



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

Chris Shutes, Executive Director

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<http://calsport.org/news/>

July 11, 2024

Erik Ekdahl, Deputy Director, Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Transmitted via email to: [Erik.Ekdahl@waterboards.ca.gov](mailto:Erik.Ekdahl@waterboards.ca.gov);  
[eric.oppenheimer@waterboards.ca.gov](mailto:eric.oppenheimer@waterboards.ca.gov); [diane.riddle@waterboards.ca.gov](mailto:diane.riddle@waterboards.ca.gov)

Re: Transmittal of Petition for Reconsideration of 2024 Approval of Sacramento River Temperature Management Plan

Dear Mr. Ekdahl,

The California Sportfishing Protection Alliance respectfully submits the following petition for reconsideration of your June 14, 2024 Approval of the Bureau of Reclamation's 2024 Sacramento River Temperature Management Plan.

Please feel free to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Shutes", is written over a horizontal line.

Chris Shutes  
Executive Director  
California Sportfishing Protection Alliance

**BEFORE THE  
STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

**In the Matter of Sacramento River Temperature Management Plan for Water Year 2024**

**PETITION FOR RECONSIDERATION OF  
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
OF THE JUNE 14, 2024 APPROVAL LETTER OF THE  
DEPUTY DIRECTOR, WATER RIGHTS  
OF THE  
SACRAMENTO RIVER TEMPERATURE MANAGEMENT PLAN  
FOR WATER YEAR 2024**

Pursuant to sections 1122 and 1126 of the California Water Code, section 769 of title 23 of the California Code of Regulations, and related authorities, the California Sportfishing Protection Alliance (CSPA) hereby petitions the State Water Resources Control Board (“Board”) to reconsider the June 14, 2024 Approval Letter of the Deputy Director, Water Rights of the 2024 Sacramento River Temperature Management Plan (“2024 TMP”).

CSPA is a public interest, non-governmental resource conservation organization that seeks to protect the fisheries, habitat, water quality, and water resources of California, with much of its efforts focused in the Central Valley’s Bay-Delta watershed. CSPA requests that the State Board set aside the Deputy Director’s approval of the 2024 TMP, in order to conform to appropriate process and to measures required by Water Rights Order 90-5, the Board’s public trust responsibilities, and in conformance with the Board’s 2020 Settlement with CSPA. The issues at hand also address the Board’s ongoing failures to address such matters over dry years 2021 and 2022 and previous dry years, as well as the Board’s failure to address such matters in wet year 2023.

**1. Name and Address of Petitioners (23 Cal. Code Regs., § 769(a)(1)):**

California Sportfishing Protection Alliance  
1608 Francisco Street  
Berkeley, CA 94703  
(510) 421-2405

Please direct communications to Petitioners regarding this petition to:

Chris Shutes, Executive Director  
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1608 Francisco St.  
Berkeley, CA 94703  
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(510) 421-2405

**2. The specific board action of which petitioner requests reconsideration (23 Cal. Code Regs., § 769(a)(2)):**

The June 14, 2024 approval of the Deputy Director, Water Rights of the Final Shasta Temperature Management Plan submitted by the U.S. Bureau of Reclamation pursuant to Water Rights Order 90-5<sup>1</sup> (“Approval Letter”).

**3. The date on which the order or decision was made by the board (23 Cal. Code Regs., § 769(a)(3)):**

The Deputy Director, Water Rights sent the Approval Letter approving the 2024 TMP on June 14, 2024.

**4. The reason the action was inappropriate or improper (23 Cal. Code Regs., § 769(a)(4)):**

As discussed in the attached memorandum of points and authorities, the Approval Letter is not supported by substantial evidence, is arbitrary and capricious, improperly delegates the Board’s responsibilities to Reclamation and fisheries agencies, and fails to conduct the public trust analysis required pursuant to the Board’s 2020 Settlement with CSPA.<sup>2</sup>

More specifically, the Approval Letter fails to meet the procedural and substantive requirements of Water Rights Order 90-5 and the Board’s public trust responsibilities because it:

- (1) Fails to quantify and thus support with substantial evidence the conclusion that factors beyond Reclamation’s reasonable control prevent Reclamation from maintaining water temperatures of 56 degrees Fahrenheit (56°F) at Red Bluff Diversion Dam, as required by Order 90-5 and the Basin Plan. Instead, the Approval Letter impermissibly accepts the undocumented conclusions of Reclamation and other agencies that such analysis, required by California water quality law, is unnecessary or irrelevant.
- (2) Fails to provide expected Trinity River temperatures at the downstream compliance points of Douglas City and the North Fork Trinity River.

