

## PROTEST-PETITION

This form may be used for objections to:

### PETITION FOR TEMPORARY URGENT CHANGE

APPLICATION \_\_\_\_\_ 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 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*. The Notice provides 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.

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 Bay-Delta Plan specifies water quality objectives for the protection of beneficial uses of water in the Bay-Delta, including fish and wildlife, agricultural, and municipal and industrial uses. In part, Water Right Decision 1641 (D-1641) assigns responsibility for meeting the water quality objectives included in the Bay-Delta Plan to the California Department of Water Resources and the Bureau of Reclamation. This is done through measures that ensure that specified water quality objectives included in Tables 1, 2, and 3 of D-1641 are met, in addition to other requirements. The flow and water quality requirements established by the State Water Board in D-1641 are summarized in the tables and figures contained in Attachment 1 to the above referenced Order: Table 1 (Municipal and Industrial Beneficial Uses), Table 2 (Agricultural Beneficial Uses), and Table 3 (Fish and Wildlife Beneficial Uses). Included in Attachment 1 are the footnotes to Table 3 that refer to definitions and other requirements contained in Figure 1 (Sacramento Valley Water Year Hydrologic Classification), Figure 2 (San Joaquin Valley Water

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Year Hydrologic Classification), Figure 3 (Formulas for NDOI and Percent Inflow Diverted), and Table 4 (Chippis Island and Port Chicago Maximum Daily Average Electrical Conductivity). The objectives are intended to protect fish and wildlife living in or migrating through the Bay-Delta, and also to keep the Delta and water exported from the Delta from getting too salty for municipal and agricultural uses. Flow and salinity objectives in the Bay-Delta Plan and D-1641 were developed based on historic hydrologic conditions. The Board claims in the Order that “provisions [in the water quality objectives] for the extreme dry conditions currently being experienced were therefore not considered in either the Bay-Delta Plan or D-1641.” We note that the Board does not provide documentation to verify this claim to lack of precedence in this drought’s hydrology, since it is demonstrable that river runoff conditions are greater than they were in 1924 and 1976-77. Moreover, the aforementioned water quality objectives intended to protect fish and wildlife in the Delta are gradated according to water year type, with “critically dry” being the objective level applicable to serious dry periods.

The Delta outflow objectives included in the Bay-Delta Plan and D-1641 for the February through June time frame are identified in footnote 10 of Table 3 and Table 4 of footnote 10. Pursuant to footnote 10, the minimum daily NDOI during February through June is 7,100 cfs calculated as a 3-day running average. This requirement may also be met by achieving either a daily average or 14-day running average EC at the confluence of the Sacramento and San Joaquin Rivers of less than or equal to 2.64 millimhos per centimeter (mmhos/cm) (Collinsville station C2). If the best available estimate of the Eight River Index<sup>1</sup> for January is more than 900 thousand acre-feet (TAF), the daily average or 14-day running average EC at station C2 is required to be less than or equal to 2.64 mmhos/cm for at least one day between February 1 and February 14; however, if the best available estimate of the Eight River Index for January is between 650 TAF and 900 TAF, the Executive Director of the State Water Board is delegated authority to decide whether this requirement applies. If the best available estimate of the Eight River Index for February is less than 500 TAF, the standard may be further relaxed in March upon the request of the DWR and Reclamation, subject to the approval of the Executive Director. (Additional Delta outflow objectives are also contained in Table 4 of D-1641, which requires a certain number of days of compliance with specified flows or EC requirements at specified stations (Chippis Island and Port Chicago) based on the previous month’s Eight River Index.) The SWRCB expected the final Eight River Index for January to be 813 TAF, which will result in a requirement for 9 days of compliance at Chippis Island pursuant to Table 4.

The Board’s Order makes the following temporary modifications to D-1641 requirements during February and March:

- Reduces minimum monthly Delta outflows to 4,000 cfs, even though footnote conditions for February probably should not apply otherwise;
- Reduces minimum monthly San Joaquin River flows at Vernalis to 500 cfs from 710 to 1100 cfs;

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<sup>1</sup> Pursuant to footnote 9 of Table 3 of D-1641, the Eight River Index refers to the sum of the unimpaired runoff as published in the DWR Bulletin 120 for the following locations: Sacramento River flow at Bend Bridge, near Red Bluff; Feather River, total inflow to Oroville Reservoir; Yuba River flow at Smartville; American River, total inflow to Folsom Reservoir; Stanislaus River, total inflow to New Melones Reservoir; Tuolumne River, total inflow to Don Pedro Reservoir; Merced River, total inflow to Exchequer Reservoir; and San Joaquin River, total inflow to Millerton Lake.

