

State of California
State Water Resources Control Board
**DIVISION OF WATER RIGHTS P.O. Box 2000,
Sacramento, CA 95812-2000**

Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterboards.ca.gov/waterrights>

PETITION FOR URGENT REHEARING

REQUEST FOR URGENT RECONSIDERATION OF:

In the Matter of Specified License and Permits of the Department of Water Resources and U.S. Bureau of Reclamation for the State Water Project and Central Valley Project: APRIL 11, 2014 ORDER MODIFYING AN ORDER THAT APPROVED A TEMPORARY URGENCY CHANGE IN LICENSE AND PERMIT TERMS AND CONDITIONS REQUIRING COMPLIANCE WITH DELTA WATER QUALITY OBJECTIVES IN RESPONSE TO DROUGHT CONDITIONS

SPECIFIED LICENSE AND PERMITS:

Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources for the State Water Project and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 20245, and 16600 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 14858B, and 19304, respectively) of the United States Bureau of Reclamation for the Central Valley Project.

Name of Petitioner: Natural Resources Defense Council, The Bay Institute

Address, email address and phone number of petitioner or authorized agent:

Kate Poole, Natural Resources Defense Council, 111 Sutter Street 20th Floor, San Francisco, CA 94104; kpole@nrdc.org; (415) 875-6100.

Request for rehearing based on environmental and public interest considerations:

- Contrary to the public interest
- Contrary to law
- Adverse environmental impact

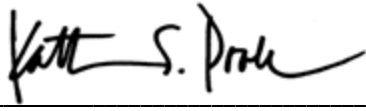
State facts which support the foregoing allegations: See attachment

**Under what conditions may this petition be disregarded and dismissed?
(Conditions should be of a nature that the petitioner can address and may**

*NRDC and TBI Request for Urgent Reconsideration of April 11, 2014 Order Approving
Temporary Urgency Change Petition (Vernalis Flow Objective)
April 28, 2014*

include mitigation measures.): The State Water Resources Control Board should grant an immediate stay of the temporary urgency change order, should overturn the order, and should deny the April 9, 2014 temporary urgency change petition and require the Bureau of Reclamation to comply with the Vernalis flow objectives in Decision 1641 for April and May of 2014.

All petitions must be signed by the protestant or authorized representative:

Signed:  Date: 04/28/2014

All petitions must be served on the petitioner. Provide the date served and method of service used: April 28, 2014 via email to USBR, DWR, and the SWRCB.

PETITION FOR URGENT REHEARING OF APRIL 11, 2014 ORDER MODIFYING AN ORDER THAT APPROVED A TEMPORARY URGENCY CHANGE IN LICENSE AND PERMIT TERMS AND CONDITIONS REQUIRING COMPLIANCE WITH DELTA WATER QUALITY OBJECTIVES IN RESPONSE TO DROUGHT CONDITIONS

To the State Water Resources Control Board:

The Natural Resources Defense Council (“NRDC”) and The Bay Institute (“TBI”) submit this request for urgent reconsideration to the April 11, 2014 Order approving a temporary urgency change petition that waives compliance with the April and May Vernalis flow objectives under Decision 1641 (“Order”). Because of the very limited time to remedy the issues raised in this request over the next 33 days, NRDC and TBI respectfully request that the Board issue an immediate stay of the Order, overrule the Order, and deny the Petition.

NRDC has previously filed an objections and protest to the Petition with the SWRCB on April 10, 2014, *see* Attachment 1, and NRDC filed a protest to the Order on April 21, 2014, *see* Attachment 2. We have requested that the Executive Director prepare the staff record, to the extent such record is available. *See* Attachment 3.

The other interested parties to this Order include the Friant Water Authority, San Luis and Delta Mendota Water Authority, the Exchange Contractors Authority, Stockton East Water District, and the San Joaquin Tributaries Authority. In addition to the protests by NRDC and other environmental protestants, the San Joaquin Tributaries Authority has likewise filed a protest of the Order.