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<sup>1</sup> See letter from Erik Ekdahl, Deputy Director, Water Rights, State Water Resources Control Board to Levi Johnson, Central Valley Project Operations Manager, U.S. Bureau of Reclamation, “Order 90-5 Sacramento River Temperature Management Plan” (Jun. 14, 2024). The Approval Letter is available online at: [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/sacramento\\_river/docs/2024/final-2024-tmp-response-letter-06.14.2024.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/sacramento_river/docs/2024/final-2024-tmp-response-letter-06.14.2024.pdf). This document and all other specific webpages cited herein are incorporated by reference.

<sup>2</sup> Settlement Agreement and Release of Claims (Case Number RG15780498, *California Sportfishing Protection Alliance, et al. v. California State Water Resources Control Board and Thomas Howard*) (July 17, 2020): <https://calsport.org/news/wp-content/uploads/2020.07.17-CSPA-v.-SWRCB-Settlement-Fully-Executed-1.pdf>.

(3) Fails to evaluate whether and to what extent reductions in water supply deliveries would allow achievement of 56°F at locations downstream of Balls Ferry. Thus, the Approval Letter fails to quantify and thus support with substantial evidence the conclusion that “it would be unreasonable to limit Reclamation’s operations to deliver water to its contractors below the levels that have been allocated to date.”<sup>3</sup> This failure also breaches the Board’s 2020 Settlement with CSPA, because the Board does not conduct a public trust analysis that quantifies and evaluates competing factors under Reclamation’s control.

**5. The specific action which petitioner requests (23 Cal. Code Regs., § 769(a)(5)):**

- (1) The Board should rescind the Approval Letter and perform the analyses required by Water Rights Order 90-5;
- (2) The Board should perform the analyses required in Order 90-5, and, once performed, use the analyses to order as warranted further temperature requirements in the lower Sacramento River and in the Trinity River, and conforming actions as appropriate;
- (3) The Board should initiate a proceeding to evaluate and revise Order 90-5.

**6. A statement that copies of the petition and any accompanying materials have been sent to all interested parties (23 Cal. Code Regs., § 769(a)(6)):**

This petition and accompanying materials have been emailed to the U.S. Bureau of Reclamation, California Department of Water Resources, California Department of Fish and Wildlife, US Fish and Wildlife Service, National Marine Fisheries Service, and staff from the State Water Board, at the following addresses:

Levi Johnson, [lejohnson@usbr.gov](mailto:lejohnson@usbr.gov)  
Kristin White, [knwhite@usbr.gov](mailto:knwhite@usbr.gov)  
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<sup>3</sup> Approval Letter, pp. 4-5.

## 7. Conclusion

For the reasons stated above and in the attached Memorandum of Points and Authorities, CSPA respectfully requests that the Board grant reconsideration, rescind the Approval Letter of the Deputy Director, Water Rights of the 2024 TMP, and require the requested actions.

Respectfully submitted this 11<sup>th</sup> day of July, 2024.

Chris Shutes



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Executive Director  
California Sportfishing Protection Alliance

## MEMORANDUM OF POINTS AND AUTHORITIES

As described in the June 4, 2024 Objection of Defenders of Wildlife et al.<sup>4</sup> to the 2024 TMP, the Approval Letter fails to minimally comply with the requirements of Water Rights Order 90-5.

Order 90-5 only allows for designation of an upstream temperature compliance location when “factors beyond the reasonable control” of Reclamation prevent Reclamation from maintaining water temperatures of 56°F at Red Bluff Diversion Dam. The 2024 TMP fails to make a quantitative evaluation of whether it is possible to meet 56°F at Red Bluff Diversion Dam. In fact, the 2024 TMP does not provide any modeling of water temperatures at this location. Nor does it evaluate whether factors beyond Reclamation’s reasonable control prevent achieving this water temperature obligation.

The complete failure of the 2024 TMP to consider this important aspect of Reclamation’s legal obligations under Order 90-5 is arbitrary and capricious.

