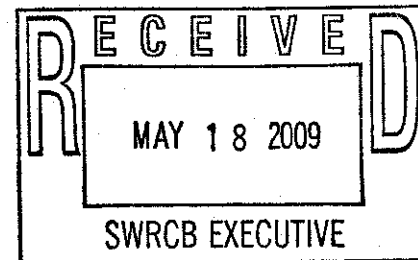


PUBLIC TRUST ALLIANCE

A Project of the Resource Renewal Institute
Historical Building D, Rm. 290
Fort Mason Center
San Francisco, CA 94123
Project tel. (510) 644-0752

May 17, 2009

Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



RE: DWR/USBR Petition to Consolidate Places of Use
19 May, 2009 Regular Agenda

Dear Board,

As Hearing participants and protestants of this major legal change, and as members of the California Public, we urge you not to approve the Draft Order proposed for this petition. Not only has it been shown to be unnecessary in this water year, but the conduct of various parties and public decision makers has not been up to the standard required to engender public credibility or confidence in this outcome. In fact, by signing on to this order as written, this Board might appear to be joining in deliberately misleading representations to the California Public. This is simply not a solid basis for reliable or responsible public policy.

An inappropriate attempt to evade objective analysis through "Emergency" exceptions in some applicable statutes must not be substituted for Constitutionally required inquiry and deliberate public decision making. The scale of the "emergency remedy" goes far beyond any actual emergency demonstrated in the Hearing. In fact, the private parties (the actual property owners) on whose supposed behalf the public authorities were acting, chose not to present any testimony related to the character and extent of the property to be protected. Because of the very short time allotted to this major California policy decision, the Public Trust Alliance chose not to add possibly duplicative testimony in the evidentiary portion of the hearing, because other public interest representatives stood far more prepared to challenge what would surely be presented in this case. Yet at the last minute, the private parties withdrew all their proposed witnesses and left the project operators as the main supporters of this action. That does not accurately reflect the context of water policy formation in this State, or the drive to eliminate regulatory separations of long standing. Just as the drivers of our current financial crisis were petitioning for more "flexibility" from regulators, participants in developing State water markets are trying to make the same sort of arguments for unexamined water transactions. And just as our banking collapse was fed off fractional reserves, we have the same problems with our over-subscribed water rights

system. This is a time to be more careful and not be swayed by disproportional "emergency" actions.

The text of the Order makes it seem as if the concerns of protestants relate to a possible increase in exports from the Delta. The actual problem is that export levels are already much too high to protect public trust values and the ecological basis of our State's water system. "Historical levels" are not the pre-approved shibboleth or in any way the vested right of project contractors as apparently assumed in this Order. Present "Historical levels" increased significantly in the period of relaxed environmental defense cultivated during the CalFed era. And while Consolidated Place of Use will make sense in the future, at present it cannot provide adequate protections for broader public rights in the vastly oversubscribed system that we now have and the present level of trust and credibility of the project operators.

We now have a water season characterized by precipitation and runoff only slightly below average for the state. Perhaps a few emergency temporary transfers might be approved. But to approve Consolidated Place of Use for the whole project areas on an emergency basis without any disciplined evaluation would send truly the wrong signal to private appropriators and the general public alike. It would say that the designated trustees for the waters of this state are willing to set aside their fiduciary duties of resource protection and prudence at the drop of a hat.

On the fourth day of sustained rainfall in early May, I wrote an objection to the introduction of drought emergency evidence offered by DWR after the close of the hearing. Almost all of that evidence pertained to speculations made in February. The same night, I saw that DWR had begun publishing a "Drought Update" with supposedly "up to date" information so the public would know what was happening with "hydrology" in the state. Further questions revealed that since the precipitation arrived after the end of April, it wouldn't appear in the drought updates until June after the totals for May could be completed. It may look like an easy way to exclude information from this decision making period but it is not the sort of conduct that leads to public confidence.

We join the Planning and Conservation League in suggesting that the State Board take the step of denying this poorly supported petition and setting a more credible standard for establishing water policies in California.

Thanks for the opportunity to comment on this action.

Sincerely,

Michael Warburton
Executive Director