

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Specified License and Permits¹ of the
Department of Water Resources and U.S. Bureau of Reclamation
for the State Water Project and Central Valley Project**

**ORDER MODIFYING AN ORDER THAT APPROVED TEMPORARY URGENCY
CHANGES TO WATER RIGHT LICENSE AND PERMIT TERMS RELATING TO
DELTA WATER QUALITY OBJECTIVES**

BY THE EXECUTIVE DIRECTOR:

1.0 OVERVIEW

This Order modifies the State Water Resources Control Board (State Water Board) Executive Director's February 21, 2023 Order that acted on a Temporary Urgency Change Petition (TUCP) submitted by the U.S. Bureau of Reclamation (Reclamation) and Department of Water Resources (DWR) (collectively, Petitioners) on February 13, 2023 (February 21 Order). The February 21 Order suspended water right permit and license² requirements of the Central Valley Project (CVP) and State Water Project (SWP) (collectively, Projects) during February and March of 2023 that would otherwise necessitate that the Projects meet the Port Chicago Delta outflow requirements included in Table 4 of State Water Board Decision 1641 (D-1641). The D-1641 Delta outflow requirements vary based on hydrologic conditions with higher requirements applying based on wetter conditions the prior month that are intended to protect an array of estuarine species. The Port Chicago Delta outflow requirements are specifically intended to provide for some population growth of native estuarine species during wetter conditions. The requirement was triggered based on very wet conditions in January 2023. The

¹The petition was filed for Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources' State Water Project and License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation's Central Valley Project.

²X2 and an electrical conductivity (EC) value of 2.64 millimhos per centimeter (mmhos/cm) are referenced interchangeably in this Order. As stated in D-1641, "X2 is the location of the 2 parts per thousand salinity contour (isohaline), one meter off the bottom of the estuary, as measured in kilometers upstream from the Golden Gate Bridge. The abundance of several estuarine species has been correlated with X2. In the 1995 Bay-Delta Plan, an electrical conductivity value of 2.64 mmhos/cm is used to represent the X2 location." (D-1641, p. 10, fn. 11.)

TUCP cited the prospects for a "return to dry conditions the rest of winter and spring of 2023" and "deteriorating hydrology" that, if coupled with the D-1641 Delta outflow requirements, would hinder the ability to divert and store water south of the Delta as well as impede retention of storage in north of Delta reservoirs.

The February 21 Order determined that an urgent need for the proposed changes existed at the time the TUCP was filed and that the changes were in the public interest and would not have unreasonable impacts on fish and wildlife. However, as identified in the March 8, 2023 Bulletin 120 hydrologic forecast, hydrologic conditions have improved since the Order was issued and additional significant precipitation is currently occurring and projected to occur. The State Water Board has also received public comments on the TUCP and a petition for reconsideration. Based on the improved hydrology and in consideration of the public comments and the petition for reconsideration, this Order finds that an urgent need for the changes no longer exists, the changes are no longer in the public interest, and the impacts of the changes on fish and wildlife are no longer reasonable.

Accordingly, this Order rescinds the suspension of the Port Chicago Delta outflow requirements for the remainder of March. All other applicable provisions of the February 21 Order remain in place, including Conditions 4 and 8, which require reporting on the volume of water saved by not meeting the Port Chicago requirement (Condition 8) and reporting on how a portion of the water supply improvements will be used for fish and wildlife purposes, and if not, the reason it is not going to be used for that purpose (Condition 4).

2.0 INTRODUCTION

At the time the February 21 Order was issued, California had experienced an extremely wet December and January as a result of a series of atmospheric rivers that began in late December, but there was concern for potentially dry conditions for the remainder of the winter and spring. In January 2023, the state experienced one of the wettest three-week periods on record, yielding a snowpack that was at 205 percent of average on February 1, 2023. The beginning of February was relatively dry and short-term forecasts indicated continued dry conditions. While hydrologic conditions had improved in water year (WY) 2023 through early January, it was possible that the remainder of the winter and spring would be dry reducing opportunities to divert water for human uses and promote water supply resiliency.