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- ☑ Allows the DCC Gates to be opened consistent with Drought Contingency Plan-defined triggers to protect fish species during extreme dry conditions and alleging a balancing with water quality needs in the central and south Delta channels;
- ☑ Adds export constraints to allow exports of 1,500 cfs when Delta outflows are below 7,100 cfs regardless of DCC Gate status and allows exports up to D-1641 limits when Delta outflows are above 7,100 cfs and the DCC Gates are closed. Here the Board declined to allow DWR and the Bureau intermediate export levels up to 3,500 cfs at intermediate outflows of 5,500 cfs.

**The Order does not best serve the public interest.**

The public interest in this matter concerns the protection of fish species, salinity control in the Delta, water supplies, and ecosystem conditions that prioritize a Bay-Delta estuary that continues to be fishable, swimmable, drinkable, and farmable in drought years as well as wet.

Droughts are recurrent and predictable weather patterns in California. We are now in the eighth year of the last nine years where runoff has been below normal. Droughts are not emergencies, except when our water agencies fail to manage for their recurrence. Instead, like households prudently saving money to get through bouts of unemployment, state regulators should prepare the state and federal projects for droughts by managing storage and export deliveries as though each new water year would be dry, then managing storage accordingly should rains and snowmelt come.

Reserves south of the Delta continue to dwindle as we enter 2015, except that San Luis Reservoir has over 560,000 acre-feet more now than it had a year ago. As of this morning, Castaic and Perris lakes are each about 34 to 35 percent of capacity, and about 41 to 42 percent of average for this date. However, north of Delta storage in the state and federal projects is bouncing back this year relative to last year. Trinity is slightly below last year's storage level of 1.16 million acre-feet, but Shasta has nearly 750,000 acre-feet more in storage now than at this time last year when it had just 1.7 MAF. Oroville has about 280,000 acre-feet more now than at this time last year, when it was at 1.35 MAF. Folsom is at 102 percent of normal, with over a half-million acre-feet in storage. New Melones and Millerton reservoirs still lag their normal storage levels (New Melones at 41 percent of average, Millerton at 56 percent of average for the date). Overall, this is a better picture than last year, but this could just mean that DWR and the Bureau will be looking for ways to get water through the Delta to the south of Delta reservoirs whether or not rains continue to come in February and March.

The current D-1641 objective at Table 3 and its footnote 10 gives a green light to DWR and the Bureau to gamble each year that the water year will be normal to wet: they prioritize upstream storage for exports to south of Delta storage, resulting in a "beggar-thy-neighbor" competition among Delta beneficial uses during dry years (i.e., pitting against each other exports, salinity control, fish protection, and ecosystem-protective outflows). Dry-year south of Delta export demands put the Board in the difficult role of a veritable God Squad with immediate power over the Delta's endangered fish as it decides, with little due process, how to allocate depleted upstream supplies.

This situation is preventable and state and federal agencies failed to prevent it.

As noted above, D-1641 provides that between February and June, minimum Delta outflow should be no less than 7,100 cfs in critically dry years. This objective was set after evidentiary

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hearings were conducted in the early 1990s that led to adoption of D-1641 in March 2000. Footnote 10 of Table 3 in D-1641 provides an off-ramp from this objective if February unimpaired flows in the Eight River Index are below 500,000 acre-feet. The projected February Index in Bulletin 120 appears to be above 2.5 million acre-feet, despite low runoff in the San Joaquin River basin. We appear to have above normal runoff conditions north of the Delta. Since the Eight River Index is over five times the February threshold of Footnote 10 of Table 3 for modifying the Delta outflow objective, the 7,100 cfs should be applied to the regulation of exports for the time being.

