



February 23, 2023

Via Email and USPS

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State Water Resources Control Board

P.O. Box 2000

Sacramento, CA 95812-2000

Re: Comments on February 13, 2023 State Water Project and Central Valley Project Petition for Temporary Urgency Changes in License and Permit Terms (“Petition”)

Dear Board Members:

To: State Water Resources Control Board  
Re: Comments on February 13, 2023 Petition  
Date: February 23, 2023

Pursuant to Water Code section 1438(d), Western Canal Water District and the Joint Water Districts Board<sup>1</sup> (collectively “Feather River Agencies”) respectfully comment to the Petition of the Central Valley Project (“CVP”) and State Water Project (“SWP”).

The Feather River Agencies are the senior water right holders on the Feather River and hold agreements concerning the diversion of water from the Feather River with the State of California, including all its political subdivisions (“Diversion Agreements”). The Feather River Agencies recognize the extraordinarily difficult drought conditions from 2020-2022 and the uncertainty of whether drought conditions may continue in 2023. If hydrologic conditions justify the need for the Petition, the Feather River Agencies support the temporary changes requested in the Petition to preserve upstream storage and provide additional operational flexibility in 2023 for the CVP and SWP, including meeting the terms of the Feather River Agencies’ Diversion Agreements.

The Feather River Agencies have commented on prior CVP/SWP petitions and expressed concerns with the State Water Board’s use of conditions of approval that, in some instances, go well beyond the scope of the relief sought in those prior petitions and undermine the operational flexibility sought in those petitions, particularly given uncertain and unpredictable hydrologic conditions we are experiencing in California. The State Water Board should ensure that any conditions of approval have a clear nexus between the condition and the required findings set forth in Water Code section 1435(b)(1)-(4). Conditions of approval must be clearly related to and advance or address (1) the urgency of the need to make a proposed change; (2) ensuring the proposed change is made without injury to any other lawful user of water; (3) ensuring the proposed change is made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) ensuring the proposed change is in the public interest. Conditions of approval that do not have a clear nexus or reasonable relationship to these required findings would be improper.

Nor should conditions of approval undermine the required findings of Water Code section 1435(b). For example, a condition designed to ensure no injury to other legal users of water should not result in an unreasonable effect on fish, wildlife, or other instream beneficial uses. Conversely, a condition designed to avoid unreasonable effects on fish, wildlife and other instream beneficial uses should not result in or contribute to injury to other legal users of water.

On February 21, 2023 the State Water Board issued an Order conditionally approving the Petition. Ordering paragraph 4 is a condition of approval and states:

DWR and Reclamation shall evaluate opportunities to use a portion of the additional water supplies resulting from this change to improve water supplies to wildlife refuges and to provide for pulse flows for the benefit of native fish and wildlife. DWR and Reclamation shall provide a report to the Executive Director by April 3, 2023, identifying how a portion of the water supply improvements

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<sup>1</sup> Made up of Richvale Irrigation District, Biggs-West Gridley Water District, Butte Water District and Sutter Extension Water District

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resulting from this change will be used for fish and wildlife purposes, and if not, the reason it is not going to be used for this purpose. The Executive Director reserves authority to direct use of a portion of the water supply gains resulting from this Order for fish and wildlife purposes.

The Petition was “intended to reduce the risk that DWR and Reclamation will be unable to provide future protection of beneficial uses that rely on storage from the Projects” (Petition p. 1-2) and to “provide clear storage benefits south of the Delta and would also have the potential to provide storage benefits north of the Delta” (*id.* p.1-9). On February 18, 2023 California Department of Fish & Wildlife stated “in the course of our review [of the Petition] thus far, we have not seen that the change would result in any substantial impact to fish and wildlife.” Ordering Paragraph 4 is, thus, an inappropriate condition of approval that purports to vest discretion in the Executive Director to dictate that the storage gains resulting from the Petition be dedicated to one beneficial use (fish and wildlife purposes), rather than the Petition’s purpose to protect multiple beneficial uses that rely on storage. The Feather River Agencies request that Ordering Condition 4 be stricken.

In sum, the Feather River Agencies support the Petition if continued drought conditions necessitate temporary changes in water right terms for the CVP and SWP. The Feather River Agencies request that Ordering Condition 4 be stricken and that DWR and Reclamation be allowed the flexibility to utilize any benefits to CVP/SWP storage from the Petition to be used for multiple beneficial uses, not just fish and wildlife beneficial uses.

Thank you for the opportunity to comment on the Petition.

Date: February 23, 2023



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Ted Trimble, General Manager  
Western Canal Water District

Date: February 23, 2023



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Donnie Stinnett, Manager  
Joint Water Districts Board