Statement of Facts:

Decision 1641 imposes conditions on the water rights of the Bureau of Reclamation that require the Bureau to release sufficient flows to meet minimum instream flow objectives at Vernalis during the months of April and May. Those objectives vary depending on hydrology, requiring lower flows in drier years and higher flows in wetter years.

On August 3, 2010, after receipt of scientific evidence from agencies and stakeholders, consideration of public comments, and several workshops to obtain information, the SWRCB issued its final report on Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem. The final report recommended significant increases in San Joaquin River flows at Vernalis in the spring, in order to better protect salmon and other public trust fishery resources.¹

¹ The final report is available online at:
http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflo

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On July 18, 2012, the Delta Watermaster issued a notice of violation to the Bureau of Reclamation for failing to meet the Vernalis flow objective. *See* Attachment 4.

On December 31, 2012, after holding several workshops and scientific peer reviews, the SWRCB issued a draft substitute environmental document in support of potential changes to the water quality control plan for the Bay Delta: San Joaquin River Flows and Southern Delta Salinity. On April 18, 2013, NRDC and other fishing and conservation groups submitted comments on the draft substitute environmental document.²

On April 9, 2014, the Bureau of Reclamation submitted a Temporary Urgency Change Petition to the SWRCB requesting changes to the Vernalis flow objective.

On April 10, 2014, NRDC filed a protest of that petition. *See* Attachment 1.

On April 11, 2014, the SWRCB issued the Order approving the Temporary Urgency Change Petition.

On April 21, 2014, NRDC filed a protest of the Order. *See* Attachment 2. On that same date, the San Joaquin Tributary Association (“SJTA”) filed a protest of the Order.³

BASIS FOR REQUEST FOR URGENT RECONSIDERATION

NRDC’s and TBI’s basis for requesting urgent reconsideration are identical to those issues noted in NRDC’s April 21, 2014 protest of the Order, which demonstrates that the Order will unreasonably affect fish and wildlife and is not in the public interest. *See* Attachment 1. However, the Board does not appear prepared to act on that or other pending protests in a timely manner, i.e., prior to the Bureau of Reclamation

[w/final_rpt.shtml](#). It is incorporated by reference in this request for reconsideration.

² The draft substitute environmental document, and NRDC et al’s comments on the draft document, are available from the SWRCB’s webpage at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/bay_delta_pdsed/docs/comments032913/jonathan_rosenfield.pdf and at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/. The draft substitute environmental document and NRDC et al’s comments are incorporated by reference in this Protest.

³ SJTA’s protest is available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/tucp/20140421_sjta_protest.pdf.

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implementing reduced flows at Vernalis, in violation of D-1641, beginning around April 30, 2014. Therefore, we seek immediate reconsideration by one or more members of the Board prior to April 30, 2014.

NRDC's Protest demonstrates that the Order will unreasonably affect salmon and other fish and wildlife, particularly fall run Chinook salmon, the significant harms to which were not discussed or considered in the Petition or Order. NRDC's Protest also demonstrates that the Bureau of Reclamation is able to meet these flows, but has instead made a discretionary decision to allocate 55% deliveries to junior water service contractors on the Stanislaus instead, in violation of law and priorities of deliveries under its contracts and other legal requirements. NRDC's Protest further recognizes that the reduction in otherwise applicable San Joaquin River inflows permitted by the Order will likewise reduce Delta exports in May (by approximately 42,000 acre feet, according to SJTA) to the impairment of other water users, and that the Order will not improve upstream storage. In short, the Order is not in the public interest.

ACTIONS TO CURE THE PROTEST AND REQUEST FOR RECONSIDERATION

NRDC and TBI respectfully request that the SWRCB issue an immediate stay of the Order, rescind the Order, and deny the petition.