We urge the Board to reconsider and void its relaxation of the Delta outflow objective to 4,000 cfs. This relaxation does not best serve the public interest because the Board has failed to determine the need for the relaxation, in terms of water supply cost. By failing to determine independently of the Petitioners whether there is need for the relaxation on supply grounds, the Board also fails to recognize and must, in reconsidering its Order, evaluate the fact that the existing D-1641 Delta outflow objective was already not protective enough for both listed resident and migratory fishes using the Delta as habitat and migration corridor. Their populations have been in decline for decades, and poor salmon survival rates through the Delta have all occurred during the reign of D-1641 when fully in effect. This was true even before the state entered the extended dry period of the last eight and a half years. D-1641 fully implemented for Delta outflow is already not protective of Delta smelt, longfin smelt, winter-run Chinook salmon, steelhead and sturgeon, so relaxing the objective to 4,000 cfs is even less protective and pushes them ever closer to final extirpation from the Delta's Central Valley watershed.

For similar reasons, we urge the Board to reconsider its relaxation of San Joaquin River inflow at Vernalis to 500 cfs in February and March. The applicable critical year flow objective in D-1641 is 710 to 1,140 cfs (depending on whether higher flows on the San Joaquin are needed to help DWR and the Bureau meet X2 estuarine objective requirements in Table 4 of D-1641) has not been protective of fish since numerous studies (including those of the Bay Delta Conservation Plan) show that the entire flow of the San Joaquin River is typically exported when D-1641 is in full effect. Lowering the San Joaquin River flow objective increases the need for fresh water flows to be released through opening of the Delta Cross Channel, to freshen central and south Delta channels for in-Delta users but primarily for export water quality protection. But opening the Delta Cross Channel when salmon smolts and other resident juvenile fish make them much more vulnerable to predation and entrainment to the export pumps and has long been demonstrated to decrease fish survival in the Delta. The Board's Order allows actions that tighten the maelstrom these listed fish species face as they circle the drain of extinction in the Delta watershed.

We urge the State Water Board to reconsider its TUCP Order *post haste* to resume full effect of D-1641, except that state and federal export pumping should be limited from now through at least June to health and safety levels. State and Federal upstream storage has recovered significantly from the early February storm. However, the Board relaxed D-1641 provisions before the precipitation, runoff, and storage benefits of the storm were known. The Board's priorities should be with maintaining minimum exports for public health and safety, protection of endangered fish species using the Delta, and Delta salinity control.

This drought also makes it empirically and practically clear that the state's water system is increasingly a wet-year system that cannot meet water demands of its customers in dry and

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drought years. In average water years, as the California Water Impact Network demonstrated in 2012, water rights claims throughout the watershed of the Bay-Delta estuary exceed unimpaired flows by five and a half times.<sup>2</sup> When drier times come, that factor increases dramatically as flows decrease, and crisis ensues because the system is over-subscribed. Future regulatory changes must provide prudent incentives for greater carry-over storage upstream, at least for the first quarter of the water year (October through December), so that the state (and not just state and federal water contractors) puts itself in the best position possible to regulate salinity control, endangered species protection, late season temperature control upstream, and exports for health and safety protection.

The TUCP Order does not best serve the public interest because the state has failed to devise a comprehensive strategy for dealing with recurring, expected droughts. We recognize it is necessary for the State Water Board to have adopted this order, but **we protest it on the grounds that it does not best serve the public interest.**

**It also does not best serve the public interest to promote water for agricultural and urban water development at the expense of commercial and recreational sport fishing and cultural and symbolic reliance on salmonid populations.** They are important drivers of rural California economies and societies. Approving a TUCP in this situation risks extirpating Central Valley salmonids even with the limitations the Board cites. Since statehood, fishing communities thrived up and down the west coast of North America, especially in coastal California from Morro Bay to Crescent City. The various salmon species that migrate through the Bay-Delta estuary are an important food source for modern American diets as well as importers of nutrients from the eastern Pacific ocean ecosystems to California's Central Valley rivers. Nutritionists point to the important role of omega-3 fatty acids from salmon consumption (as well as other food sources) in preventing heart disease in humans. Salmon were once an affordable fish that was well integrated into American diets because they were abundant. Prior to statehood, California Indian tribes, especially in northern California, made them the center of "first salmon" ceremonies heralding the annual return of each seasonal race of salmon. After foregoing the first salmon to return upstream, harvesting these fish provided these tribes with ample protein to supplement their diets year-round. The state's conduct of water policy has failed to support broad natural resource management goals and the regional economies dependent on natural resources like renewable salmon and steelhead stocks, which support the state's commercial fishing industry and an interior recreational and angling sector. Instead, water policy has been the exclusive handmaiden of urban and agricultural development here, and in times of droughts now causes an environmental justice travesty.

