant to the requirements of the Water Code, the Petition cannot
17 be granted if such harm will occur.

18 The continued flows of the San Joaquin River System and the Sacramento River System, and
19 their respective tributaries, uninterrupted and without diminution by the proposed diversions for
20 which the above Petition has been made, is essential to the continued prosperity and welfare of the
21 owners and operations of land in the San Joaquin and Sacramento River Delta Area, and to the
22 individual Protestants.

23 PROTEST AGAINST PETITION

24 The Protestants, being convinced of injury to themselves and others owners of land lying
25 within the Delta Area if the proposed changes are granted due to injury to the water supply of the
26 lands within its boundaries, protest the granting of the same upon the following grounds, to-wit:

- 27 (a) The proposed changes will result in the Petitioners degrading the water quality in the
28 Delta while at the same timer exporting water which is needed to meet their permit

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- conditions.
- (b) The proposed changes have not been subject to any adequate CEQA review and thus cannot be granted.
 - (c) The Petitioners' analysis does not accurately evaluate the actual changes in downstream flows and quality because the operations used in the analysis do not reflect actual or likely Petitioner operations.
 - (d) The proposed changes will decrease flows at times of the year when downstream riparians and senior right holders have insufficient water to divert. In addition, those decreased flows will adversely affect the flushing of salts from Delta lands at times when there is sufficient water for diversion needs.
 - (e) The analysis of the proposed changes fails to examine the project as a whole, rather it anticipates future similar changes and thus a piecemeal analysis which will mask the effects.
 - (f) The analysis of the proposed changes does not address the SWRCB's conclusions in D-1641 regarding how changes in operations can adversely affect legal users.
 - (g) The Proposed changes constitute a violation of Water Code §§ 1392 or 1629, which adversely affect the availability of water for the environment and other potential water users.
 - (h) That the proposed changes, if permitted, will contribute to reducing and altering the direction of the natural flows in the rivers, channels, canals and sloughs in the Delta Area, thereby reducing the quantity of irrigation water available and adversely affecting the distribution of good quality water available in the Delta and tributary area.
 - (k) The proposed changes or additional diversion, by reducing the water supply in the channels, rivers, canals, and sloughs in the Delta Area will endanger the remaining water supply by (i) permitting the incursion of salt water from San Francisco Bay, and (ii) by permitting a deterioration in the quality of the water in the rivers, channels, canals, and sloughs in the Delta Area and upstream as a result of the

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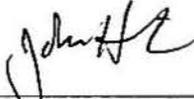
drainage from lands upstream to the Delta Area and the lack of adequate downstream flow to dilute and flush those drainage salts.

- (l) The proposed changes or additional diversion, if permitted, will constitute an infringement upon and a violation of water and property rights of the individual Protestant and of owners and operators of lands in the SDWA and of lands lying generally within the Delta Area.
- (m) The approval of the proposed changes or additional diversion and increased consumptive use would violate sections 12230 through 12232, sections 12200-12205, and 1200, et seq. of the Water Code.
- (n) The proposed changes or additional diversion and resulting increase in consumptive use would reduce the downstream flow of the San Joaquin River into the Delta and at times prevent downstream flow through Delta channels and past lands of the individual protestant, and lands within the Agency.
- (o) The approval of the change or additional diversion and resulting increase in consumptive use would be detrimental to the public interest, be in violation of and detrimental to the uses protected by the public trust, and cause damage to the environment.

WHEREFORE, Protestants pray that the Petition be denied unless and until comprehensive conditions to protect downstream beneficial uses are adopted:

Respectfully submitted,

Dated: February 13, 2015



JOHN HERRICK, Attorney for Protestants

SOUTH DELTA WATER AGENCY

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February 13, 2015

VIA E-MAIL thomas.howard@waterboards.ca.gov

State Water Resources Control Board
c/o Thomas Howard, Executive Director
1001 "I" Street
Sacramento, CA 95814

Re: February 3, 2015 Order Approving Temporary
Urgency Change Petition of DWR and USBR

Dear Mr. Howard:

The following are the comments of the South Delta Water Agency to the above referenced Order issued by you as Executive Director. SDWA opposes the Order and requests that the State Water Resources Control Board, either on its own or through the powers assigned to you revoke the Order and instead conduct an evidentiary hearing on the issues contained in the Order and on how the USBR and DWR shall operate the CVP and SWP during the ongoing drought.