Statement of Service

This protest and request for reconsideration has been served by email upon the SWRCB, Bureau of Reclamation, and Department of Water Resources as follows:

Michael Buckman
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Michael.Buckman@waterboards.ca.gov

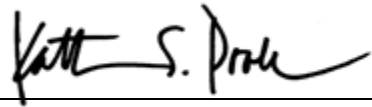
Amy Aufdemberge
Regional Solicitor's Office
2800 Cottage Way, Rm. E-1712
Sacramento, CA 95825
amy.aufdemberge@sol.doi.gov

Paul Fujitani
U.S. Bureau of Reclamation
3310 El Camino Ave., Room 300
Sacramento, CA 95821
pfujitani@usbr.gov

*NRDC and TBI Request for Urgent Reconsideration of April 11, 2014 Order Approving
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April 28, 2014*

Dated: April 28, 2014

Natural Resources Defense Council
The Bay Institute

By: 

Katherine Poole
Natural Resources Defense Council

Attachment 1

From: Obegi, Doug
Sent: Thursday, April 10, 2014 11:44 AM
To: Tom Howard; Les Grober
Cc: Wilson, Craig@Waterboards; Poole, Kate; Jonathan Alan Rosenfield Ph. D. (rosenfield@bay.org)
Subject: Protest of USBR TUC petition to relax Vernalis flow standards

Dear Tom & Les,

This morning I received a copy of the temporary urgency change petition from the Bureau of Reclamation that has been transmitted to both of you, and I wanted to alert you to our significant objections to the changes proposed in this petition. The proposal to relax base and pulse flows in April and May is not justified, will cause unreasonable effects on fish and wildlife, and is not in the public interest.

The documents provided by the fishery agencies acknowledge that the Stanislaus River steelhead are in a very precarious state (only 25 adult steelhead were counted at the weir on the Stanislaus River since October 2013, and only 21 juvenile steelhead were estimated to have migrated downstream through March 26, 2014). See Attachment E, pages 14, 26-27. These documents also acknowledge that reductions in San Joaquin inflow to the Delta, and increased pumping in the Delta, will substantially reduce steelhead survival through the Delta:

“The low quality habitat along routes to the ocean likely results in low emigration survival, especially in critically dry years such as this and is likely a large contributor to why the steelhead component of the *O. mykiss* population in the San Joaquin basin is small. It is hypothesized that steelhead escapement in two years will be lower than during previous wetter years due to poorer steelhead survival through the lower San Joaquin River between Durham Ferry (proximal to the confluence of the Stanislaus River) and Lathrop than during previous wetter years (see San Joaquin River I:E ratio and San Joaquin River flow downstream of the Head of Old River section).”

Attachment E, page 27; *see id.*, page 41-42 (describing cumulative effects of the proposed plan as reducing survival of steelhead and other salmonids).

Furthermore, the fishery agencies have not analyzed the impacts of the petition (or the plan) to fall run Chinook salmon, spring run chinook salmon in the Stanislaus River, or to other species that are not listed under the state and federal ESAs but which are critically important fishery resources that are beneficial uses protected under the water quality control plan and that will be adversely affected by this proposed temporary urgency change.

In addition, the SWRCB's Phase I proceeding regarding lower San Joaquin River flow objectives is replete with scientific information, evidence, and testimony from numerous fishery agencies, independent scientific reviews, and biologists with conservation groups (including NRDC) demonstrating that increased flows in the Lower San Joaquin River are necessary to protect instream beneficial uses. That information also demonstrates that reducing Vernalis flows this year would have unreasonable effects on fish and wildlife. *See, e.g.*, State Water Resources Control Board. 2010. Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem. August 3, 2010. Available online at: http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf; State Water Resources Control Board. 2012. Public Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. December 2012. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/; California Department of Fish and Wildlife. 2013. Comments regarding the Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay – Sacramento / San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. March 28, 2013. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/baydelta_pdsed/docs/comments032913/scott_cantrell.pdf

In contrast, as the letter acknowledges, not only is the Bureau making substantial water deliveries to senior water rights holders on the Stanislaus (355,000 acre feet per the initial allocation), but they are also planning a significant allocation of water (55%, over 85,000 acre feet) to junior water service contractors on the Stanislaus River. See petition, page 2; USBR, 2014 CVP water Quantities and Allocation, available online at: http://www.usbr.gov/mp/PA/water/docs/1_CVP_Water_Quantities_Allocation.pdf. Of the maximum 155,000 acre feet contract amounts for these junior East Side water service contractors (Stockton East Water District and Central San Joaquin Water Conservation District), it is our understanding that only 10,000 acre feet is for Municipal and Industrial supply, with the remainder for agricultural uses.