**The Order is contrary to law.**

In our opinion, the Order is contrary to several laws, including the constitutional principles of reasonable use and protection of the public trust. Again, while we recognize that the State Water Board uses this Order to make the best of a bad situation, partly of its own making, we contend that the Order is contrary to the reasonable use doctrine, the public trust doctrine, the state and federal legislative goals to double salmon populations and keep fish populations in good condition below dams owned by the federal and state governments, the federal Clean Water

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<sup>2</sup> C-WIN's testimony found at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/comments111312/tim\\_stroshane.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/comments111312/tim_stroshane.pdf).

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Act, and the Delta Protection Act of 1959. The illegal character of the Order is also described under the adverse environmental effects section below.

*The Order is contrary to the federal Clean Water Act.*

The federal Clean Water Act allows no emergency exceptions to the administration of water quality standards adopted by the states. The Governor, as best we can tell, has no legal authority to suspend a EPA-approved water quality objective on the grounds that he has declared an emergency water shortage. Water quality objectives and standards under this law **must protect the most sensitive beneficial uses** for which objectives and standards have been applied. In this case, the particular objectives in question are ***the fish and wildlife objectives for Delta outflow, operation of the Delta Cross Channel, San Joaquin River flow, and Delta exports.***

The Governor's emergency drought proclamations of January and December 2014 suspended Water Code Section 13247, says the Order, "to the extent that it otherwise would have applied to specified activities, including action on the TUCP." In the absence of its suspension, says the Order, "Section 13247 requires state agencies, including the State Water Board, to comply with water quality control plans unless otherwise directed or authorized by statute." We maintain that the act of suspension on grounds of emergency is not permitted under the federal Clean Water Act and therefore the Governor's suspension of Water Code Section 13247 should be null and void.

The Order then states:

Absent suspension of section 13247, the State Water Board could not approve a change petition that modifies permits and licenses in a way that does not provide for full attainment of the water quality objectives in the Bay-Delta Plan, even during a drought emergency. (p. 13)

We could not agree more.

*The Order is contrary to the Delta Protection Act of 1959.*

The Delta Protection Act of 1959 commits the State Water Project to the provision of salinity control "and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." It also declares as state policy that no one, including the state or federal governments "should divert water from the channels of the...Delta to which the users within said Delta are entitled" and that "in determining the availability of water for export from the...Delta no water shall be exported which is necessary" to meet these requirements. These requirements are premised on the Legislature finding in the Act that maintaining "an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban, and recreational development in the Delta area" as well as to "provide a common source of fresh water for export to areas of water deficiency is necessary to the peace, health, safety and welfare of the people of the State," subject to watershed and area of origins statutes on behalf of the Delta. The Legislature further recognized that the state water plan was supposed to bring surplus waters from the Sacramento Valley and "the north coastal area" to be gathered in the Delta for export. Much of those surplus waters did not materialize, yet the state's management of the Delta has exported water as if they had, and to the detriment of Delta ecosystems, agriculture, recreation, and industry.

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The Order is contrary to the Delta Protection Act for failing to make findings that no water would be exported from the Delta to which Delta users are entitled. We are aware that the Board's subsequently-issued "Drought Information Order" requires Delta as well as Sacramento-San Joaquin watershed water right holders to provide information on their water rights and usage. We respectfully remind the Board, by protesting this temporary urgency change petition, that the language of the Delta Protection Act of 1959 places the burden of proof on junior water rights holders to show what the reasonable area of origin water rights of Delta water rights holders are.

Water rights, whether held by private or public entities, have community importance as reflected in area of origin rights recognition of the Delta Protection Act of 1959. The TUCP Order from the State Water Board fails to recognize these rights. The Board instructed DWR and the Bureau that

other lawful users will not be injured by the proposed changes because the Projects will continue to meet modified Delta outflow and San Joaquin River flow requirements, and adequate flows are expected to remain in the system to meet the demands of other lawful users of water. Moreover, approval of the proposed changes does not affect the Petitioners' [DWR and the Bureau's] obligation to curtail their diversions of natural and abandoned flows to the extent necessary to protect senior water right holders. Further this Order requires that the Petitioners' bypass adequate natural and abandoned flows to prevent injury to senior water right holders. (p. 16.)