The Order suffers from a number of factual, legal and policy errors which are addressed in more specifics below. Most importantly, (I) it fails to provide any meaningful public input by denying interested parties the ability to see, comment on or dispute the underlying facts on which it is based, (ii) it is contrary to the expressed duties of the SWRCB, (iii) it attempts to insure some level of exports at a time when there is no supply for export, (iv) the TUCP is an inappropriate end-run around the normal process by which permittees can secure temporary changes to their permits and improperly avoids the ex parte communication prohibition which controls the normal process, (v) the Order condones the use of water for export purposes when such water is legally required to be used for other beneficial uses, and (vi) it adversely harms the

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beneficial uses to be protected by the operative Bay-Delta Water Quality Control Plan and the Water Rights Decision D-1641 which implements that decision.

The irony of this current situation should not go unmentioned. Almost exactly one year ago the SWRCB was faced with a similar set of conditions. DWR and USBR stated they had insufficient storage to meet the minimum requirements of their permits, but proposed to continue exports while failing to meet those requirements. Insufficient water was available to provide minimum flows to protect fishery beneficial uses and agricultural beneficial uses as mandated by DWR and USBR permits. The SWRCB approved a temporary urgency change petition (with seven subsequent changes thereto) outside the public purview. Nearly all other interested parties complained about the lack of public process and sought an evidentiary hearing, which hearing was denied. The SWRCB Board members all stated publically that such important issues as drought planning and drought operations should be dealt within a more deliberate and timely manner and the public should be able to participate in a meaningful way.

Notwithstanding this, DWR and USBR waited and waited as the drought continued and did not file a "regular" temporary change petition. Rather, for the third time, a few days before the outflow standard was scheduled to become operative, DWR and USBR file a last minute Urgency Change Petition. The notion that the regulator of water rights and water quality would acquiesce and participate in such a complete lack of drought planning raises issues which cannot be addressed by the Board itself. There can be no excuse at this late date for not wanting to, and requiring the projects to subject themselves to critical review and cross-examination; all the while the projects blindly stumble their way through the drought pretending to know what they are doing, how they should do it, and what priorities exist when the water supply is so severely limited. DWR and USBR's unthinking obedience to their customers is only slightly less embarrassing than the SWRCB's inexplicable efforts to protect exports at the expense of all other beneficial uses. The Board's unswerving efforts to "share the burden" of the drought by maximizing exports is contrary to their statutory obligations. It is extremely unfortunate that the supply of water is insufficient to meet exporter needs. However, in a year where the supply is 3-8 MAF short of area of origin needs, the notion that there is any supply for exports is unsupportable. Given the extreme situation of the fisheries, any decrease in minimum fishery flows in order to provide export supply can only be described as an intentional effort to hasten the extinction of certain species.

The Order Again Ignores the Mandates of Water Code Section 1425 (c).

As stated numerous times over the past seven years, the SWRCB is ignoring Section 1425 of the Water Code. That section states in pertinent part: "except that the Board shall not find an applicant's need to be urgent if the board in its judgment concludes , if applicable, that the applicant has not exercised due diligence either (1) in making application for a permit

pursuant to provisions of this division other than this chapter, or (2) in pursuing that application to permit.” “Other provisions of the division,” including Chapter 10.5 deal with temporary changes in permit conditions under non-urgency situations.

The purpose of the condition in section 1425 is to make sure that applicants/permittees do not avoid the strict requirements and public process of the “normal” process by waiting until the last minute to file the petition. The Urgency process is meant to deal with emergencies which are unavoidable or unforeseen. They cannot be meant to address re-occurring, expected conditions. Both the Board and staff are aware of the numerous drought related statements by DWR, USBR, Brown Administration, and Board members themselves over the past two years. Those statements include such things as “even with ‘normal’ rainfall next year we will still be in a drought,” or “should it not rain enough next year we may lose control of the Delta.” With such statements (asserting obvious facts) it cannot be argued that DWR, USBR and SWRCB did not know as of September 2014 (if not earlier) that the projects would likely not be able to meet their various permit obligations in 2015.

If all of these parties feared our current, dire conditions five months ago, there can be no excuse for not requiring the projects to file a petition under the normal process to make changes to a permit. Such a process would have required an evidentiary hearing on the various aspects, facts and proposed operations. This would have allowed the public to participate in the process and we would not have rely on undisclosed “facts” and arguments used by DWR and USBR to support their petition.

