



NCWA
Northern California Water Association



*To advance the economic, social and environmental sustainability of Northern California
by enhancing and preserving the water rights, supplies and water quality.*

December 14, 2015

Felicia Marcus, Chair
Members of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Item 7, December 15, 2015 Board Meeting--NCWA's Comments Requesting Denial of Proposed Order

Dear Chair Marcus and Members of the Board:

The Northern California Water Association and the Sacramento Valley Water Users (collectively, "NCWA") have reviewed the Proposed Order described above. Rather than adopt the order, we respectfully urge the State Water Resources Control Board (State Water Board) to consider a different and better process to address these important issues over the next several months. Adopting this order in December is premature, particularly when there has been no advance coordination with the various water resources managers who understand our integrated water system and whose input is necessary to assist the State of California in satisfying its important water needs in 2016. The order is simply not necessary at this time.

The most effective processes undertaken by the State Water Board have been collaborative, have encouraged and facilitated creativity and flexibility by water resources and fishery managers, and have provided a workshop forum for healthy and constructive discourse. The Proposed Order does not facilitate any of these important ingredients for a successful process. Instead, the Proposed Order would propose rigid and artificial operational parameters that will stifle any creativity in water resources management that will be necessary as we continue initial planning for the 2016 water year.

NCWA thus proposes that the State Water Board provide a sequenced process over the next several months as follows. First, the State Water Board should more specifically address the petitions and objections to the previous temporary urgency change orders without resorting to new requirements concerning future 2016 operations. In the meantime, the project operators and the fishery agencies will be seriously undertaking their continued consultations, which we assume will include planning for various hydrologic and water management scenarios that will address these important issues in the context of an integrated and thoughtfully considered water management system. Second, we suggest that the State Water Board schedule regular briefings

and workshops with these agencies to provide public updates, allow for input by the State Water Board members and others, and offer a full evaluation of these different scenarios depending upon hydrology and other important factors. During this time, DWR and Reclamation will determine whether continued dry conditions dictate the need to submit another petition for temporary change to the State Water Board, which would then be evaluated by the State Water Board.

As part of this process, NCWA again requests to have water agency representatives involved in the Sacramento River Temperature Task Group (SRTTG) and related processes. We first made this request in December 2013 (see attached letter) and the lack of this direct participation has led to less than ideal coordination on the Sacramento River. This has limited a full understanding of the dynamics on the Sacramento River and the water resources managers' ability to fully cooperate and assist in these efforts. Specifically with respect to salmon, there has been a concerted effort to implement the Sacramento Valley Salmon Recovery Program over the past several years and these efforts will continue. Effective coordination and mutual understanding of the issues--which are fostered through inclusion of water agency representation on the SRTTG--is essential to continued success of the Salmon Recovery Program.

The water resources managers in the Sacramento Valley have proactively managed the limited water resources for multiple beneficial uses, including domestic deliveries to cities and rural communities and in supplying water for farms, fish and birds. It is important to recognize that all of these beneficial uses have suffered supply deficits during the past several years; yet because of creative water resources management, all of these beneficial uses have received more water than they otherwise would have in either natural conditions or without this creative water management. We therefore call on the State Water Board, through this process and others, to help foster this type of creative water resources management that focuses on serving multiple beneficial uses rather than simply focusing on one beneficial use as suggested in the order.

We have previously expressed our concerns and objections to the State Water Board's expansion of authority under the Temporary Urgency Change Petitions (TUCP) filed by Reclamation and DWR, and the expansion of authority under the Executive Director's orders on the TUCP. We incorporate and reiterate our prior objections here. We also add our serious concerns with this process for considering the Proposed Order on the many petitions for reconsideration and objections filed over several months during the 2015 TUCP process.

Reclamation and DWR filed the latest TUCP on May 20, 2015, requesting certain changes to conditions of their water right permits and licenses for the operation of the Central Valley Project (CVP) and the State Water Project (SWP). The May 20, 2015 petition requested these modifications for the months of July to November 2015, and a corresponding renewal of the February 3, 2015 Temporary Urgency Change Order, as amended, for 180 days from July 1, 2015. The State Water Board granted in part and denied in part the May 20, 2015 petition in its July 3, 2015 Order, which expires December 30, 2015.

Reclamation and DWR have not submitted any additional request for renewal of the July 3 Order. Therefore, NCWA questions the authority of the State Water Board to renew, continue, or modify the July 3 Order and the conditions therein. Water Code section 1441 allows for renewal of a temporary change order issued pursuant to Chapter 6.6 for 180 days upon a request for

renewal from the permit or license holder. There is no such request here. The State Water Board is acting outside of the parameters of the temporary change process provided in Chapter 6.6. The Proposed Order effectively modifies the water right permits and licenses for the CVP and SWP, without any of the required process for such a modification.

Additionally, the Proposed Order intends to grant in part and deny in part ten petitions for reconsideration filed by parties during the TUCP process. As the Proposed Order acknowledges, Water Code section 1122 governs petitions for reconsideration to the State Water Board in this context. That section provides that the State Water Board must “order or deny reconsideration on a petition therefor not later than 90 days from the date the board adopts the decision or order.” (Water Code §1122.) Further, the authority of the State Water Board to act on its own motion on the petitions for reconsideration expires 30 days after it adopted the decision or order. (*Ibid.*) NCWA questions whether the State Water Board can issue an order on the petitions for reconsideration at all, given that the 90-day statutory period for the State Water Board to rule upon the reconsideration petitions has long-since passed.