It remains true that the Board's act of unilaterally reducing both Delta outflow and San Joaquin River flow objectives imposes a direct injury on Delta water right holders under guise of its water quality authority and alleged emergency powers. Water rights in the Delta are a function of water quality of flows available for diversion. This is water rights allocation by other means, without due process, and without extending equal protection to all Delta water rights holders. *We urgently request that the Board reconsider its Order given this plain injury to the Delta's area of origin water rights under the Delta Protection Act of 1959 and the water rights priority system of the state of California.*

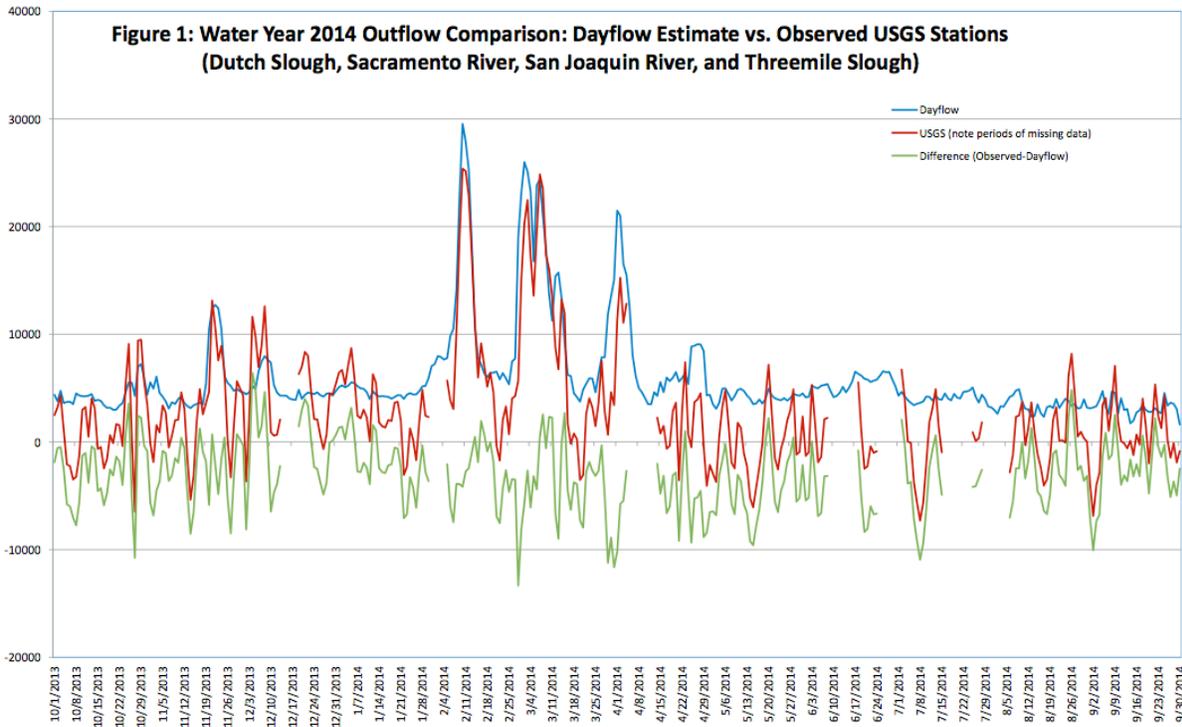
**The Order would have significant adverse environmental effects which are also contrary to law and do not best serve the public interest.**

The Board used key findings from state and federal fishery agencies, which accompanied DWR and the Bureau's temporary urgency change petition, on the current location and condition of endangered fish. The Board appears to have used the best available science, if not the conclusions of the fishery agencies, and applied the standard it must under Water Code Section 1435 to avoid causing unreasonable adverse impacts to fish and wildlife. The leadership of the state and federal fishery agencies refused to draw similar conclusions from their science. We nonetheless protest the Order and urge the Board to reconsider the Order on grounds that it imposes (through relaxation) unreasonable flow and salinity conditions in the Delta that could contribute directly to extirpation of these listed species in the Delta in 2015. On the other hand, it would best serve the public interest for the State Water Board to prevent extinctions now so these species' recovery can be effectively planned for when the Board resumes its Phases 1 and 2 work on the Bay Delta Plan.