In addition, under existing biological opinions and SWRCB requirements, 100% of the San Joaquin River inflow during the pulse flow period can be captured by the CVP and SWP. This can provide water supply for human health and safety needs, or for contract supply in 2014 and/or 2015. Providing full Vernalis pulse and base flows thus provides substantial benefits for fish and wildlife, as well as the potential for the projects to capture 100% of that water for water supply.

Therefore, we urge the SWRCB to reject the proposed temporary urgency change petition because it will cause unreasonable effects on fish and wildlife and is not in the public interest. This email constitutes a formal protest and objection to the petition.

Please contact me at your convenience if you have any questions or need additional information. We greatly appreciate you taking this information into account as the Board considers the petition.

Sincerely,
Doug

Doug Obegi
Staff Attorney*
Water Program
Natural Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, CA 94104
415.875.6100 (phone)
415.875.6161 (facsimile)

** Admitted to practice in California*

Attachment 2



April 21, 2014

Diane Riddle
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Sent via email to: diane.riddle@waterboards.ca.gov

RE: Protest of April 11, 2014 Order Approving Modification of Vernalis Minimum Flow Requirements

Dear Ms. Riddle:

On behalf of the Natural Resources Defense Council and the Bay Institute, we are writing to protest the State Water Resources Control Board's April 11, 2014 Order approving the Bureau of Reclamation's temporary urgency change petition regarding minimum flows at Vernalis ("Order"). Contrary to the findings in the Order, the proposal to relax base and pulse flows in April and May is not justified, will cause unreasonable effects on fish and wildlife, and is not in the public interest.

I. The Order Will Result in Unreasonable Effects on Fish and Wildlife

Contrary to the Executive Director's findings in the Order, the reduction in Vernalis flows pursuant to the Order will result in unreasonable effects on fish and wildlife, particularly salmon and steelhead.

First, neither the Order nor any of the materials submitted by the Bureau of Reclamation with the petition even analyzes the impacts of the order on fall run Chinook salmon, spring run Chinook salmon in the Stanislaus River, or to other species that are not listed under the state and federal Endangered Species Acts. Fall run Chinook is the backbone of the state's salmon fishery, and these and other species that are not listed under the ESA are critically important fishery resources that are beneficial uses protected under the water quality control plan. Although the order does not analyze the effects, it is clear that these species will be adversely affected by this proposed temporary urgency change. Decision 1641 imposes minimum San Joaquin River flows at Vernalis to protect fall run Chinook salmon and other native fisheries. Absent any analysis of the impacts or reducing Vernalis pulse flows on fall run Chinook salmon, spring run Chinook salmon in the Stanislaus River, or other fish and wildlife that are not listed

under state and federal endangered species acts, the State Water Resources Control Board cannot determine that the order will not result in unreasonable effects on fish and wildlife.

Second, with respect to fisheries listed under the state and federal Endangered Species Acts, it is clear that reducing flows will significantly harm salmon and steelhead. The documents provided by the fishery agencies acknowledge that the Stanislaus River steelhead are in a very precarious state (only 25 adult steelhead were counted at the weir on the Stanislaus River since October 2013, and only 21 juvenile steelhead were estimated to have migrated downstream through March 26, 2014). See Attachment E, pages 14, 26-27. These documents also acknowledge that reductions in San Joaquin inflow to the Delta, and increased pumping in the Delta, will substantially reduce steelhead survival through the Delta:

The low quality habitat along routes to the ocean likely results in low emigration survival, especially in critically dry years such as this and is likely a large contributor to why the steelhead component of the *O. mykiss* population in the San Joaquin basin is small. It is hypothesized that steelhead escapement in two years will be lower than during previous wetter years due to poorer steelhead survival through the lower San Joaquin River between Durham Ferry (proximal to the confluence of the Stanislaus River) and Lathrop than during previous wetter years (see San Joaquin River I:E ratio and San Joaquin River flow downstream of the Head of Old River section).

