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## State Water Resources Control Board

January 16, 2024

Ms. Cathy Marcinkevage  
Assistant Regional Administrator  
NOAA's National Marine Fisheries Service  
West Coast Region  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

### DRY CONDITIONS ON THE MERCED RIVER IN 2022

Dear Ms. Marcinkevage:

This letter responds to correspondence from your office regarding very low flow and dry river conditions in the Merced River during the summer and early fall of 2022.<sup>1</sup> In your correspondence you request that the State Water Resources Control Board (State Water Board or Board) investigate and take actions to avoid drying of the river in the future. In addition to letters from your office, the Board also received correspondence from multiple other parties related to this matter.<sup>2</sup>

Board staff have been actively analyzing river flow data, reported diversion data, and other information since receipt of your letter in 2022 in order to identify factors causing or contributing to the observed dry riverbed conditions. Multiple factors can contribute to stream dewatering, including record drought conditions, groundwater pumping, and authorized and unauthorized (illegal) river diversions. The scope of the Board's investigation is initially focused on evaluating the effect of authorized and unauthorized diversions on river flow, as well as identifying the timing and location of flow losses. We anticipate making the results of our analysis available for public review and input later in 2024.

The State Water Board had adopted emergency curtailment regulations for the Sacramento-San Joaquin Delta watershed, which were in effect during the summer and fall of 2022. However, those emergency regulations did not include a minimum instream flow component. Our preliminary work suggests that water diversion and use under non-curtailed water rights and claims could explain the very low flow and dry conditions in the lower reach of the Merced River even in the absence of curtailed or other unauthorized diversions. Review of flow gage and water use information shows that non-curtailed water right holders and claimants reported diverting more than 100 percent of the full natural flow of the Merced River from July through September.

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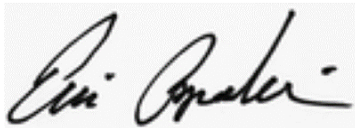
E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

Uncurtailed diversions also appear to have driven the dry conditions observed in parts of June and October of 2022, although the analysis for these months is complicated by the monthly nature of reported diversion data. Accordingly, it is possible that the full flow of the river could have been legally diverted when dry conditions were observed.

The State Water Board is evaluating methods to maintain a year-round connected river to the confluence with the San Joaquin River as part of ongoing efforts to update and implement flow requirements for the Merced River and other Lower San Joaquin River tributaries. Current instream flow requirements<sup>3</sup> may not prevent drying of the lower reaches of the Merced River during extremely dry hydrologic conditions because those requirements do not apply to the lower reaches of the Merced River. However, new and revised instream flow requirements are expected to be in effect in the future with implementation of the 2018 updates to the Bay-Delta Water Quality Control Plan (Plan). Implementation of the Plan will require flows on the Merced River (as well as the Tuolumne and Stanislaus Rivers) to the confluence with the San Joaquin River from February through June. In addition, the Federal Energy Regulatory Commission (FERC) relicensing and water quality certification processes for the Merced River and Merced Falls Hydroelectric Projects have evaluated year-round flow requirements below those facilities. We look forward to additional conversations with your team to consider ways to add to these existing protections, including actions to ensure flows to the confluence from July through January.

The State Water Board appreciates input from and looks forward to coordinating with NMFS, CDFW, and other watershed partners on possible approaches to avoid further drying of the Merced River under the authorities of our partner agencies or within the State Water Board's authorities.<sup>4</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Oppenheimer", is placed on a light gray rectangular background.

Eric Oppenheimer  
Executive Director

CC: Julie A Vance  
Regional Manager  
California Department of Fish and Wildlife

Phillip McMurray  
General Counsel  
Merced Irrigation District

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission

Julie Zimmerman  
Director of Freshwater Science  
The Nature Conservancy

Keiko Mertz  
Policy Director  
Friends of the River

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<sup>1</sup> October 27, 2022 Letter from NMFS to the State Water Board Re: NOAA'S National Marine Fisheries Service notice to State Water Resources Control Board regarding 2022 Merced River Conditions; March 1, 2023 Letter from NMFS to the State Water Board Re: Flow Recommendations for the Lower Merced River to Support Fisheries; November 21, 2023 Letter from NMFS to State Water Board Re: Comment Letter – Bay-Delta Plan Final Initial Biological Goals for the Lower San Joaquin River Flow Objectives.

<sup>2</sup> November 22, 2022 Letter from CDFW to State Water Board: California Department of Fish and Wildlife Notice to State Water Resources Control Board regarding 2022 Merced River Conditions; December 5, 2022 Letter from Merced Irrigation District to State Water Board Re: Merced River Hydroelectric Project (P-2179) and Merced Falls Hydroelectric Project (P-2467)-National Marine Fisheries Service's October 27, 2022 letter to State Water Resources Control Board Regarding Merced River Conditions; November 16, 2023 Letter from The Nature Conservancy to State Water Board Subject: Criteria for the Lower Merced River to Protect Ecological Condition; January 8, 2024 Letter from Friends of the River and California Sportfishing Protection Alliance to State Water Board Re: 2022 Merced River Dewatering and Protective Year-Round Regulations

<sup>3</sup> The Federal Energy Regulation Commission (FERC) dry year instream flow requirement of 15 cubic feet per second at Shaffer Bridge was met all summer 2022. CDEC Merced River at Shaffer Bridge (CDEC code MBN) event flow data from June – October 2022  
[https://cdec.water.ca.gov/dynamicapp/selectQuery?Stations=MBN&SensorNums=20&dur\\_code=E&Start=2022-06-00&End=2022-10-20](https://cdec.water.ca.gov/dynamicapp/selectQuery?Stations=MBN&SensorNums=20&dur_code=E&Start=2022-06-00&End=2022-10-20)

<sup>4</sup> Merced Irrigation District suggested the State Water Board appoint a Watermaster, but within California Water Code section 4050, appointment of a Watermaster is not within the Board's authority; [Department of Water Resources Watermaster Services](#)  
<https://water.ca.gov/programs/all-programs/system-reoperation-program/watermaster-services#:~:text=California%20Water%20Code%2C%20Section%204201,percent%20by%20water%20right%20holders>