We further protest the TUCP, the Order on which it is based, and D-1641 for continuing to rely on the calculated Net Delta Outflow Index (NDOI). This index is acknowledged by many

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scientists and by DWR’s Dayflow web site as overestimating net Delta outflows during wet periods. It appears, as shown in this chart from the Dayflow web site, that it vastly overestimates outflow during dry periods as well.



The State Water Board cannot manage what it and many other state and federal water and resource management do not measure properly. In fact, D-1641 does not require measurement of net Delta outflow as the regulatory objective it applies. It relies instead on a calculated formula that yields a “Net Delta Outflow Index.” This index frequently overestimates actual net Delta outflow as the sum of USGS measuring gauges in the western Delta.

The green curves represent the error margins between the calculated NDOI in Dayflow and the equivalent summation of empirical gauge data from USGS sensors in the Delta. The red line also illustrates at least 24 separate instances when empirical Net Delta Outflow went negative, when NDOI calculations were positive. Empirical gauge data for NDOI is consistently lower and even negative (that is, flowing upstream away from the ocean) from April through September 2014. This strongly suggests conditions were poorer for listed fish species than the calculated NDOI would lead state regulators to believe in 2014. Hydrologic conditions may return to this level absent more storms the rest of this winter. The gaps of missing empirical gauge data from USGS must be remedied so that net Delta outflow regulation is based on real flows, not a poorly-calibrated formula. **It does not best serve the public interest to continue using calculated NDOI to determine empirical conditions affecting the possible extinction of listed Delta fish.**

Delta smelt are endemic to the Delta, and are endangered. As recently as the 1980s, Delta smelt declined from a level of several hundred thousand individuals to a level where the last Fall Midwater Trawl index was 9 in 2014. Construction and operation of the Central Valley Project and especially the State Water Project, as well as rising levels of pollutants in the Bay-Delta

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estuary has, beginning in the 1970s, resulted in rapid decline of Delta smelt.<sup>3</sup> Because of Delta smelt's prior abundance it was a significant prey species for piscivorous fish in the Delta, but its decline reflects the overall ecological unravelling of native Delta food webs and the deterioration of Delta water quality.

**As we have said, it does not best serve the public interest to approve the TUCP when the State Water Board, as a public trust agency in California, has an obligation and duty to have made plans that would result in doubling the populations of the various salmon runs and steelhead in Central Valley rivers and streams who use the Delta as a crucial migration corridor and, at times, rearing area. It has not yet done so.** The Order makes clear that

surviving winter-run [Chinook] salmon are in the Delta and rearing extensively in the lower Sacramento River and Delta with some fish in south Delta waterways." Adult winter-run are also starting to enter the Sacramento River system and have begun to migrate to the upper Sacramento River below Keswick Dam until they are ready to spawn during the summer. These fish require cold water holding habitat for several months prior to spawning to allow for maturation of their gonads, and then subsequently require cold water to ensure the proper development of their fertilized eggs, which are highly sensitive to thermal conditions during this embryo development period. Adults returning to the river in 2015 are predominantly members of the cohort from BY [Brood Year] 2012 (assuming a 3-year cohort cycle). Based on cohort replacement rate (CRR) estimates BY 2012 had the fifth lowest CRR since 1992, making this run of particular concern. (p. 11)

The Order provides similar summary assessments based on biological reviews conducted by state and federal fishery agencies. The Board equivocates (in a manner reminiscent of the Bay-Delta Conservation Plan EIR/S last year) in summing up the overall effects on salmonids and green sturgeon.

"According to the Biological Reviews, both positive and negative effects of the TUCP are expected on salmonids and green sturgeon during February and March. The TUCP changes are expected to affect the abundance and spatial distribution of juvenile winter-run and spring-run Chinook salmon, steelhead, and green sturgeon."

Are the effects on these positive or negative? Can't tell from the Order's description.

The modifications to outflows and DCC Gate operations may affect the spatial distribution and abundance of adult winter-run Chinook salmon and green sturgeon.

Where are the effects expected to occur, and will the effects be positive or negative? How significant will they be?

Life history diversity of steelhead may be affected due to reduced survival through the San Joaquin River migration corridor.