This is no mere mental exercise (as expounded on below) but a necessary part of the process. Projections of storage, inflows, exports, fishery and superior right needs, are all part and parcel of any decision to relax project mandates contained in permits. How one change might affect another or how one requirement may not be “balanced” away are the very core of the public process which flows from any change petition.

Worse yet, the Urgency process, by never having a noticed hearing does not include any of the pesky ex parte prohibitions. Thus, DWR and USBR can actually negotiate the terms and conditions of the urgency change petition with SWRCB staff and Board members without fear of breaching ex parte rules. It is of course unknown the degree to which SWRCB staff or Board members participated in this most recent Urgency Change Petition. However, we know from last year that Board staff was involved, and as part of the drought management team, continued this practice before, during and after the seven requests for additional changes to last year’s Urgency Order. It is clear the SWRCB believes that this sort of hands-on, intimate involvement is necessary for real-time management. However, we believe it is the antithesis of a regulator’s duties. The entity which makes the rules and (hypothetically) enforces the rules should not be in constant contact with the regulated and jointly seeking how to maximize the benefits to the

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regulated. The recent disclosure of the Public Utilities Commission relationship with PG&E should cause everyone to take pause.

As we have complained in the past, this lack of separation between regulator and regulated also raises serious concerns regarding lobbying laws. Although virtually none of the counsel representing interested parties (except counsel for SDWA and CDWA) are registered lobbyists who report their activities to the Fair Political Practices Commission, it would appear that virtually all of the communications between such counsel and the Board and staff are indeed lobbying within the definition of Section 18238.5 9 (and other sections) of the California Code of Regulations. By having a public process with ex parte rules in place, these sorts of problems can be avoided.

The Public is Unable to Critique the Facts Behind the Order.

As referenced above, the public is completely unaware of and cannot get access to the data underlying the TUCP or the Order. Although we get summaries via the Order and the TUCP, the essential data remains undisclosed.

The TUCP sought changes to DWR and USBR permits to address the shortage of water in the drought. The projects asserted that a lack of storage and insufficient precipitation would mean there was an inability for the projects to meet their permit obligations and there would be severe impacts to their contractors. Somewhere in that undisclosed data and modeling projections were numbers which either supported the projects' requests or conflicted with them.

Absent a public disclosure and an evidentiary hearing we cannot answer even the most simple of questions. Did the storage in the main CVP and SWP reservoirs allow for the projects to meet some obligations and not others? By how much? How much water would be saved by relaxing outflow or agricultural water quality obligations? Would that saved water increase fishery protections at later times. Would that saved water provide a meaningful improvement in later times or be significant? Would a decrease in exports beyond that requested in the TUCP provide enough water to meet future obligations this year? Does additional outflow above and beyond minimum requirements provide any "make-up" benefit to fisheries which were shorted prior to that time? Can exports be used to supplement in-Delta water needs?

These are not hypothetical questions, but go to the very heart of any proposed change petition which seeks to relax minimum water quality standards. The petitioners DWR and USBR cannot be expected to adequately present or defend other parties' interests when they are constantly at odds with those other parties. In addition, the project's main concern of maximizing exports is at odds with their other statutory and regulatory duties to protect and enhance fish and wildlife, and to benefit other water uses. We saw in a previous year how the

USBR biologists represented to the Board under oath that relaxation of an interior Delta water quality standard would preserve supply for later-in-the-year cold water needs. Then, under cross-examination those same biologists had to admit that they had not considered increasing cold water supplies by decreasing exports; and, they had not determined that the saved water would actually increase the length of the river to be protected by the cold water pool.

It is clear that numerous options, conditions and suggestions can only be presented and explored when the public can access the underlying data and cross-examine the proponents of the petition for change. It is also clear that the fishery agencies have abandoned their responsibilities to protect fish when they agree to decrease previously set standards for flows while acquiescing to continued exports.

There is no Supply of Water for Exports.

SDWA has previously provided the SWRCB with the bar charts from the Weber Foundation Studies prepared in anticipation of the construction and operation of the CVP and SWP. Those charts indicate that in a repetition of the 1928-34 drought the Sacramento-San Joaquin watersheds produce approximately 17.6 MAF annually. They also estimate that in-basin, non-export needs during the same time are approximately 25.6 MAF annually. This means that under 55+ year old data, the entire system is approximately 8 MAF short in each year of an extreme 6-year drought. These numbers of course need updating and the assumptions about fishery needs are certainly incorrect. However, whatever the actual or updated numbers may be, it is clear that in such drought times the area of origin and superior needs are millions of acre feet short of supply. Under any rational evaluation there is virtually no "surplus" water and thus no water for export.

