

## PROTEST-PETITION

This form may be used for objections to:

PETITION FOR TEMPORARY URGENT CHANGE  
APPLICATION \_\_\_\_\_<sup>1</sup> PERMIT \_\_\_\_\_<sup>1</sup> LICENSE \_\_\_\_\_<sup>1</sup>  
OF \_\_\_\_\_<sup>1</sup>

We, Tim Stroshane (Policy Analyst, Restore the Delta, 639 San Carlos Avenue, Albany, CA 94706; [tim@restorethedelta.org](mailto:tim@restorethedelta.org)) and Barbara Barrigan-Parrilla (Executive Director, Restore the Delta 10500 Trinity Parkway, Suite 100, Stockton, CA 95219; [barbara@restorethedelta.org](mailto:barbara@restorethedelta.org)), have carefully read:

1) the *Notice of Temporary Urgency Change Petition [TUCP] and Notice of Public Workshop*, dated January 27, 2015, and the subsequent *Order Approving in Part and Denying in Part a Petition for Temporary Urgency Changes to License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions*. That Notice provided the public with opportunity to protest the TUCP by no later than noon on Friday, February 13, 2015, and indicates parties to which such protest must be provided at the State Water Resources Control Board, the Department of Water Resources and the US Bureau of Reclamation. We incorporate here by reference the protest filed jointly by California Water Impact Network, California Sportfishing Protection Alliance, and AquAlliance. Our comments herein also request specific topics where Restore the Delta wants the State Water Resources Control Board to reconsider its TUCP Order.

2) And the subsequent *Notice of Request to Modify and Renew a Temporary Urgency Change Order for SWP and CVP for July through November*, dated June 8, 2015, and the accompanying Temporary Urgency Change Petition (TUCP) filed by the California Department of Water Resources and the US Bureau of Reclamation, dated May 21, 2015.

We further incorporate by reference the comments and protests of the California Sportfishing Protection Alliance submitted pursuant to the TUCP Notice issued by the State Water Resources Control Board Executive Director on June 8, 2015. We also incorporate by reference Restore the Delta's previously submitted protests and comments submitted to the State Water Board on February 13, 2015, and May 5, 2015, requesting reconsideration of the Board's orders implementing TUCP requests. We further incorporate by reference additional protest comments submitted by the California Sportfishing Protection Alliance, the California Water Impact Network, and AquAlliance. We object to the proposed temporary urgency change petition submitted May 21, 2015, by the California Department of Water Resources and the US Bureau

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<sup>1</sup> Latest temporary urgency change petition (TUCP) applies to 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.

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of Reclamation, and urge the State Water Resources Control Board and its Executive Director to consider our grounds before issuing an order on the TUCP:

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS:

- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations:

**The latest temporary urgency change petition does not best serve the public interest.**

- *The TUCP does not best serve the public interest because the state has failed to devise a comprehensive strategy for dealing with recurring, expected droughts which does not require waiving, relaxing, or obviating established water quality regulations.*
- *The TUCP does not best serve the public interest because it promotes agricultural and urban water development at the expense of commercial, recreational, and subsistence fishing and the cultural and symbolic reliance of some cultures on salmonid populations in California. This reflects the lack of coherent and comprehensive public trust analysis in the Board's own planning work for determining what are the most important beneficial uses to protect and serve during dry periods. The Board's TUCP actions assume what it instead should have demonstrated already.*
- *The TUCP does not best serve the public interest because it assumes the need for the urgency change is due strictly to natural conditions, when the role of recent management of water project operations is neither assessed nor evaluated in creating the alleged urgency. Past water management and allocation decisions by DWR and the Bureau have contributed to water supply shortages in historical drought experience. Similar practices and patterns can be observed in the 2012-2015 drought period. A hindcast should be performed on recent water project operations from the beginning of Water Year 2012 to assess and evaluate the roles of State Water Project, Central Valley Project, and State Water Resources Control Board actions in response to drought conditions. This would help the Board demonstrate that its own actions in regulating water project operations as well as those of the project operators are reasonable and not wasteful of water. Restore the Delta urges the State Water Resources Control Board to take a lead role in revising how water project operations are managed so that the greater likelihood of dry to drought conditions are factored into water project allocation decisions.*

**The TUCP is contrary to law.**

- *The Board, in approving previous iterations of this TUCP, has unlawfully neglected its duty under Water Code Section 1435(c) to define and assess the due diligence required of the state and federal water project operators in managing the system and whether a lack of diligence may be grounds for denying the TUCP.*
- *The TUCP is contrary to the reasonable use doctrine. The Board must perform its duty to ensure that water management and use by the state and federal water projects and their*

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*water contractors has been reasonable, and not wasteful. No such analysis has been performed by either the petitioners or the Board and its staff.*

- *The TUCP is contrary to the public trust doctrine because the Board has failed to perform needed analyses of public trust resources sufficient to validate balancing actions the Board and its Executive Director purport to engage in when issuing orders approving the TUCPs. The one public trust analysis the Board performed pursuant to Water Code Section 85086(c)(1) found that more flows were needed for recovery of at-risk public trust resources, not less. The Board's actions reducing Delta outflows and Delta inflows, as well as relaxations such as the TUCP Orders' treatment of Delta Cross Channel operation and installation of the False River barrier are thus inconsistent with the public trust doctrine and are therefore unlawful.*
- *While we recognize that some of the actions deemed necessary in this TUCP and the recent TUCP orders are necessary as emergency stopgap measures to save as many winter-run and spring-run Chinook salmon as possible this year, past unlawful failures to target and meet state and federal legislative goals to double salmon populations relative to 1967-1991 levels and keep fish populations in good condition below dams owned by the federal and state governments are also evidence that the TUCP*
- *The TUCP continues to be contrary to the federal Clean Water Act as we discussed in our previous protest comments from February 13 and May 5.*
- *The TUCP continues to be contrary to the Delta Protection Act of 1959 as we discussed in our previous protest comments from February 13 and May 5.*