Rather than evaluating Reclamation’s ability to maintain daily average river temperatures at or below 56°F at Red Bluff, the 2024 TMP instead evaluates the potential to maintain 56°F at Balls Ferry. Balls Ferry is upstream of Red Bluff. Its use as the initial, downstream-most prospective temperature compliance location instead of Red Bluff would represent a less stringent temperature standard that would maintain a substantially smaller salmonid spawning and incubation reach. The evaluation of Balls Ferry as the initial downstream-most temperature compliance location violates Order 90-5. The 2024 TMP offers no acknowledgement of this deficiency or explanation for this arbitrary decision.

The 2024 TMP presents model outputs for two scenarios: maintaining 56°F at Balls Ferry (“Attachment 6”) and maintaining 53.5°F at Clear Creek (“Attachment 3”). Modeling of those two management approaches reveals that operating to maintain temperatures at or below 56°F at Balls Ferry results in less than 90% exceedance scenarios and no difference in the end-of-September cold-water pool and total storage in Shasta Reservoir (Table 6, p. 6), though the modeled exceedances of 56°C in the Balls Ferry scenario are unexplained.

Despite this positive comparison, the 2024 TMP states: “Reclamation does not propose to operate the TCD explicitly to meet 56 degrees F at BSF under conditions that may require changes to TCD operations that could risk cold water pool resources for use later in the temperature management season. This would cause an unreasonable risk to other goals and objectives.” 2024 TMP at 5. Reclamation provides no evidence to support this alleged risk.

The Approval Letter’s acceptance of Reclamation’s conclusion is not supported by substantial evidence because Reclamation presents a conclusion without supporting analysis. The Approval Letter thus also improperly delegates the Board’s analytical responsibilities to Reclamation.

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<sup>4</sup> CSPA is one of the authors of and signatories to the Objection of Defenders of Wildlife et al. to the 2024 TMP. The Objection is available at: [https://calsport.org/news/wp-content/uploads/DOW-et-al-objections-to-draft-Shasta-TMP\\_060423\\_Final-with-Attachments.pdf](https://calsport.org/news/wp-content/uploads/DOW-et-al-objections-to-draft-Shasta-TMP_060423_Final-with-Attachments.pdf).

Order 90-5 does not allow Reclamation to plan to maintain daily average temperatures higher than 56°F upstream of Red Bluff during periods when temperature increases will be detrimental to the fishery,<sup>5</sup> when there are measures within Reclamation’s reasonable control that would avoid such an outcome. Yet this is the 2024 TMP’s expectation (Attachment 2, Figure 1 at p. 10).

Order 90-5 requires Reclamation to protect Trinity River salmon by meeting 56°F at Douglas City and at the North Fork Trinity confluence during specific time periods. However, the 2024 TMP does not provide any Trinity River temperature projections other than at Trinity Dam and Lewiston. The State Water Board cannot determine if there are Trinity River impacts based on the 2024 TMP. The State Water Board should correct this omission by requiring Reclamation to show projected Trinity River temperatures at these compliance points. The Approval Letter’s failure to require analysis of the 2024 TMP’s temperature impacts to the Trinity is arbitrary and capricious.

Finally, modification of Order 90-5 is long overdue. Reclamation has repeatedly failed to achieve water temperatures of 56°F at Red Bluff Diversion Dam as required under Order 90-5 and the Basin Plan. Reclamation has also repeatedly refused to reduce water supply allocations to Sacramento River Settlement Contractors and take other actions under its reasonable control to improve water temperatures to protect the salmon fishery. In addition, the best available science demonstrates that temperature dependent mortality of Chinook salmon eggs begins when temperatures exceed 53.5°F, meaning Order 90-5’s 56°F target is unprotective. *See* Martin et al. 2017, Martin et al. 2020. For Trinity River Coho salmon, temperature dependent mortality begins when temperatures exceed 50°F (*see* Justin Ly, NMFS, e-mail to State Water Board, April 27, 2022); Order 90-5 contains no protection that reflects this science.

Therefore, the State Water Board should rescind the 2024 TMP because it fails to address Reclamation’s obligations under Order 90-5, and should formally begin proceedings to modify Order 90-5 to be consistent with the best available science and to protect the salmon fishery, and Trinity River Coho salmon.

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<sup>5</sup> Order 90-5 states (at p. 11): “Permittee *shall* control releases from Shasta Dam, Spring Creek Power Plant and Keswick Dam so as not to allow the average daily water temperature of the Sacramento River in the reach between Keswick Dam and Hamilton City to exceed 56°F during periods when temperature increases will be detrimental to the fishery” (emphasis added).