The SWRCB (as well as USBR and DWR) approaches this scenario by turning a blind eye to it. The SWRCB has two false views of its duties. The first is that it is faced with an impossible situation under the governing rules. Even if this were the case (which it is not) the solution is not to ignore the rules, rather it is to obey the rules until changed. It is telling that SWRCB personnel write about how certain laws and priorities must be changed while at the same time failing to apply the rules they disdain. More importantly, the SWRCB does not face an impossible challenge. The "impossibility" arises from the Board's misunderstanding of the rules themselves.

At some point political pressures have led the Board to think it must try to maximize export supplies and balance other beneficial uses to do so. This position results from a misunderstanding of the relevant statutes. Although Water Code Section 13241 provides criteria under which the Board may "balance" various factors in deciding what water quality objectives

to set, that balancing ends once the objectives are set and applied through the water rights process.

Instead, the Board seems to think, and even makes statements that during the drought, they are trying to balance the various needs given the shortages of water. Such a second or continuing balancing finds no support anywhere in the law. The factors balanced in the determination of water quality standards are what determine what is later mandated in permits and licenses. The water quality process contains no "escape clause" or "poverty clause." Once set and once mandated by permit/license terms and conditions, the water quality standards are required. There is no legal authority whereby the SWRCB can later ease permit conditions because the permittee would have less water if forced to comply with its permits. In this case the public went through hundreds of hours to determine what standards to set, then hundreds of hours implementing the standards all supported by extensive environmental documents. None of the supporting analysis included any sort of analysis that periodically not meeting the standards is "okay" or getting more water than planned is "better."

In spite of this the SWRCB continues to attempt to "split the baby" so that everyone gets something rather than some get nothing. Everyone is forced to share the burden; a keen misunderstanding of the Solomon story. Splitting the baby was a cruel and ridiculous option meant to find the real parent. It was not a solution to opposing claims. "When everyone is complaining we must be on the right tract" countless Board members intone when they are not following the law. To the contrary, when some parties are satisfied and others not, that means the Board has ruled and one party's claim is correct and the other's not. The Board is not a mediator trying to give each side something. The Board is a judge charged with enforcing the rules; rules meant to protect fisheries and apply water right priorities

Thus when DWR and USBR operate for 40-60 years and *yet have no plan whereby they can meet minimum fishery standards in the first year of a drought* (then the second, then the third), it is not the Board's job to find them water or to allow them to take water needed for permit mandates. The Board should not agree to temporary changes, it should enforce the rules. These are not random, ill-conceived rules, they are the deliberate and specific mandates of the Legislature and the Board's own water quality process. If DWR and USBR can't meet an outflow developed 15 years ago but still want to export at rates of 1500 to 4000+ cfs while not meeting the outflow, the Board is obligated to deny such an upside down proposal.

The temporary alteration of permit terms and conditions is not a method by which we will solve our water shortage problem. In fact it only delays any solution. If it turns out that we have spent billions of dollars to build and operate giant export projects which destroy the fisheries and environment, cannot be operated to provide for dry times, and have virtually no export water

supply in many years something radical must change. Squeezing a few hundreds of thousands of acre feet here and there from fishery needs so exporters can get 8% instead of 5% of their supply is meaningless excepting in that it will probably push certain fish to extinction.

It is the Board's obligation to apply the rules whether there is a surplus of supply or a severe drought. What would the Board do if the fishery agencies sought an urgency change to increase outflow above the standard or if Delta farmers sought to increase their diversion amounts during a drought to flush out the CVP salts in the area?

The Order Sets Bad Precedent for Future Water Quality Planning.

As referenced above hundreds if not thousands of hours and millions of dollars were expended to develop and adopt the current water quality objectives for the Delta and in applying those objectives to certain water right holders. The Board is currently trying to undertake a review of those objectives and will likely change some through an equally lengthy and costly process; the impetus of which is to provide further protections to fish and wildlife given that fishery populations have plummeted during the current Control Plan's effective time frame.