**The Order would have significant adverse environmental effects which are also contrary to law and do not best serve the public interest.**

- *The latest TUCP continues the trend of worsening salinity conditions in the Delta. It continues imposing unreasonable flow and salinity conditions in the Delta that could extirpate listed fish species in the Delta during 2015. On the other hand it would best serve the public interest for the State Water Board to prevent extinctions of Delta smelt, longfin smelt, salmonids, and sturgeon now so that these species' recovery can be effectively planned for when the Board resumes its Phases 1 and 2 work on the Bay Delta Plan.*
- *RTD continues to object to significant adverse effects resulting from continued reliance on the calculated Net Delta Outflow Index (NDOI). The Board should ensure that net Delta outflow is accurately measured, not merely estimated in such a manner that it fails to correlate with salinity conditions in the western Delta. You cannot successfully manage what you do not measure accurately.*
- *The latest TUCP documents, without acknowledging, that the real beneficiaries of the TUCP and the False River Barrier are the water export interests along the corridors of Old and Middle River. (TUCP, Exhibit A, Figure 9, p. 7.) It also documents that the western and central Delta, and the region of the Low Salinity Zone will see far higher salinity as a consequence of barrier installation and the various TUCP measures. (TUCP, Exhibit A, Figures 2, 4, 5 and 8.) **RTD demands that the petitioners prepare for the State Water Resources Control Board's consideration and public review a set of modeling DSM2 modeling outputs that include a D-1641-with-barrier scenario so***

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***that a full set of meaningful comparisons may be made between the impacts of D-1641 on water project operations, the TUCP orders, and the False River barrier.***

- *We further question the modeling artifact of the blue “island” of fresh water between the False River Barrier and Franks Track shown in the TUCP. (Exhibit A, Figure 9, p. 7.) There is no explanation of it in the TUCP narrative in Exhibit A. It raises the question of how the better quality water can arrive in Old and Middle River as it often does when the Delta Cross Channel is open and Sacramento River flows enter the Mokelumne/San Joaquin/Old River corridor on their way to the South Delta pumps. This central portion of the flow corridor for exports is shown to have worse water quality, when it is possible that it takes better water quality getting across the Delta from north to south in order to have the better quality water in the south Delta along Old and Middle Rivers. This requires explanation by the petitioners prior to issuance of the Board’s next TUCP order, and during the Board’s June 24<sup>th</sup> workshop.*
- *As a consequence of this manufactured salinity pattern in the Delta, Delta smelt will be confined to smaller refugia in the north Delta and the Sacramento Deep Water Ship Channel, areas of relatively small water volume (especially when compared with their historical native habitat in the low salinity zone of the western Delta) where they will be vulnerable to mortality due to summer heat waves. This year’s habitat refugia is likely to be the Delta smelt’s smallest in recorded history. The TUCP acknowledges Delta smelts’ vulnerability, given that “The majority of the members of the Smelt Working Group expect that larval and juvenile Delta smelt may not be detected in salvage because numbers are so low as to be at detection levels of the larval surveys.” (TUCP, Attachment 2, p. 22.) It also acknowledges the “upstream relocation of X2” where its location influences “both the area and quality of habitat available for Delta Smelt to successfully complete their life cycle.” (TUCP, Attachment 2, p. 32.) DSM2 forecasts that X2 (the salinity location in the Low Salinity Zone where the bottom salinity is 2.0 psu) will be located “towards the upstream end of the range in the Sacramento River between June and November, with greater differences between the D-1641 baseline and the proposed action occurring between July and September.” (TUCP, Attachment 2, p. 32.) The TUCP also acknowledged evidence of Delta smelt spawning failure this spring. (TUCP, Attachment 2, p. 20.)*

**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.)**

We incorporate by reference from our February 13, 2015, protest letter the conditions under which this protest may be dismissed, and supplement those conditions with the condition that the State Water Resources Control Board require the Department of Water Resources and the Bureau of Reclamation to perform a hindcast and make recommendations to the State Water Resources Control Board on how they plan to re-operate the Central Valley Project and the State Water Project to begin managing for multi-year droughts.

We thank you for the opportunity to submit these protest remarks. Signed by the protestant or authorized representative:

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Date: 17 June 2015

Signed: \_\_\_\_\_

Executive Director, Restore the Delta



Date: 17 June 2015

Signed: \_\_\_\_\_

Policy Analyst, Restore the Delta

All protests must be served on the petitioner. Provide the date served and method of service used:

Served Party	Address	Email Address (service method employed)	Date Served
Rich Satkowski State Water Board	P.O. Box 2000 Sacramento, CA 95812	<a href="mailto:Rich.Satkowski@waterboards.ca.gov">Rich.Satkowski@waterboards.ca.gov</a>	<a href="#">17 June 2015</a>
James Mizell Department of Water Resources	P.O. Box 942836 Sacramento, CA 94236	<a href="mailto:James.Mizell@water.ca.gov">James.Mizell@water.ca.gov</a>	<a href="#">17 June 2015</a>
Amy Aufdemberge Regional Solicitor's Office	2800 Cottage Way, Room E-1712, Sacramento, CA 95825	<a href="mailto:Amy.Aufdemberge@sol.doi.gov">Amy.Aufdemberge@sol.doi.gov</a>	<a href="#">17 June 2015</a>