



Daniel J. O'Hanlon

916.321.4500
dohanlon@kmtg.com

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VIA ELECTRONIC MAIL ONLY

State Water Resources Control Board
c/o Michael Buckman
Michael.Buckman@waterboards.ca.gov

Department of Water Resources
c/o James Mizell
James.Mizell@water.ca.gov

Regional Solicitor's Office
c/o Amy Aufdemberge
Amy.Aufdemberge@sol.doi.gov

U.S. Bureau of Reclamation
c/o Paul Fujitani
pfujitani@usbr.gov

Re: Comments And Objections Regarding The May 2, 2014 Order Modifying And Renewing 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 & Permits of the Dept. 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 May 2, 2014 Order Modifying and Renewing 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, "May 2 Order"). The Authority has submitted comments and objections in response to previous related orders (dated January 31, February 7, February 28, March 18, April 9, and April 11 collectively "prior orders") regarding this matter and we hereby incorporate those prior submittals by reference. In addition, the Authority has submitted a Petition for Reconsideration of the orders as modified through March 18, 2014.

The Authority appreciates the extraordinary efforts of the State Water Resources Control Board (“State Board”) and its staff to address the drought’s impacts and conserve scarce water supplies. The Authority is encouraged by several of the changes made in the orders and continues to urge the State Board to make additional changes to maximize the capture, delivery, and use of scarce water supplies.

In the State Board’s May 6, 2014 workshop, the State Board encouraged all parties that have filed protests and petitions for reconsideration to submit comments indicating the current status of objections raised to date and also providing any additional comments on the May 2, 2014 order. These comments satisfy that request.

1. The Orders Have Substantially Satisfied The Authority’s Concerns Regarding The Health And Safety Limitation On Use Of Exported Water

The Authority’s prior comments expressed concern about and objected to a limitation on the permissible delivery and use of Central Valley Project (“CVP”) and State Water Project (“SWP”) water to undefined “health and safety” needs. The State Board has made necessary and appropriate revisions to Condition 1.b by removing this limitation. The Authority supports and appreciates this change.

2. The Orders Have Not Removed The 1,500 cfs Cap On Export Pumping In Condition 1.b Or Condition 2

a. Condition 1.b

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 the D-1641 Delta Outflow requirements, Delta Cross Channel (“DCC”) Gate closure requirements, or Sacramento River flow and electric conductivity (“EC”) requirements are not being met.

It is critical that the State Board allow and the CVP to 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 State Board consider and look to optimize opportunities to allow for export pumping. 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 State Board remove this cap on the pumping rate.

b. Condition 2

The Authority likewise renews its request that the State Board remove Condition 2 of the Order. Condition 2 requires the CVP and SWP to comply with the Delta outflow, DCC Gate

Closure, and now Rio Vista flow and Sacramento River at Emmaton EC requirements contained in D-1641 when precipitation events occur that enable the projects to meet those requirements. (May 2 Order, p. 13.) It does allow CVP and SWP 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.

3. Additional Actions Are Needed To Mitigate Drought Impacts

The Authority requests that the State Board issue water diversion Curtailment Notices to prevent diversions that are unsupported by water rights under the current hydrological conditions. According to the State Board's website, for the Sacramento-San Joaquin Watershed, it expects to issue curtailment notices between May 15 and June 1 for all post-1914 water rights, and between June 1 and June 15 for junior pre-1914 water rights.

As the State Board has found, in these extreme hydrological conditions, there is very little, if any, natural and abandoned flow to support exercise of appropriative and riparian water rights, particularly within the Delta, and it is likely that many diversions are already relying, at least in part, on release of stored water by the CVP and SWP. Indeed, current operations summaries¹ indicate that twice as much water is likely being diverted within the Delta than the combined pumping of the CVP and SWP. Yet, disproportionate regulatory obligations on the CVP and SWP remain in effect. The State Board has a critical role to rebalance objectives in light of the current conditions and to provide diverters with timely information regarding what flow is or is not available to them under their rights. In addition to Curtailment Notices, the State Board will likely need to increase enforcement actions to ensure water is available for its intended and authorized uses.

4. Additional Comments Regarding The May 2, 2014 Order

a. Condition 1.a

The May 2, 2014 Order extends the relaxation of the minimum Delta Outflow levels specified in Table 3 of D-1641 to 3,000 cfs on a monthly average in May and July. (May Order, p. 12.) The Authority questions why the relaxation was not also extended to June, and asks the State Board to do so, or provide an explanation why such action is not necessary.

¹ Available at <http://www.water.ca.gov/swp/operationscontrol/docs/delta/deltaops.pdf>.

b. Condition 7

The May 2, 2014 Order revises Condition 7 to state: “**While** DWR and Reclamation **are operating under the changes approved by this order, they** shall bypass natural and abandoned flows **in order** ~~to the extent necessary~~ to prevent injury to ~~senior water right holders~~ **other lawful users of water.**” (May 2 Order, p. 14.) The Authority objects to the revisions striking out “to senior water right holders” and replacing it with “other lawful users of water.” We recognize that the CVP and SWP cannot operate to the detriment of users that have a higher priority. We believe that this principle is reflected in the original language in Condition 7. While we assume that by using new language, this principle carries forward and is not intended to be more restrictive, the original language was clearer on this point.

The current extreme hydrological conditions present challenges for the entire State and the State Board has the critical task of determining what is a reasonable balance and in the public interest to support beneficial uses. We respectfully ask that when striking that balance, the State 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



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