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<sup>3</sup> [http://www.swrcb.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/exhibits/dfg/spprt\\_docs/1992/cdfg\\_1992\\_exh9.pdf.pdf](http://www.swrcb.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/exhibits/dfg/spprt_docs/1992/cdfg_1992_exh9.pdf.pdf), See also Figure 4 in this document by the California Department of Fish and Game.

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It is unclear if steelhead smolts, juveniles, or returning adults are implicated, or whether all three segments of steelhead life history will be affected, and by how much.

The modification of outflow, exports, and Vernalis flows may reduce survival of juvenile listed salmonids, steelhead and green sturgeon, and may modify their designated critical habitat.

Here we have something: TUCP changes to outflow, exports and San Joaquin River inflow would be negative on the juvenile portion of fish life histories as well as to their habitat—principally flow quantity and flow dynamics (that is, whether flow is upstream toward the export pumps or downstream toward the rest of the Bay-Delta estuary).

Steelhead survival may also be reduced along the mainstem of the San Joaquin River downstream of the Stanislaus River leading to increased entrainment of steelhead toward the Project pumping facilities.

Under these terrible circumstances facing salmonids and green sturgeon, the State Water Board's Order highlights the Biological Reviews' findings:

- Unmeasured mortality of salmonids in the south Delta region may increase as a result of increased entrainment towards the Project facilities under the proposed intermediate export rate of 3,500 cfs when NDOI is between 5,500 and 7,100 cfs.
- Mortality may increase due to long transit times on the San Joaquin River [due to low inflows] where exposure to degraded habitat [like Clifton Court Forebay] and predaceous species is constant.
- Under exports of 1,500 cfs with NDOI of 5,500 or less, reduced entrainment and salvage of listed species at the Project fish collection facilities adjacent to the South Delta export facilities would be expected due to increased positive flows in the south and central Delta.

Having recognized these findings in the TUCP's biological reviews, we further appreciate that the State Water Board chose in its Order not to grant the intermediate flows requested in the temporary urgency change petition from DWR and the Bureau. We sincerely hope that as it moves through 2015 it will hold to this position and facilitate flows that benefit fish not only in upstream habitats but also in Delta habitats downstream to move them through the Delta to the Golden Gate. Otherwise the Board risks further jeopardy to salmonids and green sturgeon, contrary to Fish and Game Code and the Central Valley Project Improvement Act sections that address the state and federal governments' legislated goals to double salmon populations.

This compromises the ability of the Board to govern water resource allocation and use under the California Constitution, Article X, Section 2, and the public trust doctrine.

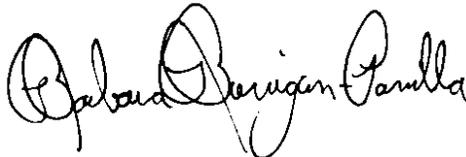
**Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)**

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We incorporate by reference the conditions for dismissal provided by the California Water Impact Network, the California Sportfishing Protection Alliance, and AquAlliance to the extent they duplicate and augment Restore the Delta's conditions listed here:

1. The Order must be modified to define what conditions under which it will be cancelled.
2. The Order must be modified to rely on empirical measurement of net Delta outflow to ensure real water is conducted through the Delta for benefit of salinity control and ecosystem protection.
3. The Order must be modified to define how health and safety are defined and require quantification and location of deliveries for health and safety by the Projects.
4. The Board must stop holding workshops on these matters and instead hold evidentiary hearings that address the following specific topics:
  - a. Summer 2015 operations for the Projects, fisheries protections, and necessary 2015 end-of-year carryover storage requirements.
  - b. How much water, if any, is available for export in 2015.
  - c. How water transfers in 2015 will be addressed, particularly with settlement contractors in the Sacramento Valley as potential sellers, and under what conditions they will be allowed.
  - d. How much inflow to DWR and USBR project reservoirs greater than reservoir releases may be stored in Project reservoirs to meet the public interest, and how much must be released to senior water rights holders downstream, including for in-Delta and area of origin use.
  - e. Other issues related to any existing and potential conflicts between the Board's public interest determination on this issue and the water rights priority system.

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



Date: 13 February 2015

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

Executive Director, Restore the Delta



Date: 13 February 2015

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

Policy Analyst, Restore the Delta

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

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**February 13, 2015**

<b>Served Party</b>	<b>Address</b>	<b>Email Address (service method employed)</b>	<b>Date Served</b>
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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>	February 13, 2015