

**Congress of the United States**  
Washington, DC 20510

February 11, 2015

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

Dear Chairwoman Marcus,

Water is so precious during our State's extraordinary drought that agencies need immediate flexibility, based on best available information, to maximize the benefit from every drop for both human and environmental needs. We therefore urge you to reconsider immediately the portion of your Executive Director's February 3, 2015 order that denied additional near-term operational flexibility as expressed in the Temporary Urgency Change Petition submitted to the Executive Director by the U.S. Bureau of Reclamation Mid-Pacific Regional Director and the California Department of Water Resources Director on January 23, 2015.

We urgently request that State Water Resources Control Board (the Board) approve the petition in full and allow State and Federal agencies to collectively manage the Central Valley Project and State Water Project on a real-time basis to provide water to communities in dire need while maintaining environmental protections. Our State cannot afford any lesser degree of operational flexibility during this unprecedented crisis.

The project operators petitioned the Board for this flexibility with the complete concurrence of the U.S. Fish and Wildlife Service Pacific Southwest Regional Director, the National Marine Fisheries Service West Coast Regional Administrator, and the California Department of Fish and Wildlife Director. These agencies have the direct, day-to-day responsibility for operating the Central Valley Project and State Water Project to meet multiple demands consistent with federal and state law. We believe the petition fulfills that responsibility, and urge the Board to accept these combined agency recommendations as the best way forward for California to avoid exacerbating the already-disastrous consequences of the drought.

## **Worsening Drought Conditions**

The State is now in its fourth consecutive year of below-average precipitation, and the second year of the emergency drought declaration. Gains from a few storms in December were quickly wiped out by one of the driest Januaries on record. Shasta Reservoir and Lake Oroville are well below 50 percent capacity. The statewide snowpack is at 21 percent of normal. The U.S. Drought Monitor shows 78 percent of the State under “Extreme Drought” and 39 percent under “Exceptional Drought.” 2015 is the eighth of the last nine years with below-average run-off, resulting in “chronic and significant” surface and ground water shortages.

These sobering statistics barely begin to tell the story of the difficulties unfolding in many parts of the State and most significantly in the San Joaquin Valley. As a result of this severe, prolonged drought:

- Many Central Valley towns have unemployment rates that are triple or quadruple that of the state average of 7 percent due to significantly reduced employment in the agricultural sector. For example, Mendota has 31.6 percent unemployment, and San Joaquin has 28 percent.
- The total number of food boxes distributed state-wide to community food banks increased nearly ten-fold between May 2014 (46,000 boxes) and January 2015 (425,050 boxes).
- At least 1,760 wells have run dry in the State. In the Porterville area, emergency drinking water and shower stations have been in place for the last seven months because wells to people’s homes have failed.
- Total estimated economic loss is more than \$1.7 billion.
- South-of-Delta CVP contractors received zero percent allocation of water last year, and are anticipating the same this year.
- Last year, the Bureau of Reclamation was unable to meet its substitute water supply obligation to the San Joaquin River Exchange Contractors and Reclamation gave Friant Water Authority contractors a zero percent allocation – the first time in the 65 year history of the project.

Our constituents have told us that some do not even have water for basic necessities like cooking, drinking, and showering, and that some are abandoning their homes and moving out of State.

Wildlife and refuges are suffering too. The fall trawl surveys showed record low numbers for Delta smelt. Low water flows and higher-than-normal water temperatures have killed off many endangered winter-run salmon eggs and fry. Habitat for migratory birds has shrunk dramatically.

### **The Temporary Urgency Change Petition for Operational Flexibility**

On January 23, 2015, the Bureau of Reclamation and the California Department of Water Resources submitted a Temporary Urgency Change Petition (TUCP) to the Board requesting a temporary modification to Water Rights Decision (D-1641). The goal is to “allow management of reservoir releases [to] conserve upstream storage for fish and wildlife protection and Delta salinity control while allowing for critical water supply needs exports.”

We recognize and appreciate the Executive Director’s decision to grant the petition in part, allowing adjustments to the minimum monthly Delta outflow requirement, San Joaquin River flows at Vernalis, and Delta Cross Channel Gates operations. These changes will provide project operators limited flexibility to enhance water project deliveries to central and southern California, as well as preserve water in storage for use later in the year.

However, the project operators requested a crucial adjustment to water export rates to “reflect[] an appropriate balance between competing beneficial needs” – an intermediate pumping level of 3,500 cubic feet per second (cfs), instead of last year’s limit of 1,500 cfs, when Delta outflow is between 5,500 and 7,100 cfs. This temporary change would provide system operators some limited, but needed flexibility to increase exports only when more water is moving through the system while maintaining protections for species. The National Marine Fisheries Service affirmed: “the combined export limit of 3,500 cfs would only apply to natural or abandoned flow. Combined exports will be limited to 1,500 cfs if reservoir releases are necessary to meet D-1641 or other water quality requirements.”

