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8 **BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

9  
10 In re April 28, 2014 Response to El Dorado  
11 Irrigation District's March 31, 2014 letter  
Regarding operating emergencies,  
12 Project No. 184-000

**EL DORADO IRRIGATION DISTRICT'S  
REQUEST FOR REHEARING**

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15 **I. Identification of Participant and Relief Sought**

16 El Dorado Irrigation District (District), the licensee of FERC Project No. 184 (Project 184),  
17 hereby respectfully requests rehearing of the Commission's April 28, 2014 letter to the District,  
18 "Response to El Dorado Irrigation District's March 31, 2014 letter regarding operating  
19 emergencies." Rehearing is requested to obtain relief from the Commission's determination that  
20 California's extreme drought conditions does not constitute an "operating emergency beyond the  
21 control of the licensee" within the meaning of Article 404 of the Project 184 operating license.  
22 Relief is warranted because numerous Commission precedents directly contradict this  
23 determination.

24 **II. Relevant Facts**

25 It is well-known that California is in the grip of an extraordinary drought. As of May 20,  
26 2014, the United States Drought Monitor characterized 100% of California as being in severe,  
27 extreme, or exceptional drought condition. The entire Project 184 project area and District service  
28 area are in extreme drought, according to the same source.

1           These conditions actually represent an improvement over those prevailing on February 4,  
2 2014, when the District's Board of Directors adopted a resolution declaring a drought emergency  
3 and called on its customers to achieve 30% water conservation, to avoid running out of water if  
4 2015 is another dry year. The District Board's action noted that California's Governor Brown had  
5 declared a state-wide drought emergency on January 17, finding "that conditions of extreme peril  
6 to the safety of persons and property exist in California due to water shortage and drought  
7 conditions with which local authority is unable to cope." The Governor further found that "the  
8 magnitude of the severe drought conditions presents threats beyond the control of the services,  
9 personnel, equipment and facilities of any single local government."

10           The District's drought emergency declaration endorsed these findings, invoked Project 184  
11 license Article 404, and directed District staff to temporarily reduce instream flows for Project 184,  
12 while negotiating with all Project 184 stakeholders to obtain their agreement to a longer-term  
13 proposal to vary those flow requirements for as long as the drought conditions persist. At that  
14 time, hydrologic conditions in the Project 184 project area were far drier than those prevailing  
15 during 1976 and 1977, the worst drought on record. Based on modeling, all storage in Project 184  
16 reservoirs was predicted to be bankrupted by late summer and Project 184's powerhouse was  
17 completely shut down.

18           As a result of these unprecedented conditions, the District Board directed its staff to reduce  
19 instream flows for two reasons: to ensure that the District could obtain its full measure of  
20 consumptive water supplies from Project 184, and to conserve water stored in the Project 184  
21 reservoirs for environmental releases later in the year. These were legitimate concerns arising  
22 from the driest calendar year on record followed by the driest January on record. Project 184's  
23 facilities were built in the 1870s to provide consumptive water supplies; the hydroelectric project  
24 purpose was added in the 1920s. Consequently, the consumptive water rights are senior to the  
25 hydroelectric operation, and Section 2.6 of the 2003 Project 184 Relicensing Settlement  
26 Agreement specifically provides, "Nothing in this Settlement is intended, or shall be construed to,  
27 affect any Party's water rights." Reducing flows was not to allow the idled powerhouse to resume  
28 operations; it was to enable the District to deliver needed drinking water to its customers.

1 Regarding environmental flows, operational modeling based on the then-prevailing hydrologic  
2 conditions showed that without some relief, project reservoirs would be drained to dead pool by  
3 Labor Day. Rather than provide full environmental flows until water ran out, the District judged  
4 that a reduction that would allow flows to continue until winter was clearly the environmentally  
5 superior alternative.

6 Again, the basis for the District's actions was Article 404 of Project 184's license. Article  
7 404 states:

8 Any minimum flow requirements for this license . . . may be temporarily  
9 modified if required by operating emergencies beyond the control of the  
10 licensee, or for short periods upon agreement between the licensee, the U.S.  
11 Forest Service (Forest Service), the California Department of Fish and Game  
12 (Cal Fish and Game), and the California State Water Resources Control  
13 Board (Water Board). If the flow is so modified, the licensee shall notify the  
14 Commission, the Forest Service, the Cal Fish and Game, and the Water Board  
15 as soon as possible, but no later than 10 days, after each such incident.

16 Condition No. 1 of the Water Quality Certification for the Project 184 license, incorporated  
17 into the license as Appendix B, similarly provides, "The minimum streamflows specified in the  
18 schedules may be temporarily modified if required by public safety, equipment malfunction or  
19 operating emergencies reasonably beyond the control of EID."

20 In accordance with these Project 184 license provisions and the direction of the District's  
21 Board of Directors, the District issued a letter on February 6, 2014 to the Commission and others,  
22 notifying them that the District had temporarily modified minimum flow discharges downstream of  
23 four Project 184 dams and invoking Articles 404 and Condition No. 1 of Appendix B. The District  
24 maintained the 15 cubic feet per second (cfs) flow at the Kyburz diversion dam, rather than  
25 increasing the flow to the mandated 20 cfs, and reduced the flows below the Caples Lake, Echo  
26 Lake, and Silver Lake dams from 5, 4, and 6 cfs, respectively, to 2 cfs.