Attachment E, page 27; see *id.*, page 41-42 (describing cumulative effects of the proposed plan as reducing survival of steelhead and other salmonids).

Third, the SWRCB's Phase I proceeding regarding lower San Joaquin River flow objectives is replete with scientific information, published scientific papers, and testimony and submissions from numerous fishery agencies, independent scientific reviews, and conservation groups (including NRDC) demonstrating that current flows on the San Joaquin River under D-1641 are inadequate to protect Public Trust fishery resources, and that increased flows in the Lower San Joaquin River are necessary to adequately protect instream beneficial uses.¹ Because the scientific evidence overwhelming shows that existing flows at Vernalis are inadequate to

¹ See, e.g., State Water Resources Control Board. 2010. Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem. August 3, 2010. Available online at: http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf; State Water Resources Control Board. 2012. Public Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. December 2012. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/; California Department of Fish and Wildlife. 2013. Comments regarding the Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay – Sacramento / San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality. March 28, 2013. Available online at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/baydelta_pdsed/docs/comments032913/scott_cantrell.pdf

protect fishery resources, and because the Order substantially reduces Vernalis pulse flows, the Order will have unreasonable effects on fish and wildlife.

Therefore, the Board's conclusion that the order will not unreasonably affect fish and wildlife is not supported by the Record and is contrary to the available scientific information.

II. The Order is Not in the Public Interest

In addition to causing unreasonable effects on fish and wildlife, the Order is also not in the public interest. As the letter acknowledges, not only is the Bureau making substantial water deliveries to senior water rights holders on the Stanislaus (355,000 acre feet per the initial allocation), but they are also planning a significant allocation of water (55%, over 85,000 acre feet) to junior water service contractors on the Stanislaus River. See petition, page 2; USBR, 2014 CVP Water Quantities and Allocation, available online at: http://www.usbr.gov/mp/PA/water/docs/1_CVP_Water_Quantities_Allocation.pdf. Of the maximum 155,000 acre feet contract amounts for these junior East Side water service contractors (Stockton East Water District and Central San Joaquin Water Conservation District), it is our understanding that only 10,000 acre feet is for Municipal and Industrial supply, with the remainder for agricultural uses.

In addition, under existing biological opinions and SWRCB requirements, 100% of the San Joaquin River inflow during the pulse flow period can be captured by the CVP and SWP. This can provide water supply for human health and safety needs or for contract supply in 2014 and/or 2015. Providing full Vernalis pulse and base flows thus provides critical benefits for fish and wildlife, as well as the potential for the CVP and SWP to capture 100% of that water for water supply. In addition, neither USBR's petition nor the Order provide any evidence, other than conclusory statements, that reducing Vernalis flows pursuant to the Order would substantially improve reservoir storage at the end of the year; there is no modeling or other analysis to support such conclusory statements.

Therefore, meeting full Vernalis flows under D-1641 likely would not reduce water deliveries to CVP contractors, although it may change the contractors who would receive such deliveries. Because the Order will unreasonably affect fish and wildlife, and would not reduce water deliveries by the CVP, the Order is not in the public interest.

III. Conclusion

NRDC and the Bay Institute protest the Order because it will cause unreasonable effects on fish and wildlife and is not in the public interest. We request that the State Water Resources Control Board consider this protest at the May 6, 2014 workshop, if not earlier, in order to allow for timely modifications of the Order.