NCWA also disagrees with the brief analysis and conclusory findings reached in the Proposed Order regarding the many substantive legal issues presented in the petitions for reconsideration and objections. For example, in response to NCWA’s objections, the Proposed Order states that Water Code section 1435 does not require findings for conditions of approval, and specifically does not require findings on the effects of the Temperature Management Plan (TMP) requirement. (Proposed Order, p. 50.) This statement is in direct contradiction with the language of Water Code section 1435(b)(4), which provides that:

[p]rior to issuing a change order pursuant to this chapter, the board shall make all the following findings...*including findings to support change order conditions* imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses. (Italics added.)

“Conditions of approval” like the TMP requirement, as it was crafted in the July 3 Order, are “change order conditions” under the statute, and require the same findings to support their imposition in any TUCP order.

Similarly, the Proposed Order inaccurately summarizes NCWA’s objections to the Executive Director’s unilateral authority over the TMP and implementation of that planning process, and glosses over the argument. The Proposed Order implies that NCWA objected to the preparation and implementation of a TMP. (Proposed Order, p. 49.) That is not the case.¹ Rather, NCWA objected to the manner in which the Executive Director was using the TMP requirement to circumvent the finding requirements of Water Code section 1435 by imposing operational conditions in the TMP instead of the TUCP order. The Proposed Order continues this shortcut approach. Under proposed condition 3, Reclamation “shall make any changes to the [TMP] that the Executive Director requires and shall implement the plan upon approval by the Executive

¹ Indeed, NCWA stated the exact opposite in its July 31, 2015 objection letter: “NCWA and the SRS Contractors do not object to a Temperature Plan generally as a condition in the Order.”

Director.” (Proposed Order, p. 61.) NCWA incorporates its objections to the same problematic language in the Proposed Order. We urge the State Water Board to discontinue the practice of allowing the Executive Director to unilaterally dictate the terms of the TMP (such as carryover requirements), and the practice of avoiding the minimum process provided in Water Code section 1435.²

The foregoing issues are only a few of the problems presented by the expedited process being employed to adopt this Proposed Order. The significant questions and concerns submitted in the petitions for reconsideration and objections are not being given the attention and debate necessary to avoid the same problems if drought conditions persist in 2016. Accordingly, NCWA respectfully urges the State Water Board to not adopt the Proposed Order, and instead to develop a different and improved public process, consistent with the points herein and those expressed by other interested water resource agency parties. In the meantime, NCWA remains committed to continue working with the State Water Board, Reclamation, DWR, and state and federal fish and wildlife agencies to seriously address the effects of the drought.

Sincerely yours,



David J. Guy
President

cc: Gordon Burns
Tom Howard
David Murrillo
Mark Cowin

² Again, the process outlined in Chapter 6.6 of the Water Code is an exception, based on an emergency, to the general procedure for seeking changes to permits and licenses. The statute acknowledges that the permittee or licensee is seeking, and the SWRCB is approving, a temporary, urgent change “without complying with other procedures or provisions of this division....” (Water Code, §1435(a).) As this TUCP process has developed, the State Water Board has gone far beyond approving temporary changes to permits and licenses. The Proposed Order, and in turn the process surrounding the TMP, has essentially resulted in the State Water Board’s micromanagement of the CVP. Through approvals, suspensions of approvals, and conditions on approvals, we have reached a point where the Executive Director has ordered how much water will be released from which reservoir at which time, all while bypassing the last procedural requirements left in the TUCP process—the necessary findings in section 1435.



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December 12, 2013

The Honorable Felicia Marcus
Chair, State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Sacramento River Settlement Contractor Representation on the Sacramento River Temperature Task Group

Dear Chair Marcus:

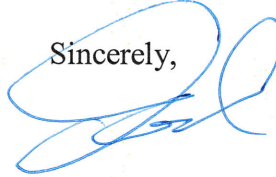
As you know, the Sacramento River Temperature Task Group (SRTTG), which was formed pursuant to State Water Resources Control Board (SWRCB) Orders 90-5 and 91-1, serves an important role in efforts to improve Chinook salmon habitat in the Sacramento River. Currently, the SRTTG includes members representing state and federal agencies and two Northern California tribes. The Northern California Water Association is asking for your assistance in adding a Sacramento River Settlement Contractor representative to the SRTTG.

The SRTTG annual efforts to guide the Bureau of Reclamation's temperature operations plans for the Shasta and Trinity divisions of the Central Valley Project would benefit greatly from the inclusion of a Sacramento River Settlement Contractor perspective. This representative could provide practical input on the impact of different water management decisions as well as opportunities to coordinate efforts to increase the value of temperature control actions to Chinook species in the Sacramento River. This input would also create great opportunities for real-time coordination and monitoring of temperature control flows.

The Settlement Contractors on the Sacramento River over the past several decades have implemented numerous projects to enhance fish passage for salmonids in the Sacramento River. One example of this work is the comprehensive program to install state-of-the-art fish screens on all of the major diversions on the Sacramento River. This effort is nearing completion with the last two major diversions preparing to be screened. The Settlement Contractors and other Sacramento Valley water suppliers have also developed a comprehensive list of fish passage and habitat improvement projects to help guide and prioritize work on the Sacramento River and its tributaries for the next several years. In addition, Settlement Contractors also are responsible for the delivery of water supplies to provide Pacific Flyway habitat on Federal Refuges, State Wildlife Areas, managed wetlands and agricultural lands in the Sacramento Valley.

The inclusion of a Settlement Contractor on the SRTTG would help to bring together the different efforts that are underway in the Sacramento River to help Chinook salmon. This shared information and potential for enhanced coordination would benefit the fish and create opportunities for complementary activities. Because of this, we ask that you add a Sacramento River Settlement Contractors representative to the SRTTG.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David J. Guy', is written over the word 'Sincerely,'.

David J. Guy
President