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June 14, 2023

Via Electronic Mail Only

Ms. Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Email: Eileen.Sobeck@Waterboards.ca.gov

Re: Sacramento River Settlement Contractors' Comments on the 2023 Temperature Management Plan and Response to NRDC, et al.'s, Objection to the Draft Temperature Management Plan for Shasta Operations Under Water Rights Order 90-5

Dear Ms. Sobeck:

On behalf of the Sacramento River Settlement Contractors (SRS Contractors), we write to support the June 7, 2023 Sacramento River Temperature Management Plan (TMP) submitted by the U.S. Bureau of Reclamation (Reclamation) and to address the "Objection to the Draft Shasta Temperature Management Plan Submitted Pursuant to Water Rights Order 90-5" (Objections) submitted by the Natural Resources Defense Council, et al. (NRDC). For the first time in four years, the Sacramento Valley experienced very wet conditions during the winter season, and Shasta Reservoir is full. The operations plan and modeling included in the TMP shows modeled temperatures of 53.1°F and less from May through November at the Sacramento River above Clear Creek (CCR) compliance location¹ and a projected end-of-September storage of 3.3 million acre-feet, using conservative modeling assumptions. The proposed operations provide very positive conditions for the fishery and for municipal and agricultural water supply, especially after the extended drought. If the cold water is managed properly this year, cold water will also be available for fall run salmon spawning in the mainstem Sacramento River below Keswick Dam.² Even with this good news for both environmental resources and water supply in the Sacramento Valley, NRDC objected to the Draft TMP and asks for reductions to the SRS Contractors' diversions. NRDC's Objections are unfounded and should not be considered as part of this year's temperature management planning process. The SRS Contractors support the operations plan included in the TMP and ask the Executive Director to refrain from any objection under Water Rights Order 90-5 (Order 90-5).

¹ The CCR compliance location is 9.7 miles downstream of Keswick Dam. Balls Ferry (BSF) is 25 miles downstream of Keswick Dam. Bend Bridge (BND) is 41 miles downstream of Keswick Dam, and Red Bluff Diversion Dam (RBDD) is 58 miles downstream of Keswick Dam.

² Approximately 35 percent of fall run Chinook salmon spawn in the mainstem Sacramento River with the remaining 65 percent spawning on other non-dammed natal tributaries to the Sacramento River. See U.S. Fish & Wildlife Service, California Department of Fish & Wildlife, and NOAA Fisheries, 2021 Sacramento River Temperature Management Workshop Salmon Conditions and Status, *available at* https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/sacramento_river/docs/2021/wro90/2021-04-21_item_03_fisheries_status_combined_2021_swrcb_presentations_final_4-19-21.pdf.

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Regarding NRDC's Objection, NRDC first claims that Reclamation misstates its legal obligations under Order 90-5 in the Draft TMP because the Draft TMP does not demonstrate whether it is possible to meet 56°F at RBDD or whether factors beyond Reclamation's reasonable control prevent compliance at RBDD. NRDC is mistaken in its interpretation of the meaning and intent of Order 90-5.

Order 90-5 limits Reclamation's obligations to factors within its "reasonable control" because of the Controllable Factors Policy in the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan).³ The water quality objective of 56°F from Keswick Dam to Hamilton City applies only to "controllable water quality factors, not to uncontrollable factors." Order 90-5 at 6. The State Water Resources Control Board (State Board) explained that "[d]epending upon the amount of water in storage at Shasta, ambient air temperatures, tributary inflow, and possibly other factors, [Reclamation's] existing facilities often cannot control temperatures in the entire reach at 56°F or less." *Id.* at 18. Thus, Order 90-5 allows Reclamation to move the compliance location upstream when factors beyond the reasonable control of Reclamation prevent it from maintaining 56°F at RBDD. The permit condition itself states "[f]actors beyond the reasonable control of the Permittee at a given location include, but are not limited to, (1) conditions where protection of the fishery can best be achieved by allowing a higher temperature in order to conserve cool water for a later release, and (2) conditions where allowing a higher temperature is necessary to implement measures to conserve winter run Chinook salmon." *Id.* at 55. The State Board further explained that if Reclamation "were to make excessive releases of cool water to achieve cooler temperature in the short term at the expense of cold water reserves necessary to protect the fishery later in the year, [Reclamation] would not be exercising reasonable control." *Id.* at 48; *see also id.* at 18 ("[Reclamation] must plan its releases so that it does not run out of cool water late in the season").

Thus, it is not the intent of Order 90-5 to require Reclamation to meet the 56°F objective at the most downstream location. Given that the Basin Plan objective applies to the Sacramento River from Hamilton City to Keswick Dam, Order 90-5 sets a compliance location at RBDD and then explicitly instructs Reclamation to move the compliance location upstream if using cold water to maintain 56°F at RBDD will be detrimental to the fishery and "at the expense of cold water reserves necessary to protect the fishery later in the year." *See* Order 90-5 at 48. Order 90-5 recognizes the tradeoffs, noting that "during some times of the year spawning salmonid adults or eggs do not occupy the entire affected reach" but at the same time recognizing that "any shortening of the protected reach during the period when spawning salmon and eggs are present may limit the production of salmon." *Id.* at 19. Thus, Order 90-5 clearly acknowledges that "it is necessary that the length of the reach to be protected be **flexible**." *Id.* (emphasis added).