The Order, like the similar ones adopted over the past few years have regularly, though temporarily made substantial changes to the objectives by relaxing the permits of DWR and USBR. Thus, instead of a deliberate, public process we have now substituted a truncated, non-public process for determining what fisheries need over long time frames. In the current ongoing review process we will be unable to evaluate whether or not the minimum flows of the current plan were sufficient because each time they were applicable the SWRCB failed to enforce them or require them to be met. What will the next plan contain? Will it do an CEQA-equivalent evaluation but opine that under drought conditions the objectives will not be enforced or met? Will it evaluate the effect on species not fully protected when regular droughts occur? Will it balance unknown future conditions so that exports get something even they cannot meet minimum fishery protections? These questions highlight the unworkable situation we find ourselves in when Water Quality Control Plan Objectives are cast aside because those without a water supply are in a drought.

The DWR/USBR TUCP and Order Creates an Illegal Preference for Exports.

It is understandable that the Board and staff have serious concerns about the complete lack of supply available for export interests. It is not reasonable for the SWRCB and staff to seek out ways to secure a supply for exports. Exports were promised to be, and on paper are only allowed to be of water that is not needed for in-basin, area of origin needs. One need only read

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Water Code Sections 11460 et. seq., 12200 et. seq. or the myriad of materials continued in the documents authorizing the SWP and CVP.

The Board itself applied (nearly) all of the obligations contained in D-1641 to all of the Bureau and DWR permits associated with their Delta operations. Some of those permits apply to San Luis reservoir. Hence, the obligations for outflow and southern Delta water quality are conditions to the operation of San Luis reservoir. Notwithstanding this, the CVP and SWP have pumped as much water as possible into San Luis since last summer/late fall. The TUCP and Order give us no indication how much water was put in San Luis, but CDEC can easily provide the answer.

If the projects cannot meet X2/outflow as of February 1, 2015, why is not San Luis water subject to release to meet this obligation? Is there some rule, regulation or statute which makes San Luis water exempt from such use? Is there any sort of legal principle which overcomes the San Luis permit condition which mandates meeting this standard or other standards? Is there some reason why the SWRCB or its staff will not mention much less consider such use of San Luis water?

We certainly know that the exporters and the projects are loathe to use previously exported water to meet permit obligations, but their preference is not based on any legal protection. The critical needs of the exporters are certainly strong reasons for their position but of course those needs have no affect on the mandate to meet the objectives. Why then does the SWRCB adopt this position? Surely the fishery agencies would want to meet X2 with previously stored Sacramento River water rather than not meet X2.

We all understand the preferences of the exporters but no one has come up with a reason why their preferences somehow over ride the permit conditions. The Board must learn to wean itself off the demands of the exporters. Decreasing fishery protections while allowing exports is no solution to the dilemma of insufficient water. The only legacy from such a policy will be the extinction of Delta fish.

The Order Does not Contain Enough Information to Determine if Other Users will be Harmed.

Decreasing X2 or other objectives alters the salinity of various regions of the Delta, especially the southern Delta. When X2 advances east (as allowed under the Order) it results in more ocean salt intruding on flood tides which injects more salt into the cross Delta flow. More salt in the cross Delta flow means that there is less dilution of CVP salts in the southern Delta when the tide mixes cross Delta flow with the water trapped in the south Delta. At the same

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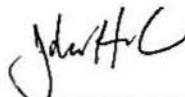
time, all four southern Deltas objectives are being violated , which means there is an inordinate amount of salt in the area already, and the tidally introduced “dilution” is both less, and less effective. The only possible result is that water quality will deteriorate. This effect, and certainly the magnitude of it are wholly ignored by the TUCP and the Order. Similar effects will occur in other areas, but they too are ignored.

Of course the SWRCB, DWR and USBR have no interest in enforcing the southern Delta water quality objectives. The violations have been the norm for the past two years even though the recent “all four violated at once” is the exception and not the rule. These standards are so universally ignored that the TUCP and Order don’t even deign to mention them as compliance and enforcement are anathema to the projects as well as the SWRCB. Everyone assumes (read had decided) the standard will change (relax) and so the southern Delta farmers deserve no protection.¹

However, the impacts to southern Delta farmers are real and measurable and should not be ignored. Changes in the flows and salinity will cause effects in the area; effect which have not been analyzed. Further the accumulation of salt in the area may have significant effects on native and transient fish as they move through and in the area; none of which is mentioned much less examined.

For the above reasons and those set forth in SDWA and CDWA’s comments submitted last year in response to the Urgency Change Orders issued in 2014, we request the Order be voided and a hearing set to allow the public to participate in the examination of how CVP and SWP permits might or might not be altered.

