
State Water Resources Control Board

March 11, 2015

The Honorable Jean Fuller
California State Senate
State Capitol, Room 3063
Sacramento, CA 95814

Dear Senator Fuller:

Thank you for your February 11, 2015 letter to the State Water Resources Control Board (State Water Board), co-signed by several other members of the Legislature, regarding my February 3, 2015 order. That order provides additional flexibility to water project operators to ameliorate effects of the drought. California's response to the continuing drought has been extraordinary and dynamic. As an example, last week I issued a revised order that largely addresses issues raised in your letter.

Your letter urges reconsideration of the February 3 order. The February 3 order responded to a Temporary Urgency Change Petition submitted by the Department of Water Resources (DWR) and United States Bureau of Reclamation (USBR) on January 23, 2015. The petition requested modifications to the complex water rights permits that govern water project operations affecting the Sacramento-San Joaquin Delta. Those water right permits contain conditions to protect other water right holders and the environment. The formal reconsideration by the State Water Board members is on-going and will be the subject of board meetings and a board order later this spring. Your letter also asks that I provide a written description of the scientific analysis used in my decision if the State Water Board or I determine that a reversal of the order is not appropriate.

As your letter recognizes, California is entering its fourth consecutive year of below-average rainfall and very low snowpack. California's drought is having devastating effects on communities, farmers, farm workers, the fishing industry, and the environment. Managing impacts on these users and properly balancing each sector's needs has been challenging.

We are very aware of the challenges facing Californians living in the Central Valley, many of whom are among the hardest hit. Hundreds of thousands of acres of farmland have been fallowed and tens of thousands of farm jobs have been lost. The drought is tearing the fabric of many Central Valley communities. For this reason, the State Water Board and other state agencies have taken an unprecedented series of actions to lessen the drought's impact on people and to conserve and to move more water.

For more than a year, the state has mobilized its resources to help people harmed by the drought. For example, as of last month, the Department of Social Services has provided nearly 500,000 boxes of food to community food banks in drought-impacted counties. The Department of Housing and Community Development has provided more than \$7 million to nearly 4,500 households in 21 counties for rental assistance. The Department of Community Service and Development has expended nearly \$600,000 to help families, mostly in the Central Valley, pay their water bills. In East Porterville, the California Office of Emergency Services is in the process of supplying up to 300 households with water supply holding tanks plumbed directly into homes, and the state is funding the installation of groundwater wells in the City of Porterville that can provide short-term emergency water supplies to East Porterville.

In the face of this drought, DWR, USBR, the California Department of Fish and Wildlife, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State Water Board have been working together since January 2014, to identify a number of operational adjustments to conserve water in storage and to deliver more water to farms and communities.

The State Water Board has repeatedly demonstrated a willingness to grant the project operators extraordinary relief for the benefit of water users. In the last 15 months, the projects have submitted eight requests for urgency adjustments to their water rights. I have approved all of the requests, with the sole exception of the intermediate pumping portion of the most recent request. In these orders, I have: approved lower flows in the San Joaquin River, reduced minimum outflows from the Delta, authorized lower water quality in the Delta, and allowed additional pumping from the Delta for water to meet health and safety needs. The requirements were originally established as part of the board's responsibility to protect and balance among all beneficial uses of water. Not surprisingly, many users in the Delta and some environmental groups have opposed adjustments to these conditions. Nonetheless, these changes were approved as being in the public interest, and they afford the projects additional flexibility for the benefit of their water users.

The urgency changes approved by the State Water Board made approximately 470,000 acre feet of additional water available for agricultural, municipal, and other uses last year. The urgency orders have adjusted requirements that protect other water right holders, Delta farms and communities, a commercial and recreational fishing industry, and a panoply of environmental concerns. The orders temporarily set aside a number of science-based protections developed as part of rigorous evidentiary proceedings and established in decisions ultimately upheld by the courts.

In the February 3 order, I approved nearly all of what was requested, including the reduction of all fish and wildlife outflow requirements for February and March. These changes allow more water to be held in storage for future water deliveries. The order also allows additional exports during times when the rules would have otherwise prohibited it. The approved urgency changes are similar to changes approved last year, and are expected to yield a comparable water savings.

Initially, I did not approve one aspect of the project operators' January 2015 request, namely the intermediate pumping request referenced in your letter. Using the information available at that time, I concluded that the request did not include sufficient information to find, as required by California law, that this change would not have an unreasonable effect on fish and wildlife. Letters submitted by the fisheries agencies prior to the initial order answered a narrower question under the laws they implement to protect endangered species. While the fisheries agencies' letters were relevant, informative, and carefully considered, the letters standing alone did not support the broader finding required by California law to grant an urgency change. Subsequently, stakeholders on both side of the issue have submitted voluminous information about the potential effects on fish and wildlife. The additional information has informed the revised order that I issued last week.

Last week, I revised the order in ways that will again benefit water users, including approving the requested intermediate exports under certain conditions. The revisions follow a workshop held on February 18, 2015, in which the State Water Board members heard public comments over the course of 12 hours from all sides on this complex issue. The revised order continues to allow a minimum level of exports south of the Delta when flow requirements are not being met. It also approves, under limited conditions, the intermediate exports that were originally requested by the project operators. However, as part of that approval, the project operators must notify me that additional water is necessary to meet minimum public health and safety needs. The notification must describe the timing and amount of the increase, the beneficiaries of the increase, and the intended purpose. The revised order also clarifies that the limitation on exports from the Sacramento-San Joaquin Delta does not apply to any transfers.

In response to your request for information on the scientific analysis used in my decision, the fisheries agencies submitted comments after the February 18 workshop that identified information that they have submitted to the State Water Board over the last several years, which the Board may want to consider when making its determinations regarding unreasonable effects on fish and wildlife. This information highlights the critical importance of freshwater flows to the Delta for a variety of species, and relies upon the same body of scientific work that informed the Delta Flow Criteria Report that the Board developed in response to the 2009 Delta Reform Act. Although 2010 Delta Flow Criteria Report did not consider any balancing of public trust resource

protection with public interest needs for water, the report did find that the best available science suggests that current flows are insufficient to protect public trust resources.

The revised order addresses some of the concerns raised in your letter. We continue to seek a balance between the competing water needs in the face of historic dry conditions. Unfortunately, the drought has left California with no good options, only unpleasant choices.

If you would like to discuss this matter further, please feel free to contact me at (916) 341-5615 or Rob Egel, Legislative Director, at (916) 341-5255.

Sincerely,



Thomas Howard
Executive Director

cc: Ms. Camille Wagner
Legislative Secretary
Office of the Governor
State Capitol
Sacramento, CA 95814

Ms. Tara Dias-Andress
Deputy Secretary for Legislation
California Environmental Protection Agency
1001 I Street, 25th Floor
Sacramento, CA 95814

Ms. Felicia Marcus, Chair
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento CA 95814

Mr. Robert Egel
Legislative Director
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814