The context for the State Board's adoption of Order 90-5 is also important to consider. In 1990, there was no temperature control device (TCD) for Shasta Dam and very little available data on water temperatures in Shasta Lake or downstream in the Sacramento River. Most of Order 90-5 concerns the need for the TCD and the schedule for its construction. Thus, the inclusion of RBDD in Order 90-5 as an initial compliance location was not based on any understanding of the temperatures Reclamation could actually achieve based on the operation of the yet-to-be-constructed TCD and the

³ The Basin Plan states that achievement of water quality objectives "depends on applying them to controllable water quality factors. Controllable water quality factors are those actions, conditions, or circumstances resulting from human activities that may influence the quality of the waters of the State, that are subject to the authority of the State Water Board or the Regional Water Board, and that may be reasonably controlled." Basin Plan at 3-2.

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size of the cold-water pool in a particular year. Indeed, since Order 90-5 has been adopted and the TCD has been operational, Reclamation has never attempted to meet 56°F at RBDD for an entire temperature management season, and it has only been met at Bend Bridge in a handful of years.

In recent years, the management focus has been on using the cold-water pool to maintain temperatures as close to 53.5°F where redds are actually located and during the most beneficial time in the incubation period for endangered winter run Chinook salmon, optimizing carryover storage to mitigate the risk of drought conditions if they occur in the next water year. This approach is fundamentally at odds with the suggested operations in NRDC's Objections where NRDC proposes using the cold-water pool to meet 56°F at a location as far downstream as possible. This operation would both waste cold water in the "short term at the expense of cold water reserves necessary to protect the fishery later in the year," and require higher releases to convey the cold water that would only result in reducing carryover storage for the next water year. *See* Order 90-5 at 48. Under the terms of Order 90-5, Reclamation "would not be exercising reasonable control" by even proposing this approach for Shasta operations. Instead, for Water Year 2023, Reclamation's temperature strategy targets 53.5°F or less at CCR through November, consistent with a Tier 1 year as described in the proposed action analyzed in the 2019 National Marine Fisheries Service Biological Opinion. Based on the temperature modeling provided in Attachment 2 to the TMP, targeting 53.5°F at CCR will result in temperatures between 56°F and 58°F at BSF for most of the irrigation season and less than 56°F after August, the same period when NRDC claims cold temperatures are necessary for fall run Chinook salmon. Based on the modeling provided in Attachment 4 to the TMP, the proposed operations are estimated to result in near zero percent temperature dependent mortality for winter-run Chinook salmon eggs during incubation.



NRDC also asks the State Board to formally initiate a water rights proceeding to modify Order 90-5 to provide more explicit protections for fall run Chinook salmon. There is nothing in the TMP that necessitates any such proceeding. Instead, NRDC's requests again ignore the Controllable Factors Policy in the Basin Plan and cited in Order 90-5. Water quality objectives "apply to controllable water quality factors, not uncontrollable factors." Order 90-5 at 6. Because of the "amount of water in storage at Shasta, ambient air temperatures, tributary inflow, and possibly other factors," Reclamation cannot reasonably control the temperatures at the level and for the distance that NRDC demands. *See id.* at 18. Indeed, in the TMP, Reclamation notes that additional modeling presented to the Sacramento River Temperature Task Group (SRTTG) demonstrated that it would not be feasible to target 53.5°F at BSF primarily due to the high, warm water flow from the tributaries entering the Sacramento River. A proceeding to modify Reclamation's water rights would not change the Controllable Factors Policy or the 56°F water quality objective in the Basin Plan.

The SRS Contractors acknowledge that changes are needed to the temperature management planning process under Order 90-5. As explained above, Order 90-5's default compliance location at RBDD was established under the previous water quality control plan for the Bay-Delta, which had different operations and objectives, and before Reclamation had any operational experience with the TCD. Order 90-5 is outdated and is inconsistent with current knowledge on where salmon spawn and when they need the coldest water during the incubation period. Moreover, there is too much uncertainty regarding the timing of the State Board's consideration of the TMP and the universe of conditions that State Board staff have imposed is unpredictable and unfounded. Instead of expending resources on planning scenarios in a year when Shasta is full, the SRS Contractors suggest that the State Board direct resources to developing an updated and well-defined process that provides certainty to our communities, our environment, and our region that coexist with the Sacramento River.

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The SRS Contractors respectfully request that the State Board ignore NRDC's Objections and that the Executive Director refrains from objecting to the TMP for the 2023 water year.

Very truly yours,

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