27 On February 10, the Commission responded with a letter to the District, stating:  
28 *Although droughts may be severe and beyond the control of the licensee, the  
Commission does not consider drought to be an operating emergency.*

1           *Operating emergencies are unexpected events consisting of things such as*  
2           *logs jamming in gates, gate failures, or other things that may pose an*  
3           *imminent threat to the integrity of the dam, or boaters crossing a breached*  
4           *boat barrier, anglers endangered by unscheduled flow releases downstream*  
5           *from a dam, and other things that may pose an imminent threat to life and*  
6           *property. While a drought does not fit into this category, it may, however,*  
7           *provide a reason for a licensee to alter operations for a short period of time,*  
8           *with the agreement of state and federal resource agencies, as provided in*  
9           *Article 404.*

10           The Commission required the District to provide it with documentation of agreement with  
11           the Forest Service, Cal Fish and Game, and the Water Board or return to normal operations within  
12           seven days of the letter.

13           On February 20, the District sent a letter in response. The District reported that it had  
14           returned all streamflows to normal license-specified levels on or before February 13, consistent  
15           with the Commission's guidance. The District's letter noted that this operational change was  
16           warranted by the beneficial hydrologic impacts of a storm event that brought significant  
17           precipitation to the region from February 7-9, 2014.

18           The District's February 20 letter expressed the District's respectful disagreement with the  
19           Commission's February 10 interpretation of Article 404, and enclosed a five-page summary of  
20           authority that the District believed supported its contrary interpretation. The summary cited twelve  
21           Commission precedents and a 2008 letter from the Regional Engineer, specifically addressing  
22           Article 404 of the Project 184 license, which the District had relied upon in taking its actions. The  
23           District's February 20 letter also enclosed its Board of Directors' February 4 resolution declaring a  
24           drought emergency, to substantiate that the District took its actions to protect drinking water  
25           supplies for its customers and to conserve stored water for environmental releases later in the year,  
26           rather than to resume or maximize power generation or for any other pecuniary reason.

27           In its February 20 letter and in two direct oral contacts with Commission staff, the District  
28           asked that the Commission review and consider the precedents the District had cited to support its  
29           contrary interpretation of Article 404. However, the Commission cancelled an agreed-upon  
30           conference call for this purpose, and did not otherwise respond. Therefore, the District sent a letter  
31           on March 28, 2014, reiterating its position and its request for a response. The District's March 28  
32           letter pointed out that with the current drought continuing and the certainty of another drought in

1 the future, a review of the District's authorities and a rationale for the Commission's position  
2 would be essential to allow the District to continue to operate in full compliance with the Project  
3 184 license conditions.

4 On April 28, 2014, the Commission responded to the District's March letter. The letter  
5 stated that the Commission had reviewed the cases the District had cited, "and we maintain our  
6 previous conclusion that a drought, in and of itself, does not constitute an operating emergency,  
7 because a drought does not pose an imminent threat to life and property or environmental  
8 resources." The letter gave no other rationale for the Commission's interpretation, and it did not  
9 further address any of the authorities the District had submitted.

### 10 **III. Factual and Legal Bases for the District's Request for Reconsideration**

11 The District's first position is that the Commission has erroneously interpreted  
12 Article 404. Language identical or substantially similar to Article 404 appears in many project  
13 licenses, and numerous Federal Energy Regulatory Commission precedents over the last two  
14 decades directly contradict the interpretation of this language that the Commission has now made.  
15 Specifically, the Commission has found numerous times that drought conditions did, in fact,  
16 constitute "operating emergencies beyond the control of the licensee."

17 The District's second position is that even if the articulated standard for invoking  
18 Article 404 -- "an imminent threat to life and property or environmental resources" -- is correct,  
19 two drought disaster proclamations by California's Governor have amply established that the  
20 current drought meets that standard.

#### 21 **A. Language allowing variances from minimum flow requirements 22 during operating emergencies appears in many project licenses**

23 There is nothing unusual about the language of Project 184's license Article 404. It  
24 appears in many licenses, and therefore there is a wealth of Commission precedent construing its  
25 meaning and operation. In ruling on a rehearing request after the issuance of a new license, the full  
26 Commission described this language as follows:

27 *[T]he proviso in Article 405[] allows temporary modification of the minimum  
28 flow schedule if required by operating emergencies beyond the licensee's  
control, and for short periods upon agreement between the licensee and the  
New Jersey DEPE. This proviso is reasonable, and in some appropriate form*

1 *it is standard in all minimum flow articles. It provides a limited amount of*  
2 *flexibility to respond to unanticipated circumstances, and with a notification*  
3 *requirement to prevent abuse.*

4 Halecrest Co. Energy Storage Corp. Esperanza Power Ltd. P'ship, 63 FERC ¶ 61307 (June 22,  
5 1993) (emphasis added).

6 The substantive language in question in that decision was identical to Article 404: "These  
7 flows may be temporarily modified, if required by operating emergencies beyond the control of the  
8 Licensee, and for short periods upon agreement between the Licensee and the New Jersey  
9 Department of Environmental Protection and Energy. If the flow is so modified, the Licensee shall  
10 notify the Commission and the White Meadow Lake Property Owners Association as soon as  
11 possible, but no later than 10 days after each such incident." *Ibid.*

12 **B. Numerous FERC precedents contradict the Commission's**  
13 **interpretation of Article 404**

14 It would test the Commission's patience to exhaustively detail every Commission  
15 precedent that construes the meaning and effect of license language identical or similar to Article  
16 404. Following, therefore, is a sample of published decisions over the last two decades that  
17 contradict the interpretation the Commission has given in the District's case, and support the  
18 District's contrary understanding. The District's research did not uncover any Commission  
19 precedents that support the narrow interpretation of Article 404's language advanced in its April  
20 28, 2014 letter.