Please contact us at your convenience if you have any questions or need additional information.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Jon Rosenfield, Ph.D.
The Bay Institute

Attachment 3

From: Poole, Kate

Sent: Monday, April 28, 2014 9:34 AM

To: Tom.Howard@waterboards.ca.gov

Cc: Obegi, Doug; Sahl, Jake

Subject: Request for Board Reconsideration of April 11 Order Modifying TUC Order and Allowing non-compliance with Vernalis flow requirements

Importance: High

Tom,

NRDC intends to file a request today for urgent reconsideration of the April 11, 2014 Order waiving the Bureau of Reclamation's compliance with Vernalis flow requirements in April and May. Because the Order would take effect at the end of this month, we are seeking immediate rehearing and a stay of the effect of the Order.

Pursuant to 23 CCR section 3867, we are requesting that staff prepare and forward any administrative record supporting the challenged Order for prompt consideration by the Board.

Thank you.

Sincerely,
Kate Poole

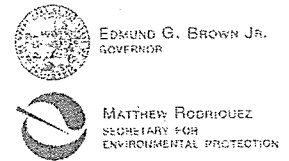
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*admitted in California

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Attachment 4



State Water Resources Control Board

July 18, 2012

Pablo R. Arroyave, Deputy Regional Director
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

Dear Mr. Arroyave:

NOTICE OF VIOLATION, UNITED STATES BUREAU OF RECLAMATION (USBR)

Notice is hereby given that you have violated the requirements of State Water Board Water Rights Decision 1641 (D-1641) to provide requisite spring pulse flow amounts in the San Joaquin River at Vernalis.

Pulse Flow Requirement

The 2006 Bay-Delta Water Quality Control Plan established spring pulse flow water quality objectives for the protection of fish and wildlife beneficial uses (Table 3, 2006 Plan). At the compliance location on the San Joaquin River at Vernalis, flows are required to be at 3,110 or 3,540 cubic feet per second (depending on the water year type) from April 15 – May 15. Based on this year's water designation, the flow requirement was 3,540.

USBR is required to meet these objectives pursuant to the water right permit for New Melones storage (D-1641), D-1641 provided as follows:

2. Permittee shall, on an interim basis until the Board adopts a decision assigning permanent responsibility for meeting the water quality objectives:
 - a. Ensure that the water quality objective for fish and wildlife beneficial uses for San Joaquin River flow at Airport Way Bridge, Vernalis set forth in Table 3 is met, with the exception that during the April-May pulse flow period while the SJRA is in effect, experimental target flows set forth in (b) below may be provided in lieu of meeting this objective.

The SJRA agreement expired in 2011 and is no longer in effect. If it had still been applicable, the pulse flow requirement for this year would have been 3,200. By letter dated May 4, 2012, USBR took the position that the SJRA alternative requirements were still in effect and indicated it would provide such flows.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Permit Violation

In fact, USBR did not maintain pulse flows consistent with either the Table 3 objectives (3,540) or the SJRA alternative requirements (3,200). The average April 15 – May 15 Vernalis flows were 3,092. Accordingly, USBR was in violation of both the pulse flow objectives and the alternative requirement.

Corrective Action

To avoid future violations, the process established in the 2006 Plan should be followed in 2013 and thereafter until such time as the Plan is amended:

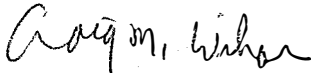
The pulse flow and time period of the pulse will be scheduled by the DWR and USBR in consultation with the applicable fishery agencies. The time schedule is subject to the approval of the Executive director of the State Water Board (Footnote 15, Table 3, 2006 Plan).

Consequences For Not Taking Corrective Action In 2013

Failure to establish and maintain required pulse flows in 2013 may subject the USBR to appropriate enforcement action.

If you have any questions regarding this notice, please contact me at (916) 445-5962 or by email at cwilson@waterboards.ca.gov.

Sincerely,



Craig M. Wilson
Delta Watermaster

cc: Allen Short
General Manager
Modesto Irrigation District
1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352

Phillip R. McMurray
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Merced Irrigation District
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Continued on next page.

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