Much to our disappointment, the Executive Director denied this important request. As a result, exports will be limited to 1,500 cfs unless all D-1641 standards are met, limiting the flexibility of the project operators to increase pumping when entrainment risks are reduced or negligible. From the day the order went into effect until storm flows arrived in the Delta, as much as 10,000 acre feet or 3.25 billion gallons of water was lost. More could be lost after storm flows subside.

## The State Water Board's Reasoning

We are aware that the Board shares the difficult task of balancing all beneficial uses of water for human and environmental uses.

However, we are strongly opposed to the Executive Director's denial of the export adjustments. We know the exports can be done without harm to fish. Three Federal and State fish agencies, solely responsible for ensuring the application of the Endangered Species Act for protected species in the Delta, concurred with Reclamation's and DWR's TUCP.

- **U.S. Fish and Wildlife Service:** "The Service accepts Reclamation's determination [that the proposed drought actions will result in no additional adverse effects on Delta Smelt or its critical habitat for the months of February and March 2015 beyond those [in] the 2008 BiOp]."
- **National Marine Fisheries Service** said the proposals "were considered in the underlying analysis of the [salmon BiOp], [and are] not likely to jeopardize the continued existence of [the listed species under the salmon BiOp]," nor "exceed levels of take anticipated [under the salmon BiOp]."
- **California Department of Fish and Wildlife confirmed** that the proposals are consistent with the California Endangered Species Act and the biological opinions.

Additionally, the operators proposed to continue coordination with the fish agencies and the Board through the Real-Time Drought Operations Management Team to "evaluate the physical and biological data on an ongoing basis" and to ensure decisions meet the requirements of the California Endangered Species Act, the Federal Endangered Species Act, and the governing biological opinions.

Thus, it is difficult to understand how the Executive Director decided that there would be an "elevated risk of entrainment impacts" that justifies denying the interim export proposal altogether.

In response to the operators' proposal to conduct additional monitoring to avoid fish entrainment, the Executive Director wrote, "it is not clear if that monitoring would be adequate to avoid entrainment impacts given the concerns with the accuracy of entrainment estimates . . . ." However, in the same breath, he denied the export proposal based on an undefined "potential additional risk of entrainment." It is unclear how he could assert a "potential" risk of entrainment

sufficiently to deny the export adjustment, but yet simultaneously dismiss the fish agencies' monitoring as not being adequate or accurate enough.

Also, the Executive Director cited an upcoming storm event as aggravating circumstances. However, the storm ended quickly, and higher outflows are not expected to last. We do not understand why the Executive Director would deny a proposal designed to address conditions through March without at least a more targeted counter-proposal that allows the project operators to adjust operations in real-time – an approach the project operators and fish agencies had successfully implemented in December to allow for more water pumping while avoiding harm to Delta smelt.

In short, we find the Executive Director's reasons for denial unpersuasive and unsupported by the facts that have been carefully evaluated by five State and Federal agencies.

### **Conclusion**

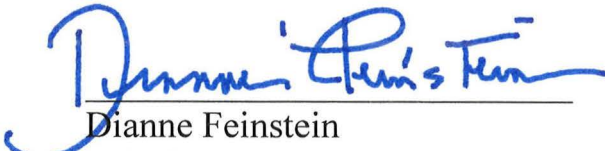
We appreciate the difficult task that has been placed in front of the Board, but we are running out of time and water because we do not know how many more storms will hit California this year.

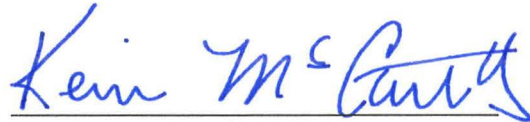
When five agencies – including three tasked with protecting fish – have already assessed and concurred that the export adjustment would *not* cause harms beyond those allowed under the most stringent statutes and biological opinions, we believe the Executive Director should not have rejected the agencies' shared assessment and denied the export adjustment in the TUCP without a compelling rationale for taking such an extraordinary action.


We strongly urge you to reconsider the Executive Director's February 3, 2015 order, and to immediately approve the project operators' TUCP fully so they have the greatest possible operational flexibility at their disposal to capture water and to meet the many competing uses of water in our drought-ridden State.

Thank you for your urgent attention to this important matter.


Sincerely,

  
Dianne Feinstein  
U.S. Senator

  
Kevin McCarthy  
House Majority Leader

  
Ken Calvert  
Chairman  
Appropriations Subcommittee  
on Interior, Environment, and  
Related Agencies

  
Jim Costa  
Member of Congress

  
Jeff Denham  
Member of Congress

  
Devin Nunes  
Member of Congress

  
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Cc:

Frances Spivy-Weber, Vice Chair, State Water Resources Control Board  
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Steven Moore, Member, State Water Resources Control Board  
Dorene D'Adamo, Member, State Water Resources Control Board