21 In 2008, the Director of the Division of Hydropower Administration and Compliance  
22 issued an order amending a license and approving an operating plan. Among other things, the  
23 approved operating plan set recreational release requirements at project reservoirs, and required an  
24 annual report on the implementation of the recreational releases. The order states, "Finally, if the  
25 above recreational releases for either the Thomson or Scanlon developments are temporarily  
26 modified due to operating emergencies beyond the control of the licensee (e.g., electrical demand  
27 emergencies, flood control operations, *droughts*), or as necessary for scheduled maintenance work,  
28 the licensee should identify such incidents in the annual report and any measures that were taken to  
minimize impacts on whitewater boating and restore the required recreational releases." Allete,  
Inc., 125 FERC ¶ 62051 (Oct. 14, 2008) (emphasis added).

1 Thus, the phrase “operating emergencies beyond the control of the licensee” was explicitly  
2 construed to include “droughts.”

3 Ordering paragraph C reiterates the express interpretation that drought conditions are  
4 among the situations that qualify as operating emergencies beyond the licensee’s control:  
5 “Further, the annual report shall identify any instances when the approved recreational releases are  
6 temporarily modified due to operating emergencies beyond the control of the licensee (e.g.,  
7 electrical demand emergencies, flood control operations, droughts), or as necessary for scheduled  
8 maintenance work, and any measures that were taken to minimize impacts on whitewater boating  
9 and restore the required recreational releases.” *Ibid.* (emphasis added)

10 A 2005 precedent addresses a license article whose language expressly defines “operating  
11 emergencies beyond the control of the licensee” to include “drought.” In this case, the Division of  
12 Hydropower Administration and Compliance approved a flow release plan for whitewater boating.  
13 Article 427 of the project’s license states, “The recreational flow releases required under this  
14 article may be temporarily modified if required by operating emergencies beyond the control of the  
15 licensee (e.g., electrical demand emergencies, flood control operations, **droughts**), or for short  
16 periods of time upon mutual agreement among the licensee, NCDENR, and the Corps. If the flows  
17 are so modified, the licensee shall notify the Commission as soon as possible, but no later than 10  
18 days after such incident.” Virginia Elec. & Power Co., DBA Dominion Virginia Power/dominion  
19 N. Carolina Power, 113 FERC ¶ 62198 (Dec. 13, 2005) (emphasis added). The Project 184 license  
20 was issued in 2003.

21 In a 1998 case, the licensee was concerned by the inflexibility of a lake-level license  
22 article, and proposed specific alternative lake levels for emergency conditions. The Director of  
23 Hydropower Licensing issued an order approving an amendment, but rather than adopting the  
24 licensee’s proposal, ordered as follows: “[T]he licensee's proposal should be modified to state that  
25 the reservoir water surface elevations may be temporarily modified if required by operating  
26 emergencies beyond the control of the licensee, including flood and **drought conditions**, and for  
27 short periods upon mutual agreement between the licensee and the NYDEC and the FWS. The  
28 licensee's proposed amendment request, filed September 20, 1996 and supplemented on March 10,

1 1997, as modified, should provide additional flexibility in the wording of Article 31 to reflect  
2 circumstances that are beyond the licensee's control and should be approved.” New York State  
3 Elec. & Gas Corp., 84 FERC ¶ 62045 (July 16, 1998) (emphasis added). Once again, this  
4 precedent clearly states that drought conditions constitute an “operating emergenc[y] beyond the  
5 control of the licensee.” Therefore, Article 404 of the Project 184 license should be construed the  
6 same way.

7 A 2010 precedent involved the approval of a Drought Management Plan by the Division of  
8 Hydropower Administration and Compliance. License Article 405 required filing of the plan, but  
9 provided that “the Plan does not require a reduction to the minimum flow release of 50 cfs (as  
10 required by Article 407) at Smith, unless *severe drought operations* [sic] *occur that result in*  
11 *operating emergencies beyond the control of the licensee* to preserve electric system emergency  
12 capabilities.” Alabama Power Co., 133 FERC ¶ 62085 (Oct. 26, 2010). Once again, the language  
13 of this license’s Article 405 of this license clearly expresses the Commission’s view that severe  
14 drought conditions can cause “operating emergencies beyond the control of the licensee.”

15 The foregoing 2010 decision was one of a series of published precedents involving  
16 Alabama Power and a prolonged drought in the Southeastern United States. In 2007, the Division  
17 of Hydropower Administration and Compliance approved a temporary amendment to the rule  
18 curve for FERC Project No. 349 due to severe drought conditions. Alabama Power, 121 FERC ¶  
19 62129 (Nov. 20, 2007). The proposed rule curve change was going to cause instream flows in  
20 FERC Project No. 2407, owned by the same licensee, to fall below the minimum license  
21 requirements, and the license for Project No. 2407 contained language identical to Article 404 of  
22 the Project 184 license: it allowed those instream flows “to be temporarily modified if required by  
23 operating emergencies beyond the control of the licensee, or for short periods upon agreement  
24 between the licensee and the Alabama Department of Conservation and Natural Resources  
25 [ADCNR]. If the flow is so modified, the licensee is required to notify the Commission as soon as  
26 possible, but no later than 10 days after each such incident.” *Ibid.*

27 The licensee consulted with ADCNR and others regarding the rule curve variance and the  
28 associated instream flow modification, and ADCNR responded that it “concurred with the

1 temporary rule curve variance” for FERC Project No. 349. *Ibid.* There is no indication, however,  
2 that ADCNR concurred with the instream flow modification to FERC Project No. 2407, or that it  
3 was asked to do so.

