



July 9, 2021

**VIA EMAIL**

Chair Esquivel and Members of the State Water Resources Control Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: Protection of Stored Water and Enforcement of California's Water Rights System

Dear Chair Esquivel and Members of the State Water Resources Control Board:

On behalf of the water agencies that serve 40 million people, those who farm more than 6 million acres of land, and those responsible for 300,000 acres of wildlife refuges, the Tehama Colusa Canal Authority, San Luis & Delta-Mendota Water Authority, Friant Water Authority, and State Water Contractors (collectively, "CVP & SWP Agencies") request that you consider, as quickly as possible, immediate action to protect the beneficial uses of water in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta Estuary"), including the releases of previously stored water by the Central Valley Project ("CVP") and State Water Project ("SWP"). Many of us have received a zero allocation for this year's Project water, or significantly reduced public health and safety deliveries, and we all recognize that unauthorized diversions of previously stored water harm CVP and SWP future supplies. The State Water Resources Control Board ("State Water Board") has the authority and the obligation to take action to protect this water.

**Action Is Required to Protect Reclamation's and DWR's Ability to Meet Current Requirements**

As you are aware, due to the extremely dry conditions this year, the United States Bureau of Reclamation ("Reclamation") and California Department of Water Resources ("DWR") are not able to achieve the purposes established for the CVP and SWP. Among others, the urban, agricultural, fish, and wildlife uses served by the CVP and SWP are suffering. The CVP & SWP Agencies are concerned that suffering is exacerbated by the unauthorized diversion and use of previously stored water by others outside of the CVP and SWP and severely impact Reclamation's and DWR's ability to meet current and future regulatory requirements.

The CVP & SWP Agencies are concerned that the circumstances forewarned by the State Water Board, in its recent order approving Reclamation's and DWR's temporary urgency change petition, have been occurring and will continue to occur, absent action by the State Water Board:

Currently, the Petitioners [Reclamation and DWR] hold primary responsibility for meeting Bay-Delta Plan flows and salinity requirements as part of D-1641. During times of limited supplies like this year, meeting those requirements can require significant contributions of previously stored water releases, both due to limited natural flows and due to other water users diverting water when it is not available under their water rights. These circumstances deplete reservoir storage, and in years like this year when reservoir storage is at critically low levels, create significant concerns for temperature management, health and safety water supplies, and salinity management in the Delta if dry conditions persist.

(June 1, 2021 Order Conditionally Approving 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, page 7.) Indeed, depletions in the Delta have been exceeding conservative forecasts and levels that occurred in previous droughts. The unabated in-Delta depletions impair the ability of Reclamation and DWR to protect reservoir storage and meet in-Delta water quality objectives, including targets for temperature management.

Allowing these circumstances to continue and worsen would be inconsistent with the Governor's recent direction to state agencies to take action to conserve water upstream, protect carry-over storage, and protect water transfers. (May 10, 2021 Drought Proclamation.)

#### **The State Water Board Has the Hydrologic and Hydrodynamic Data to Support Action**

More than twenty years ago, the State Water Board acknowledged that there is insufficient water available during certain months of the year to supply riparian water right holders in the southern Delta in certain year types. (Revised D-1641 at p. 33.) Responding to objections from South Delta Water Agency ("SDWA") to a petition to support the San Joaquin River Agreement, the State Water Board rejected claims of injury by SDWA. The State Water Board explained:

The fundamental issue with respect to SDWA's claim that its members have riparian rights that could be impaired by the proposed changes, therefore, is whether there is sufficient natural flow to satisfy the diversion requirements of riparian right holders in the southern Delta.

(Revised D-1641 at p. 30.) After reviewing evidence, including evidence presented by SDWA, and making assumptions that favored SDWA, the State Water Board rendered three conclusions:

1. On average, insufficient water is available to supply the southern Delta in Below Normal, Dry and Critical Dry years in August, September and October.
2. On average, sufficient water is available in September only in Wet Years.

3. Insufficient water is available in July during 16 percent of years, in August during 56 percent of years, in September during 78 percent of years, and in October during 70 percent of years.

(*Id.* at p. 33.) Given the current water year's classification as Critically Dry, there is no doubt that this is a year in which there is insufficient water to support the diversion of water in the southern Delta under riparian rights.