Very truly yours,



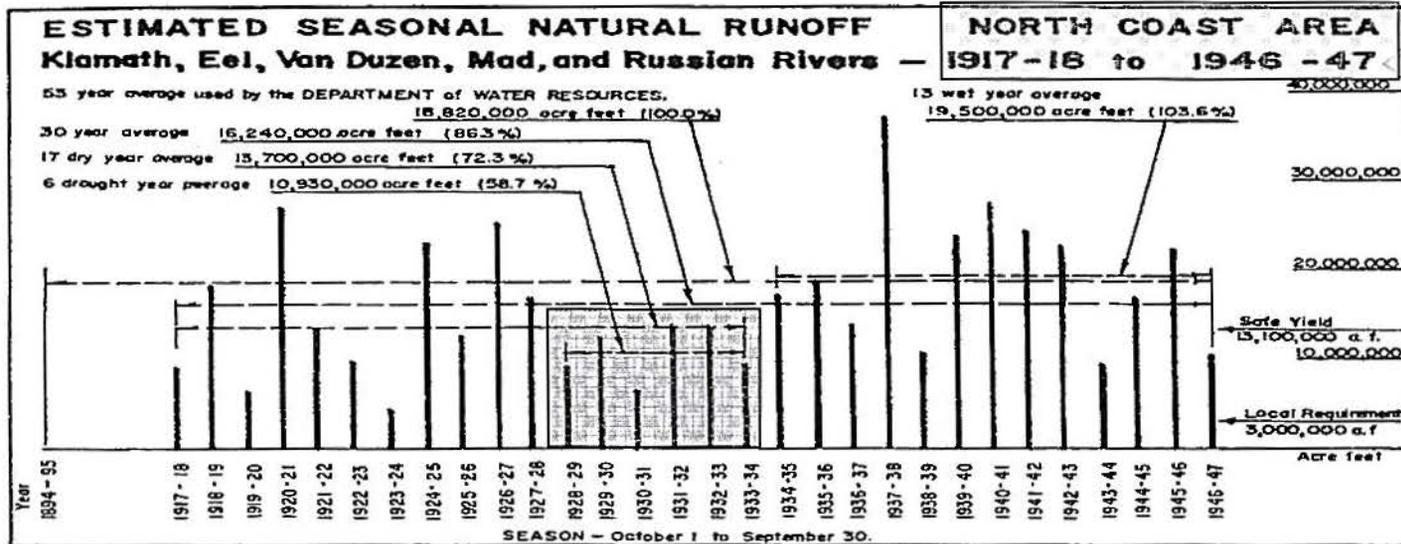
JOHN HERRICK, ESQ.

¹ SDWA will be submitting a Leaching Report in the next few weeks. The Report indicates that contrary to the SWRCB staff analysis, adequate leaching in the area does not occur with 0.7 EC water. The staff analysis calculated adequate leaching does occurs but was based on a calculation using assumed applied water quality and tile drain water quality. The tile drain water includes very saline groundwater and is not mostly excess applied water making the calculation meaningless. Once the Leaching Report is submitted there will be no scientific basis upon which to relax the standards.