4 The Order addressed the issue this way: it stated that the licensee’s submittal for the rule  
5 curve variance for FERC Project No. 349 was also “notification to the Commission, under Article  
6 401 of the Yates and Thurlow [FERC Project No. 2407] license, that upon approval of the Martin  
7 variance, the minimum flow releases at the Thurlow Project would be temporarily modified,” and  
8 approved *both* the rule curve variance “and associated temporarily modified minimum flows from  
9 the Thurlow development of the Yates and Thurlow Project.” *Ibid.*

10 The only way that the Commission could have approved the temporary modification of  
11 minimum flows for FERC Project No. 2407 without requiring a separate filing, without requiring  
12 agreement of ADCNR, and solely on the basis of severe drought conditions, is if the Commission  
13 construed the severe drought conditions to be an “operating emergenc[y] beyond the control of the  
14 licensee” under Article 401 of the project license. Article 401’s “operating emergencies” language  
15 was the only legitimate basis for the licensee to modify the instream flow without first obtaining  
16 agency agreement, and drought was the only possible source of the “operating emergency.”

17 See also the 2009 approval of a similar variance on the same project (and affecting the  
18 same downstream project), also during drought conditions that the Commission characterized as  
19 “less severe” than those of 2007. “The licensee states that during evaluation of the rule curve  
20 variance, consideration was given to the minimum flow releases at the downstream Thurlow  
21 Project. Along with its proposed variance to the Martin rule curve, *the licensee is providing*  
22 *notification to the Commission, under Article 401 of the Yates and Thurlow license, that upon*  
23 *approval of the Martin variance, the minimum flow releases at the Thurlow Project would be*  
24 *temporarily modified.”* Alabama Power, 126 FERC ¶ 62104 (Feb. 11, 2009) (emphasis added).  
25 This confirms the rationale of the 2007 Alabama Power decision: drought conditions (even if less  
26 severe) constitute an operating emergency beyond the licensee’s control and therefore warrant a  
27 temporary but unilateral reduction of minimum flows. The only applicable requirement is  
28 notification to the Commission.

1 In another case, a licensee invoked “operating emergency” license language to reduce  
2 instream flow requirements during a drought, notwithstanding a lack of concurrence that it was  
3 contemporaneously seeking (and ultimately did not receive) from a consulting agency. In this  
4 2001 decision the Commission itself took note of the licensee’s unilateral action, but the  
5 Commission did not state that it was unauthorized, and did not impose any sanction against the  
6 licensee:

7 *Article 56 provides that these flows may be temporarily modified by operating*  
8 *emergencies beyond the control of the licensee, or for short periods upon*  
9 *prior written approval from the Secretary of the Interior.*

10 *PPL Montana requests that we approve a temporary license amendment that*  
11 *would authorize it to deviate from its lake level and minimum flow license*  
12 *requirements to the extent described above. In the same May 8 filing, it*  
13 *requests written authorization from Interior to allow it to modify the Article*  
14 *56 flows, effective as of May 9 and continuing until we approve the temporary*  
15 *license amendment. PPL Montana seeks this Interior concurrence under the*  
16 *Article 56 provision allowing temporary modification of the flows for short*  
17 *periods upon prior written approval from the Secretary. However, it explains*  
18 *that, because flow releases, once increased, could not be decreased during*  
19 *spring spawning season without adverse environmental consequences, it will*  
20 *begin implementing its proposed limitation of releases to about 9,000 cfs no*  
21 *later than May 9, “subject to a determination by the Commission and Interior*  
22 *as to how the shortages of water caused by the drought are to be*  
23 *apportioned” between lake levels and Article 56 provides that these flows*  
24 *may be temporarily modified by operating emergencies beyond the control of*  
25 *the licensee, or for short periods upon prior written approval from the*  
26 *Secretary of the Interior.*

27 Ppl Montana, LLC, & Confederated Salish & Kootenai Tribes of the Flathead Nation, 95 FERC ¶  
28 61363 (June 11, 2001).

Three identical decisions issued in 1991 by the Director of Hydropower Licensing might be  
viewed as contrary precedent, but they are not. In these decisions, the Director denied the  
licensees’ requests for relief from instream flow requirements during a drought on the basis that  
the licensees’ claimed ***financial hardship*** “does not constitute an operating emergency beyond its  
control that would justify a temporary reduction in minimum flow.” Roseburg Res. Co. & Mega  
Renewables, 56 FERC ¶ 62104 (Aug. 9, 1991), Highland Hydro Construction, Inc., 57 FERC ¶  
62001 (Oct. 1, 1991), Roaring Creek Ranch & Mega Renewables, 57 FERC ¶ 62052 (Oct. 23,  
1991).

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3 These decisions did not rule whether or not **drought** was a sufficient cause, however, and in  
4 fact they each opined that the “operating emergency” exception “obviously covers situations **such**  
5 **as a natural disaster** or equipment breakdown that would prevent the licensees, for a short period  
6 of time, from maintaining the minimum flow.” *Ibid.* (emphasis added) Also, the for-profit,  
7 investor-owned utilities involved in those decisions are not similarly situated to the District, which  
8 is a government agency trying to maintain adequate drinking water supplies for its customers.  
9 Finally, every one of the numerous Commission precedents cited above is more recent than these  
10 1991 rulings.