Based on these circumstances, on February 13, 2023, Governor Newsom issued Executive Order N-3-23 stating that "to protect public health and safety, it is critical the State take certain immediate actions without undue delay to prepare for and mitigate the effects of the drought condition" and finding that under Government Code section 8571 "strict compliance with various statutes and regulations specified in [the] Order would prevent, hinder, or delay the mitigation of the effects of the drought conditions." Specifically, Governor Newsom issued Directive 3, withdrawing Directive 4 of the previous Emergency Proclamations and replacing it with the following text:

"To ensure adequate water supplies for purposes of health, safety, the environment, or drought resilient water supplies, the Water Board shall consider modifying requirements for reservoir releases or diversion limitations in Central Valley Project or State Water Project facilities to: (i) conserve water upstream later in the year in order to protect cold water pools

for salmon and steelhead, (ii) enhance instream conditions for fish and wildlife, (iii) improve water quality, (iv) protect carry-over storage, (v) ensure minimum health and safety water supplies, or (vi) provide opportunities to maintain or to expand water supplies north and south of the Delta. The Water Board shall require monitoring and evaluation of any such changes to inform future actions. For any actions taken pursuant to this paragraph and any approvals granted in furtherance of this paragraph, Water Code Section 13247 and Public Resources Code, Division 13 (commencing with Section 21000) and regulations adopted pursuant to that Division are suspended. Nothing in this Paragraph affects or limits the validity of actions already taken or ongoing under Paragraph 4 of my May 10, 2021 Proclamation or Paragraph 4 of my July 8, 2021 Proclamation.”

On the same day as the issuance of Executive Order N-3-23, Petitioners jointly filed the TUCP citing that Order and the need to build “water resilience amid climate-driven extreme weather.”³ On February 21, 2023, the State Water Board issued an Order approving, subject to conditions, the temporary suspension from the date of the Order through March 31, 2023, of the Port Chicago Delta outflow requirement specified in Table 4 of D-1641 (Condition 1). The State Water Board reserved the authority to modify the February 21 Order if significant additional precipitation and runoff in the Delta watershed occurred (Condition 5).

On March 8, 2023, DWR issued the March Bulletin 120 hydrologic forecast, which shows significantly improved hydrologic conditions as described further below. The improvement in hydrologic conditions has and is expected to result in the ability to achieve the Port Chicago Delta outflow requirements without reducing Project exports or affecting reservoir storage. Prior to and subsequent to the issuance of the February 21 Order, the State Water Board also received written comments and objections to the TUCP, and a petition for reconsideration of the February 21 Order. The improved hydrologic, biologic, and water supply information, as well as the comments and petition for reconsideration, have informed this modification to the February 21 Order in order to ensure consistency with the required findings for approval of TUCPs, including finding that:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.

(Wat. Code, § 1435, subd. (b)(1-4).)

This Order finds that the Petitioners no longer have an urgent need for the change in the Port Chicago Delta outflow requirement, that the change is no longer in the public interest, and that the impacts to fish and wildlife from the change would no longer be reasonable. Other legal

³ Attachment 1. Supplement to February through March 2023 Temporary Urgency Change, p. 1-7.

users of water were not expected to be affected by the suspension of the Port Chicago Delta outflow requirements.

3.0 BACKGROUND

This background section includes updated information on hydrologic conditions since the February 21 Order was issued. Additional background related to the Port Chicago requirements, the status of fish species, and other relevant information was included in the February 21 Order and will not be revisited in this Order.

3.1 Improved Hydrology and Water Supply Forecasts

3.1.1 Hydrology

Precipitation and runoff has increased and is expected to continue to be elevated in the Delta watershed since the issuance of the February 21 Order. As of March 8, 2023, the Northern Sierra 8-Station Precipitation Index for the water year 2023 was at 45.5 inches, 119 percent of average for the date (Figure 1); the San Joaquin 5-Station Precipitation Index was at 44.0 inches, 155 percent of average for the date (Figure 2).

At the time the February 21 Order was issued the Northern Sierra 8-Station Precipitation Index was at 39.1 inches, 116 percent of average for the date and the San Joaquin 5-Station Precipitation Index was 35.2 inches, 142 percent of average for the date. For context, the water year annual average cumulative precipitation during 1991-2020 were 53.2 and 39.9 inches for the Northern Sierra 8-Station and San Joaquin 5-Station indices, respectively.