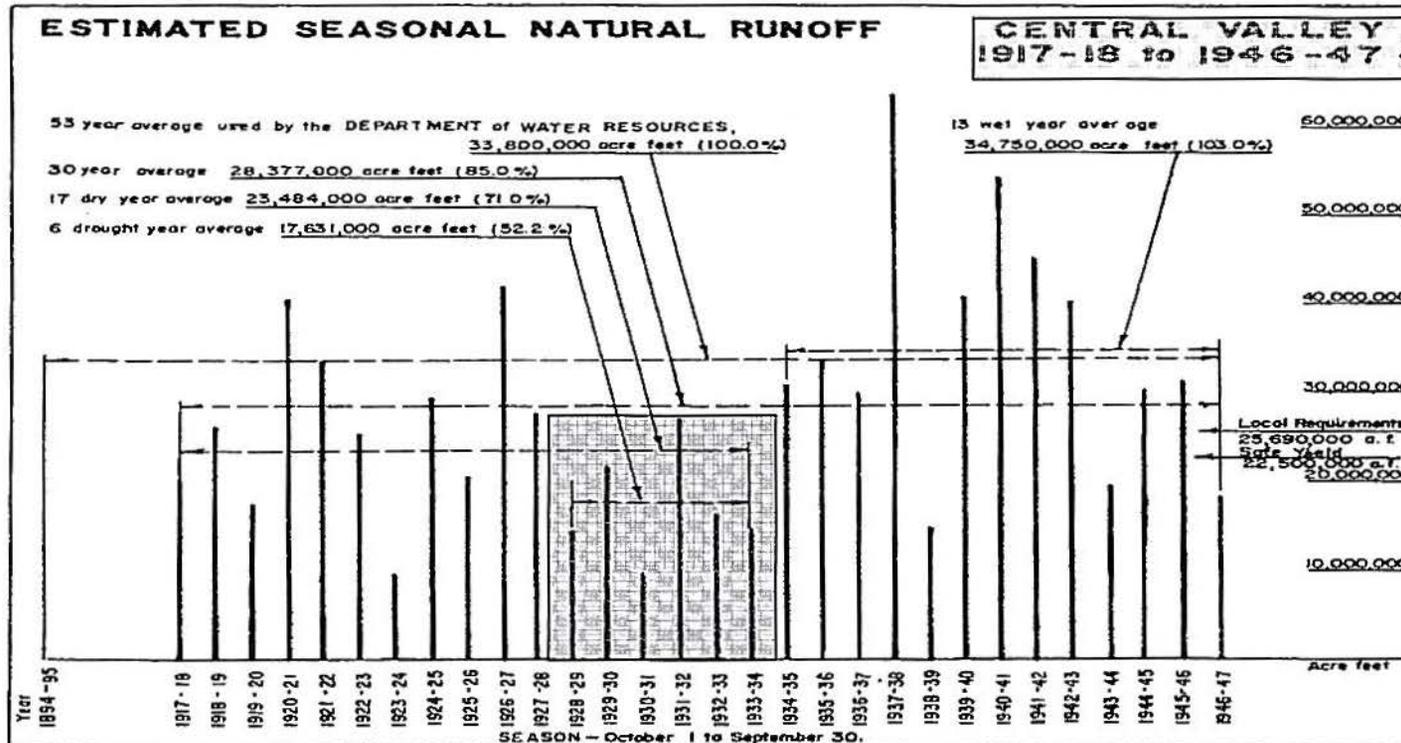
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cc: Department of Water Resources, c/o James Mizell
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SWRCB Board Members
Mr. Rich Satkowski

WEBER FOUNDATION STUDIES



Surplus
7,930,000 AF/YR



SHORTAGE
8,049,000 AF/YR

WATER CODE SECTION 1425-1431

1425. (a) Any person, whether or not an applicant, permittee, or licensee under provisions of this division other than this chapter, who has an urgent need to divert and use water may apply for, and the board may issue, a conditional, temporary permit without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a permit pursuant to this chapter, the board shall make all of the following findings:

(1) The applicant has an urgent need for the water proposed to be diverted and used.

(2) The water may be diverted and used without injury to any lawful user of water.

(3) The water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed diversion and use are in the public interest, including findings to support permit conditions imposed to ensure that the water is diverted and used in the public interest, without injury to any lawful user of water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary diversion and use is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find an applicant's need to be urgent if the board in its judgment concludes, if applicable, that the applicant has not exercised due diligence either (1) in making application for a permit pursuant to provisions of this division other than this chapter, or (2) in pursuing that application to permit.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

1426. The application for a temporary permit shall be completed in accordance with the provisions of Section 1260 and shall be accompanied by such maps, drawings, and other data as may be required by the board, and the applicant shall pay an application fee, and a permit fee if a temporary permit is issued, both computed in accordance with the provisions of Chapter 8 (commencing with Section 1525) of this part.

1427. Before making the findings required by Section 1425, the board shall review available records, files, and decisions which relate to the availability of water from the source at the proposed point of diversion to serve the proposed temporary diversion and use, and which relate to the rights of downstream users; shall consult with representatives of the Department of Fish and Game; and shall make a field investigation, if necessary or desirable in the opinion of the board.

1428. The board may issue a temporary permit in advance of the notice required by this section. In all cases, whether or not a temporary permit has been issued, the board shall, as soon as practicable after the receipt of an application, issue and deliver to the applicant or permittee a notice of the application or permit, which includes the information required by Section 1301. Publication or posting of the notice shall be as follows:

(a) If the application or permit is for more than three cubic feet per second or for more than 200 acre-feet of storage, and if the permit is to remain in effect for more than 30 days, the notice shall

be published by and at the expense of the applicant or permittee at the earliest practicable time, not to exceed 20 days from the date of issuance of the notice, in a newspaper having a general circulation and published within the county wherein the point of diversion lies. Proof of publication shall be by copy of the notice as published and made part of an affidavit filed with

the board within 10 days of publication.