11 **C. The Governor’s emergency proclamations establish that the drought is an**  
12 **imminent threat to life and property or environmental resources**

13 Even if the April 28, 2014 letter was correct in stating that to qualify under Article 404, an  
14 operating emergency must “pose an imminent threat to life and property or environmental  
15 resources,” California Governor Brown has twice made the necessary findings to meet that  
16 standard. The Governor’s January 17, 2014 emergency proclamation (See Exhibit A), which the  
17 District’s Board adopted and endorsed, includes these findings:

- 18 • “[D]ry conditions and lack of precipitation present urgent problems: drinking water  
19 supplies are at risk in many California communities; . . . animals and plants that rely on  
20 California’s rivers, including many species in danger of extinction, will be threatened; and  
21 the risk of wildfires across the state is greatly increased”
- 22 • “[T]he magnitude of the severe drought conditions presents threats beyond the control of  
23 the services, personnel, equipment and facilities of any single local government”
- 24 • “I find that conditions of extreme peril to the safety of persons and property exist in  
25 California due to water shortage and drought conditions with which local authority is  
26 unable to cope.”

27 The Governor also directed the State Water Resources Control Board to “consider  
28 modifying requirements for reservoir releases or diversion limitations, where existing requirements  
were established to implement a water quality control plan. These changes would enable water to  
be conserved upstream later in the year to protect cold water pools for salmon and steelhead,  
maintain water supply, and improve water quality.”

On April 25, 2014, the Governor proclaimed a continued state of emergency (see Exhibit  
B), and again found that:

- “[T]he magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment and facilities of any single local government”
- “I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope.”

These findings provide ample justification for the District to invoke Article 404, even if the correct legal standard for doing so is “an imminent threat to life and property or environmental resources.”

**D. Summary**

The statement in the Commission’s April 28 letter, “maintain[ing] our previous conclusion that a drought, in and of itself, does not constitute an operating emergency,” and its February 10 assertion that “the Commission does not consider drought to be an operating emergency” are both plainly erroneous. As shown above, two decades of unbroken Commission precedents directly contradict those statements. The Commission has consistently viewed drought as one of the conditions that may qualify as an operating emergency beyond the licensee’s control, sufficient to authorize the licensee to make temporary reductions to instream flows under license language like that found in Project 184’s license Article 404.

The District’s request for reconsideration should therefore be granted, and the Commission should reverse course and hew to its precedents. Otherwise, not only the District but numerous other licensees will be left to guess which Commission guidance is correct, and to wonder what standard license article the Commission will next reinterpret without warning. Given the severity of California’s ongoing drought, the practical implications of this error are real and potentially severe.

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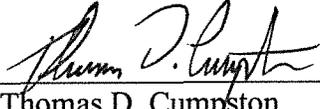
1 **IV. Information Regarding the Requesting Party**

2 The party requesting rehearing is El Dorado Irrigation District. Its principal place of  
3 business is at 2890 Mosquito Road, Placerville, CA 95667. Thomas D. Cumpston, General  
4 Counsel, represents the District in this matter. Service and other communications in this  
5 proceeding are to be directed to Mr. Cumpston, General Counsel, at the above address.  
6 Mr. Cumpston's phone number is (530) 642-4144.

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Respectfully submitted this 27<sup>th</sup> day of May, 2014.

EL DORADO IRRIGATION DISTRICT

By:   
Thomas D. Cumpston  
General Counsel

# EXHIBIT A

## **A PROCLAMATION OF A STATE OF EMERGENCY**

**WHEREAS** the State of California is experiencing record dry conditions, with 2014 projected to become the driest year on record; and

**WHEREAS** the state's water supplies have dipped to alarming levels, indicated by: snowpack in California's mountains is approximately 20 percent of the normal average for this date; California's largest water reservoirs have very low water levels for this time of year; California's major river systems, including the Sacramento and San Joaquin rivers, have significantly reduced surface water flows; and groundwater levels throughout the state have dropped significantly; and

**WHEREAS** dry conditions and lack of precipitation present urgent problems: drinking water supplies are at risk in many California communities; fewer crops can be cultivated and farmers' long-term investments are put at risk; low-income communities heavily dependent on agricultural employment will suffer heightened unemployment and economic hardship; animals and plants that rely on California's rivers, including many species in danger of extinction, will be threatened; and the risk of wildfires across the state is greatly increased; and

**WHEREAS** extremely dry conditions have persisted since 2012 and may continue beyond this year and more regularly into the future, based on scientific projections regarding the impact of climate change on California's snowpack; and

**WHEREAS** the magnitude of the severe drought conditions presents threats beyond the control of the services, personnel, equipment and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

**WHEREAS** under the provisions of section 8558(b) of the California Government Code, I find that conditions of extreme peril to the safety of persons and property exist in California due to water shortage and drought conditions with which local authority is unable to cope.

**NOW, THEREFORE, I, EDMUND G. BROWN JR.,** Governor of the State of California, in accordance with the authority vested in me by the state Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625 of the California Government Code **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in the State of California due to current drought conditions.

