

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 RECONSIDERATION

The undersigned have carefully read the following:

August 4, 2015, Order Approving Temporary Urgency Change In the Matter of Permits 16597, 16598, 16599, and 16600 (Applications A014858A, A014859, A019303, and A019304), U.S. Bureau of Reclamation

Address, email address and phone number of petitioners:

Gary Bobker, Program Director, The Bay Institute, Pier 35, The Embarcadero at Beach Street, San Francisco, CA 94133, bobker@bay.org, 415-272-6616;

Kate Poole, Senior Attorney, Natural Resources Defense Council, 111 Sutter St., 20th Floor, San Francisco, CA 94104, kpoole@nrdc.org, 415.875.6100;

Rachel Zwillinger, Water Policy Advisor, Defenders of Wildlife, 1303 J St. Suite 270, Sacramento, CA 95814, rzwillinger@defenders.org, 415.686.2233.

Petition to reconsider based on an ERROR IN LAW: VIOLATION OF THE CLEAN WATER ACT SECTION 303(c).

State facts which support the foregoing allegations:

· see attached

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.):

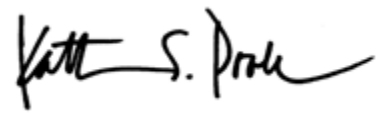
· see attached

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

Signed:



Gary Bobker
The Bay Institute



Kate Poole
Natural Resources Defense Council



Rachel Zwillinger
Defenders of Wildlife

Provide the date served and method of service used:

Email transmitting this form and appendix sent on 9/3/15 to:
tom.howard@waterboards.ca.gov

CC: chris.carr@waterboards.ca.gov; lholm@usbr.gov.

A copy of this petition and accompanying materials have been sent to all interested parties.



**STATEMENT OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION BY THE BAY INSTITUTE,
NATURAL RESOURCES DEFENSE COUNCIL,
AND DEFENDERS OF WILDLIFE TO RECONSIDER
THE AUGUST 4, 2015 ORDER APPROVING
TEMPORARY URGENCY CHANGE IN THE MATTER OF
PERMITS 16597, 16598, 16599, AND 16600
(APPLICATIONS A014858A, A014859, A019303, AND A019304),
U.S. BUREAU OF RECLAMATION**

The Bay Institute, Natural Resources Defense Council, and Defenders of Wildlife hereby submit the following statement of points and authorities in support of their petition for reconsideration of the State Water Resources Control Board (“SWRCB”) Executive Director’s August 4, 2015 order approving the U.S. Bureau of Reclamation’s (“Reclamation”) temporary urgency change petition requesting modification of the Dissolved Oxygen (“DO”) water quality objective on the Stanislaus River below Goodwin Dam (“August 4 order”).

The August 4 order effectively amends the Central Valley Regional Board’s Water Quality Control Plan for the Sacramento River and San Joaquin River (Basin Plan). The Basin Plan states that,

For surface water bodies outside the legal boundaries of the Delta . . . [t]he dissolved oxygen concentrations shall not be reduced below the following minimum levels at any time: Waters designated [for warm habitat beneficial uses] 5.0 mg/l; Waters designated [for cold habitat beneficial uses] 7.0 mg/l; Waters designated [for spawning] 7.0 mg/l.

Basin Plan, Fourth Edition, III-5.00 (Sept. 15, 1998).

Because the Stanislaus River from Goodwin Dam to the San Joaquin River has warm, cold, and spawning freshwater habitat beneficial uses, the more protective minimum 7.0 mg/l objective is the operative objective for DO in the Stanislaus River from Goodwin Dam to the San Joaquin River. The August 4 order, however, amends Water Rights Decision 1641 and Water Rights Decision 1422 to allow Reclamation to operate the Central Valley Project to meet a minimum DO level in the Stanislaus River below

Goodwin Dam of 5.0 mg/l, instead of the 7.0 mg/l level provided for in the Basin Plan. Thus, the August 4 order effectively revises the DO objectives in the Basin Plan.

The Federal Water Pollution Control Act, commonly known as the Clean Water Act (“CWA”), provides that “[w]henver the State revises or adopts a new [water quality] standard, such revised or new standard shall be submitted to the Administrator [of the EPA]” for review. 33 U.S.C. §1313(c)(2)(A). The August 4 order’s modification of the Central Valley WQCP DO satisfies the U.S. Environmental Protection Agency’s (EPA’s) four-part definition of a revised water quality standard because it: (1) is a legally binding provision adopted pursuant to state law; (2) addresses water quality criteria; (3) expresses and establishes a desired condition and instream level of protection; and (4) it “has the effect of changing an existing [water quality standard].” EPA Water Quality Handbook 1.5.1.

The EPA must review any revision to a water quality standard to determine whether it complies with multiple requirements, including, *inter alia*, that: (1) the water quality criteria in the revised standard “are consistent with the requirements of the [CWA]”; (2) the water quality criteria “protect the designated water uses”; (3) in revising the standard, the state followed its own “legal procedures for revising or adopting standards”; and (4) that the revised standard “meets the requirements included in [EPA’s regulations].” 40 C.F.R. §131.5(a). If the revisions submitted to EPA meet these and other designated criteria, the EPA must approve the standard. *Id.* §131.5(b). Otherwise, EPA must disapprove the standard and, unless the state submits an acceptable revised standard, promulgate a federal water regulation that meets the strictures of the CWA. *Id.*; 33 U.S.C. §1313(c)(3)-(4). An existing water quality standard “remains the applicable standard until [the] EPA approves a change, deletion, or addition to that water quality standard, or until [the] EPA promulgates a more stringent water quality standard.” 40 C.F.R. §131.21(e).

The SWRCB has failed to comply with its mandatory obligation to submit the August 4 order’s revision of the Basin Plan DO objective to the EPA for review and approval. The SWRCB has therefore committed an “error in law” that warrants rescission or suspension of the August 4 order. *See* Cal. Code Regs. §768(d). The Basin Plan DO objective must remain in effect until the SWRCB seeks and receives EPA approval for the proposed revision. *See* 40 C.F.R. §131.21(e).

This petition for reconsideration may be disregarded and dismissed if the SWRCB rescinds or suspends its August 4 order pending compliance with Clean Water Act section 303(c).