(b) In all other cases, unless the permit is to be in effect less than 10 days:

(1) The applicant or permittee shall post the notice in at least two conspicuous places in the locality to be affected by the diversion and use. Notices shall be posted not later than two days after receipt of the notice by the applicant or permittee. An affidavit containing proof of posting shall be filed with the board within seven days of the date of notice.

(2) The board shall send a copy of the notice by registered mail to each person who, in the judgment of the board, could be adversely affected by the temporary diversion and use.

(c) Regardless of the rate of diversion or the amount of storage, if the permit is to be in effect less than 10 days, the board shall exercise its discretion with respect to requiring notice, both before and after issuance of the temporary permit, and may require such proof of notice as it deems appropriate.

(d) Any interested person may file objection to the temporary diversion and use with the board and shall send a copy to the applicant or permittee.

(e) The board shall give prompt consideration to any objection, and may hold a hearing thereon, after notice to all interested persons.

(f) Failure of the permittee to comply with any requirement of this section shall result in the automatic termination of the temporary permit.

1429. The board shall supervise diversion and use of water under the temporary permit for the protection of all lawful users of waters and instream beneficial uses and for compliance with permit conditions.

1430. Any temporary permit issued under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board. Any temporary permit shall automatically expire 180 days after the date of its issuance, unless an earlier date is specified or it has been revoked.

1431. A temporary permit issued under this chapter may be renewed by the board. Requests for renewals shall be processed in the manner provided by this chapter except that the permittee shall not be required to file duplicate maps, drawings or other data if they were furnished with the original application. Each such renewal shall be valid for a period not to exceed 180 days from the date of renewal.

WATER CODE SECTION 12200-12205

12200. The Legislature hereby finds that the water problems of the Sacramento-San Joaquin Delta are unique within the State; the Sacramento and San Joaquin Rivers join at the Sacramento-San Joaquin Delta to discharge their fresh water flows into Suisun, San Pablo and San Francisco Bays and thence into the Pacific Ocean; the merging of fresh water with saline bay waters and drainage waters and the withdrawal of fresh water for beneficial uses creates an acute problem of salinity intrusion into the vast network of channels and sloughs of the Delta; the State Water Resources Development System has as one of its objectives the transfer of waters from water-surplus areas in the Sacramento Valley and the north coastal area to water-deficient areas to the south and west of the Sacramento-San Joaquin Delta via the Delta; water surplus to the needs of the areas in which it originates is gathered in the Delta and thereby provides a common source of fresh water supply for water-deficient areas. It is, therefore, hereby declared that a general law cannot be made applicable to said Delta and that the enactment of this law is necessary for the protection, conservation, development, control and use of the waters in the Delta for the public good.

12201. The Legislature finds that the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area as set forth in Section 12220, Chapter 2, of this part, and to provide a common

source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State, except that delivery of such water shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.

12202. Among the functions to be provided by the State Water Resources Development System, in coordination with the activities of the United States in providing salinity control for the Delta through operation of the Federal Central Valley Project, shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta. If it is determined to be in the public interest to provide a substitute water supply to the users in said Delta in lieu of that which would be provided as a result of salinity control no added financial burden shall be placed upon said Delta water users solely by virtue of such substitution. Delivery of said substitute water supply shall be subject to the provisions of Section 10505 and Sections 11460 to 11463, inclusive, of this code.

12203. It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.

12204. In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

12205. It is the policy of the State that the operation and management of releases from storage into the Sacramento-San Joaquin Delta of water for use outside the area in which such water originates shall be integrated to the maximum extent possible in order to permit the fulfillment of the objectives of this part.

WATER CODE SECTION 11460-11465

11460. In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

11461. In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.

11462. The provisions of this article shall not be so construed as to create any new property rights other than against the department as provided in this part or to require the department to furnish to any person without adequate compensation therefor any water made available by the construction of any works by the department.

11463. In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.

11464. No water right, reservoir, conduit, or facility for the generation, production, transmission, or distribution of electric power, acquired by the department shall ever be sold, granted, or conveyed by the department so that the department thereby is divested of the title to and ownership of it.

11465. The department shall not make any change, alteration, or revision of any rates, prices, or charges established by any contract entered into pursuant to this part except as provided by the contract.