### **IT IS HEREBY ORDERED THAT:**

- 1.State agencies, led by the Department of Water Resources, will execute a statewide water conservation campaign to make all Californians aware of the drought and encourage personal actions to reduce water usage. This campaign will be built on the existing Save Our Water campaign ([www.saveourh20.org](http://www.saveourh20.org)) and will coordinate with local water agencies. This campaign will call on Californians to reduce their water usage by 20 percent.
- 2.Local urban water suppliers and municipalities are called upon to implement their local water shortage contingency plans immediately in order to avoid or forestall outright restrictions that could become necessary later in the drought season. Local water agencies should also update their legally required urban and agricultural water management plans, which help plan for extended drought conditions. The Department of Water Resources will make the status of these updates publicly available.
- 3.State agencies, led by the Department of General Services, will immediately implement water use reduction plans for all state facilities. These plans will include immediate water conservation actions, and a moratorium will be placed on new, non-essential landscaping projects at state facilities and on state highways and roads.
- 4.The Department of Water Resources and the State Water Resources Control Board (Water Board) will expedite the processing of water transfers, as called for in Executive Order B-21-13. Voluntary water transfers from one water right holder to another enables water to flow where it is needed most.

**Exhibit A**

5. The Water Board will immediately consider petitions requesting consolidation of the places of use of the State Water Project and Federal Central Valley Project, which would streamline water transfers and exchanges between water users within the areas of these two major water projects.

6. The Department of Water Resources and the Water Board will accelerate funding for water supply enhancement projects that can break ground this year and will explore if any existing unspent funds can be repurposed to enable near-term water conservation projects.

7. The Water Board will put water right holders throughout the state on notice that they may be directed to cease or reduce water diversions based on water shortages.

8. 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. These changes would enable water to be conserved upstream later in the year to protect cold water pools for salmon and steelhead, maintain water supply, and improve water quality.

9. The Department of Water Resources and the Water Board will take actions necessary to make water immediately available, and, for purposes of carrying out directives 5 and 8, Water Code section 13247 and Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are suspended on the basis that strict compliance with them will prevent, hinder, or delay the mitigation of the effects of the emergency. Department of Water Resources and the Water Board shall maintain on their websites a list of the activities or approvals for which these provisions are suspended.

10. The state's Drinking Water Program will work with local agencies to identify communities that may run out of drinking water, and will provide technical and financial assistance to help these communities address drinking water shortages. It will also identify emergency interconnections that exist among the state's public water systems that can help these threatened communities.

11. The Department of Water Resources will evaluate changing groundwater levels, land subsidence, and agricultural land following as the drought persists and will provide a public update by April 30 that identifies groundwater basins with water shortages and details gaps in groundwater monitoring.

12. The Department of Water Resources will work with counties to help ensure that well drillers submit required groundwater well logs for newly constructed and deepened wells in a timely manner and the Office of Emergency Services will work with local authorities to enable early notice of areas experiencing problems with residential groundwater sources.

13. The California Department of Food and Agriculture will launch a one-stop website ([www.cdffa.ca.gov/drought](http://www.cdffa.ca.gov/drought)) that provides timely updates on the drought and connects farmers to state and federal programs that they can access during the drought.

14. The Department of Fish and Wildlife will evaluate and manage the changing impacts of drought on threatened and endangered species and species of special concern, and develop contingency plans for state Wildlife Areas and Ecological Reserves to manage reduced water resources in the public interest.

15. The Department of Fish and Wildlife will work with the Fish and Game Commission, using the best available science, to determine whether restricting fishing in certain areas will become necessary and prudent as drought conditions persist.

16. The Department of Water Resources will take necessary actions to protect water quality and water supply in the Delta, including installation of temporary barriers or temporary water supply connections as needed, and will coordinate with the Department of Fish and Wildlife to minimize impacts to affected aquatic species.

17. The Department of Water Resources will refine its seasonal climate forecasting and drought prediction by advancing new methodologies piloted in 2013.

18. The California Department of Forestry and Fire Protection will hire additional seasonal firefighters to suppress wildfires and take other needed actions to protect public safety during this time of elevated fire risk.

19.The state's Drought Task Force will immediately develop a plan that can be executed as needed to provide emergency food supplies, financial assistance, and unemployment services in communities that suffer high levels of unemployment from the drought.

20.The Drought Task Force will monitor drought impacts on a daily basis and will advise me of subsequent actions that should be taken if drought conditions worsen.

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of January, 2014.

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EDMUND G. BROWN JR.,  
Governor of California

ATTEST:

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DEBRA BOWEN,  
Secretary of State

# EXHIBIT B

## GOVERNOR BROWN ISSUES EXECUTIVE ORDER TO REDOUBLE STATE DROUGHT ACTIONS

4-25-2014

LOS ANGELES - With California's driest months ahead, Governor Edmund G. Brown Jr. today issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water.

"The driest months are still to come in California and extreme drought conditions will get worse," said Governor Brown. "This order cuts red tape to help get water to farmers more quickly, ensure communities have safe drinking water, protect vulnerable species and prepare for an extreme fire season. I call on every city, every community, every Californian to conserve water in every way possible."

In January, the Governor declared a drought state of emergency. Since then, state water officials say that reservoirs, rainfall totals and the snowpack remain critically low. Current electronic readings show the snowpack's statewide water content at just 16 percent of average.

In the order, Governor Brown directs the Department of Water Resources and the State Water Resources Control Board to expedite approvals of voluntary water transfers to assist farmers. He also directs the California Department of Fish and Wildlife to accelerate monitoring of drought impacts on winter-run Chinook salmon in the Sacramento River and its tributaries, and to execute habitat restoration projects that will help fish weather the on-going drought.