Moreover, current hydrologic and hydrodynamic data demonstrate that more water is being diverted from the Delta than natural flow to support such diversions. In DWR's June 28, 2021 Delta Operations Summary, DWR reports 8,859 cubic feet per second ("cfs") of water flowing into the Delta, the majority of which is previously CVP and SWP stored water releases. Reclamation and DWR are making 3,500 cfs available for outflow and are pumping a total of 900 cfs through the C.W. "Bill" Jones and Harvey O. Banks pumping plants. (See attached DWR Delta Operations Summary for June 28, 2021.) Using simple flow balance, in-Delta depletions are estimated to be 4,450 cfs, which exceeds the total outflow and CVP/SWP combined pumping. (*Id.*) The rights asserted by those within the Delta do not support the current level of depletions, and neither in-Delta riparian nor appropriation water right holders are entitled to divert previously stored water under their water rights. (*El Dorado Irr. Dist. v. SWRCB* (2006) 142 Cal.App.4th 937, 962, 976; see also *Phelps v. SWRCB* (2007) 157 Cal.App.4th 89, 107, 111.) Because of unabated depletions in the Delta, Reclamation and DWR have been required to increase their release of CVP and SWP water from storage and/or reduce the amount of water pumped at the Jones and Banks pumping plants, depriving the CVP and SWP of critical water supplies and placing at risk the ability of Reclamation and DWR to meet the terms and conditions of their water rights, and specifically those intended to protect the Bay-Delta Estuary.

### **The State Water Board has the Authority to Take Action**

We encourage the State Water Board to act immediately and protect the previously stored CVP and SWP water and ensure all water rights are exercised in accordance with the law. The State Water Board must take action, using best available data and respecting due process, to stop unlawful appropriation of previously stored CVP and SWP water or other appropriations not supported by law and hydrology.

We support the State Water Board's efforts to collect data to inform water rights administration, and encourage it to improve upon the data collection effort it began during the last drought. Action is required *now* to improve upon existing data and expedite decision making.

### **Conclusion**

There is no doubt that the task before the State Water Board is a difficult one. The State Water Board must take immediate action to protect CVP and SWP water flowing through the Delta. It must also continue to shore up data collection so it can be better prepared to take action in future droughts.

For all the reasons outlined in this letter, the CVP & SWP Agencies respectfully request that the State Water Board take immediate action to protect the beneficial uses of water in the Bay-Delta Estuary by protecting previously stored water from unauthorized diversions.

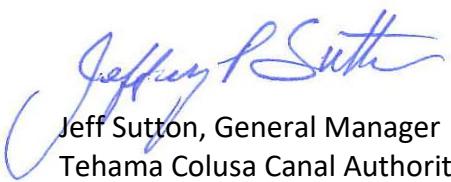
Regards,



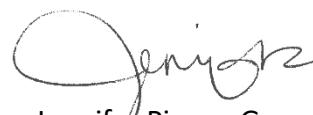
Federico Barajas, Executive Director  
San Luis & Delta-Mendota Water Authority



Jason Phillips, Chief Executive Officer  
Friant Water Authority



Jeff Sutton, General Manager  
Tehama Colusa Canal Authority



Jennifer Pierre, General Manager  
State Water Contractors

cc: Ernest Conant  
Karla Nemeth  
Eileen Sobeck  
Kristin White

**From:** DWR\_OCO\_Export\_Management  
**To:** DWR\_DELTA\_OPERATIONS\_SUMMARY@LISTSERVICE.CNRA.CA.GOV  
**Subject:** Delta Operations Summary for July 07, 2021  
**Date:** Wednesday, July 7, 2021 9:10:08 AM

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**PRELIMINARY DATA**  
**SUBJECT TO REVISION WITHOUT NOTICE**

**EXECUTIVE OPERATIONS SUMMARY ON 7/7/2021**

This summary, State Water Project informational data, and data for previous 30 days can also be found at:  
<https://water.ca.gov/Programs/State-Water-Project/Operations-and-Maintenance/Operations-and-Delta-Status>

**SCHEDULED EXPORTS FOR TODAY**

Clifton Court Inflow = 100 cfs  
Jones Pumping Plant = 800 cfs

**ESTIMATED DELTA HYDROLOGY**

Total Delta Inflow ~ 8,859 cfs  
Sacramento River = 7,142 cfs  
San Joaquin River = 1,334 cfs

**DELTA OPERATIONS**

Delta Conditions = Balanced  
Delta x-channel Gates (% of day is open) = 100%  
Outflow Index ~ 3,500 cfs  
% Inflow Diverted = 10.3% (3-day avg)  
X2 Position (yesterday) > 81.0 km  
Controlling Factor(s) = Delta WQ  
OMR Index Daily Value = -1,400 cfs

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**RESERVOIR STORAGES (AS OF MIDNIGHT)**

Shasta Reservoir = 1,687 TAF  
Folsom Reservoir = 275 TAF  
Oroville Reservoir = 1,080 TAF  
San Luis Res. Total = 625 TAF  
SWP Share = 514 TAF

Reservoir data and reports are available at:  
<http://cdec.water.ca.gov/reservoir.html>

**RESERVOIR RELEASES**

Keswick = 9,250 cfs  
Nimbus = 1,300 cfs  
Oroville = 3,000 cfs

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If you have any questions regarding the preliminary data  
in this report, please contact OCO\_Export\_Management@water.ca.gov