To respond to the increased threat of wildfire season, the order streamlines contracting rules for the Governor's Office of Emergency Services and CALFIRE for equipment purchases and enables landowners to quickly clear brush and dead, dying or diseased trees that increase fire danger.

The order also calls on Californians and California businesses to take specific actions to avoid wasting water, including limiting lawn watering and car washing; recommends that schools, parks and golf courses limit the use of potable water for irrigation; and asks that hotels and restaurants give customers options to conserve water by only serving water upon request and other measures. The order also prevents homeowner associations from fining residents that limit their lawn watering and take other conservation measures.

The order provides a limited waiver of the California Environmental Quality Act for several actions that will limit harm from the drought. This waiver will enable these urgently needed actions to take place quickly and will remain in place through the end of 2014.

Last December, the Governor formed a Drought Task Force to closely manage precious water supplies, to expand water conservation wherever possible and to quickly respond to emerging drought impacts throughout the state. In May 2013, Governor Brown issued an Executive Order to direct state water officials to expedite the review and processing of voluntary transfers of water.

Governor Brown has called on all Californians to reduce their water use by 20 percent - visit [SaveOurH2O.org](http://SaveOurH2O.org) to find out how everyone can do their part, and visit [Drought.CA.Gov](http://Drought.CA.Gov) to learn more about how California is dealing with the effects of the drought.

The text of the executive order is below:

### A PROCLAMATION OF A CONTINUED STATE OF EMERGENCY

**WHEREAS** on January 17, 2014, I proclaimed a State of Emergency to exist in the State of California due to severe drought conditions; and

Exhibit B

WHEREAS state government has taken expedited actions as directed in that Proclamation to minimize harm from the drought; and

**WHEREAS** California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall since January, with very limited snowpack in the Sierra Nevada mountains, decreased water levels in California's reservoirs, and reduced flows in the state's rivers; and

**WHEREAS** drought conditions have persisted for the last three years and the duration of this drought is unknown; and

**WHEREAS** the severe drought conditions continue to present urgent challenges: water shortages in communities across the state, greatly increased wildfire activity, diminished water for agricultural production, degraded habitat for many fish and wildlife species, threat of saltwater contamination of large fresh water supplies conveyed through the Sacramento-San Joaquin Bay Delta, and additional water scarcity if drought conditions continue into 2015; and

**WHEREAS** additional expedited actions are needed to reduce the harmful impacts from the drought as the state heads into several months of typically dry conditions; and

**WHEREAS** the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

**WHEREAS** under the provisions of section 8558(b) of the Government Code, I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope; and

**WHEREAS** under the provisions of section 8571 of the Government Code, I find that strict compliance with the various statutes and regulations specified in this proclamation would prevent, hinder, or delay the mitigation of the effects of the drought.

**NOW, THEREFORE, I, EDMUND G. BROWN JR.**, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, including the Emergency Services Act and in particular Government Code section 8567, do hereby issue this Executive Order, effective immediately, to mitigate the effects of the drought conditions upon the people and property within the State of California.

**IT IS HEREBY ORDERED THAT:**

1. The orders and provisions contained in Proclamation No. 1-17-2014, dated January 17, 2014, remain in full force and effect except as modified herein.
2. The Department of Water Resources and the State Water Resources Control Board (Water Board) will immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers, forbearance agreements, water exchanges, or other means. If necessary, the Department will request that the Water Board consider changes to water right permits to enable such voluntary movements of water.
3. Recognizing the tremendous importance of conserving water during this drought, all California residents should refrain from wasting water:
  - a. Avoid using water to clean sidewalks, driveways, parking lots and other hardscapes.

- b. Turn off fountains and other decorative water features unless recycled or grey water is available.
- c. Limit vehicle washing at home by patronizing local carwashes that use recycled water.
- d. Limit outdoor watering of lawns and landscaping to no more than two times a week.

Recreational facilities, such as city parks and golf courses, and large institutional complexes, such as schools, business parks and campuses, should immediately implement water reduction plans to reduce the use of potable water for outdoor irrigation.

Commercial establishments such as hotel and restaurants should take steps to reduce water usage and increase public awareness of the drought through measures such as offering drinking water only upon request and providing customers with options to avoid daily washing of towels or sheets.

Professional sports facilities, such as basketball arenas, football, soccer, and baseball stadiums, and hockey rinks should reduce water usage and increase public awareness of the drought by reducing the use of potable water for outdoor irrigation and encouraging conservation by spectators.

The Water Board shall direct urban water suppliers that are not already implementing drought response plans to limit outdoor irrigation and other wasteful water practices such as those identified in this Executive Order. The Water Board will request by June 15 an update from urban water agencies on their actions to reduce water usage and the effectiveness of these efforts. The Water Board is directed to adopt emergency regulations as it deems necessary, pursuant to Water Code section 1058.5, to implement this directive.

Californians can learn more about conserving water from the Save Our Water campaign ([SaveOurH2O.org](http://SaveOurH2O.org)).

4. Homeowners Associations (commonly known as HOAs) have reportedly fined or threatened to fine homeowners who comply with water conservation measures adopted by a public agency or private water company. To prevent this practice, pursuant to Government Code section 8567, I order that any provision of the governing document, architectural or landscaping guidelines, or policies of a common interest development will be void and unenforceable to the extent it has the effect of prohibiting compliance with the water-saving measures contained in this directive, or any conservation measure adopted by a public agency or private water company, any provision of Division 4, Part 5 (commencing with section 4000) of the Civil Code notwithstanding.

5. All state agencies that distribute funding for projects that impact water resources, including groundwater resources, will require recipients of future financial assistance to have appropriate conservation and efficiency programs in place.

6. The Department of Fish and Wildlife will immediately implement monitoring of winter-run Chinook salmon in the Sacramento River and its tributaries, as well as several runs of salmon and species of smelt in the Delta as described in the April 8, 2014 Drought Operations Plan.

7. The Department of Fish and Wildlife will implement projects that respond to drought conditions through habitat restoration and through water infrastructure projects on property owned or managed by the Department of Fish and Wildlife or the Department of Water Resources for the benefit of fish and wildlife impacted by the drought.

8. The Department of Fish and Wildlife will work with other state and federal agencies and with landowners in priority watersheds to protect threatened and endangered species and species of special concern and maximize the beneficial uses of scarce water supplies, including employment of voluntary agreements to secure instream flows, relocation of members of those species, or through other measures.

9. The Department of Water Resources will expedite the consideration and, where appropriate, the

implementation, of pump-back delivery of water through the State Water Project on behalf of water districts.

10. The Water Board will adopt statewide general waste discharge requirements to facilitate the use of treated wastewater that meets standards set by the Department of Public Health, in order to reduce demand on potable water supplies.

11. The Department of Water Resources will conduct intensive outreach and provide technical assistance to local agencies in order to increase groundwater monitoring in areas where the drought has significant impacts, and develop updated contour maps where new data becomes available in order to more accurately capture changing groundwater levels. The Department will provide a public update by November 30 that identifies groundwater basins with water shortages, details remaining gaps in groundwater monitoring, and updates its monitoring of land subsidence and agricultural land fallowing.

12. The California Department of Public Health, the Office of Emergency Services, and the Office of Planning and Research will assist local agencies that the Department of Public Health has identified as vulnerable to acute drinking water shortages in implementing solutions to those water shortages.

13. The Department of Water Resources and the Water Board, in coordination with other state agencies, will provide appropriate assistance to public agencies or private water companies in establishing temporary water supply connections to mitigate effects of the drought.

14. For the protection of health, safety, and the environment, CAL FIRE, the Office of Emergency Services, the Department of Water Resources, and the Department of Public Health, where appropriate, may enter into contracts and arrangements for the procurement of materials, goods, and services necessary to quickly mitigate the effects of the drought.

15. Pursuant to the drought legislation I signed into law on March 1, 2014, by July 1, 2014, the California Department of Food and Agriculture, in consultation with the Department of Water Resources and Water Board, will establish and implement a program to provide financial incentives to agricultural operations to invest in water irrigation treatment and distribution systems that reduce water and energy use, augment supply, and increase water and energy efficiency in agricultural applications.

16. To assist landowners meet their responsibilities for removing dead, dying and diseased trees and to help landowners clear other trees and plants close to structures that increase fire danger, certain noticing requirements are suspended for these activities. Specifically, the requirement that any person who conducts timber operations pursuant to the exemptions in Title 14, California Code of Regulations sections 1038 (b) and (c) submit notices to CAL FIRE under the provisions of Title 14, California Code of Regulations, section 1038.2 is hereby suspended. Timber operations pursuant to sections 1038(b) and (c) may immediately commence operations upon submission of the required notice to CAL FIRE and without a copy of the Director's notice of acceptance at the operating site. All other provisions of these regulations will remain in effect.

17. The Water Board will adopt and implement emergency regulations pursuant to Water Code section 1058.5, as it deems necessary to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation, and to require curtailment of diversions when water is not available under the diverter's priority of right.

18. In order to ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended for directives 7 and 14. Approval by the Department of Finance is required prior to the execution of any contract entered into pursuant to these directives.

19. For several actions called for in this proclamation, environmental review required by the California Environmental Quality Act is suspended to allow these actions to take place as quickly as possible. Specifically, for actions taken by state agencies pursuant to directives 2, 3, 6-10, 13, 15, and 17, for all actions taken pursuant to directive 12 when the Office of Planning and Research concurs that local action is required, and for all necessary permits needed to implement these respective actions, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. The entities implementing these directives will maintain on their websites a list of the activities or approvals for which these provisions are suspended. This suspension and that provided in paragraph 9 of the January 17, 2014 Proclamation will expire on December 31, 2014, except that actions started prior to that date shall not be subject to Division 13 for the time required to complete them.

20. For several actions called for in this proclamation, certain regulatory requirements of the Water Code are suspended to allow these actions to take place as quickly as possible. Specifically, for actions taken pursuant to directive 2, section 13247 of the Water Code is suspended. The 30-day comment period provided in section 1726(f) of the Water Code is also suspended for actions taken pursuant to directive 2, but the Water Board will provide for a 15-day comment period. For actions taken by state agencies pursuant to directives 6 and 7, Chapter 3 of Part 3 (commencing with section 85225) of the Water Code is suspended. The entities implementing these directives will maintain on their websites a list of the activities or approvals for which these provisions are suspended.

**I FURTHER DIRECT** that as soon as hereafter possible, this Proclamation shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 25th day of April, 2014

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EDMUND G. BROWN JR.  
Governor of California

ATTEST:

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DEBRA BOWEN  
Secretary of State