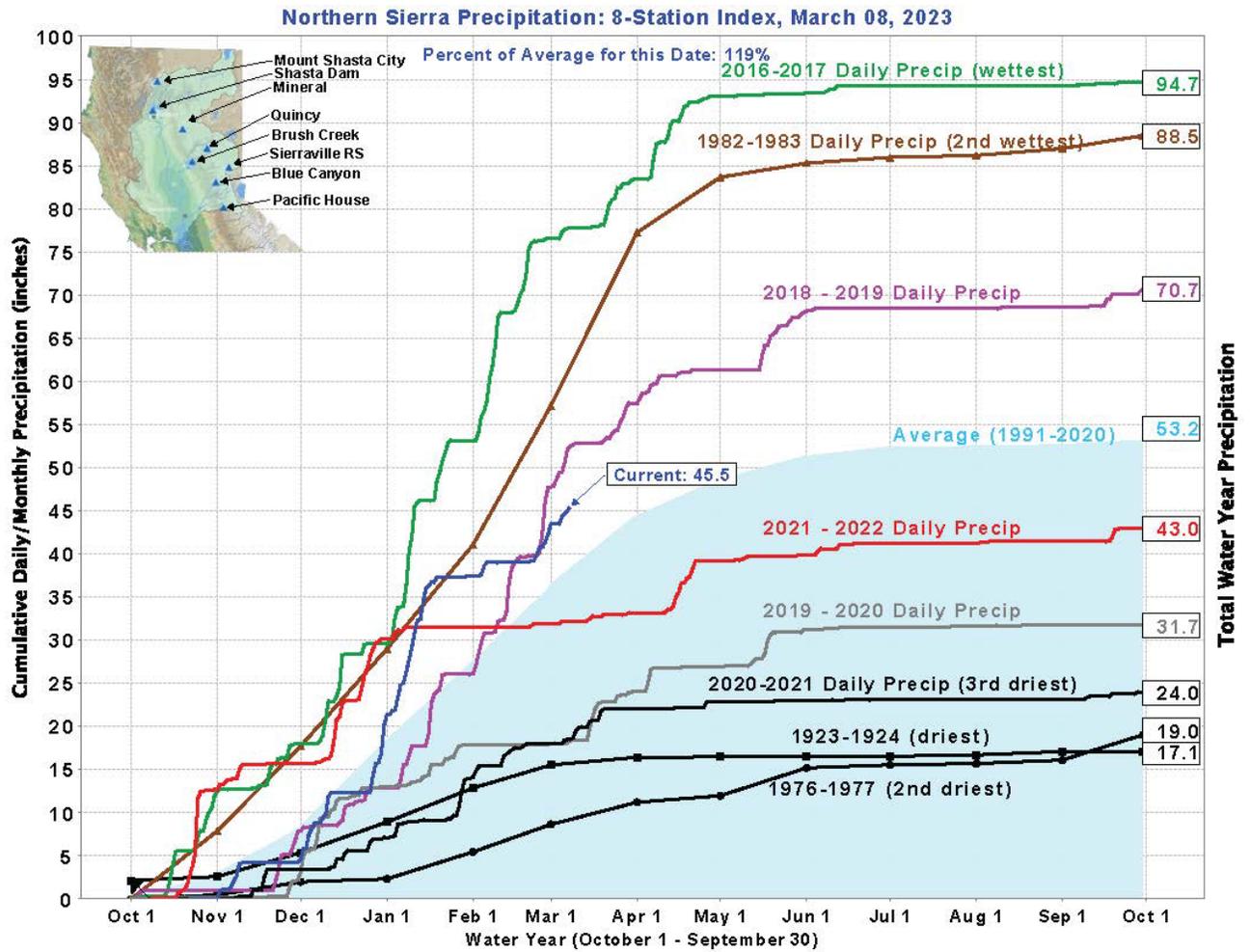


Figure 1. Northern Sierra Precipitation: 8-Station Index.

Source: https://cdec.water.ca.gov/reportapp/javareports?name=PLOT_ESI.pdf, accessed March 8, 2023.

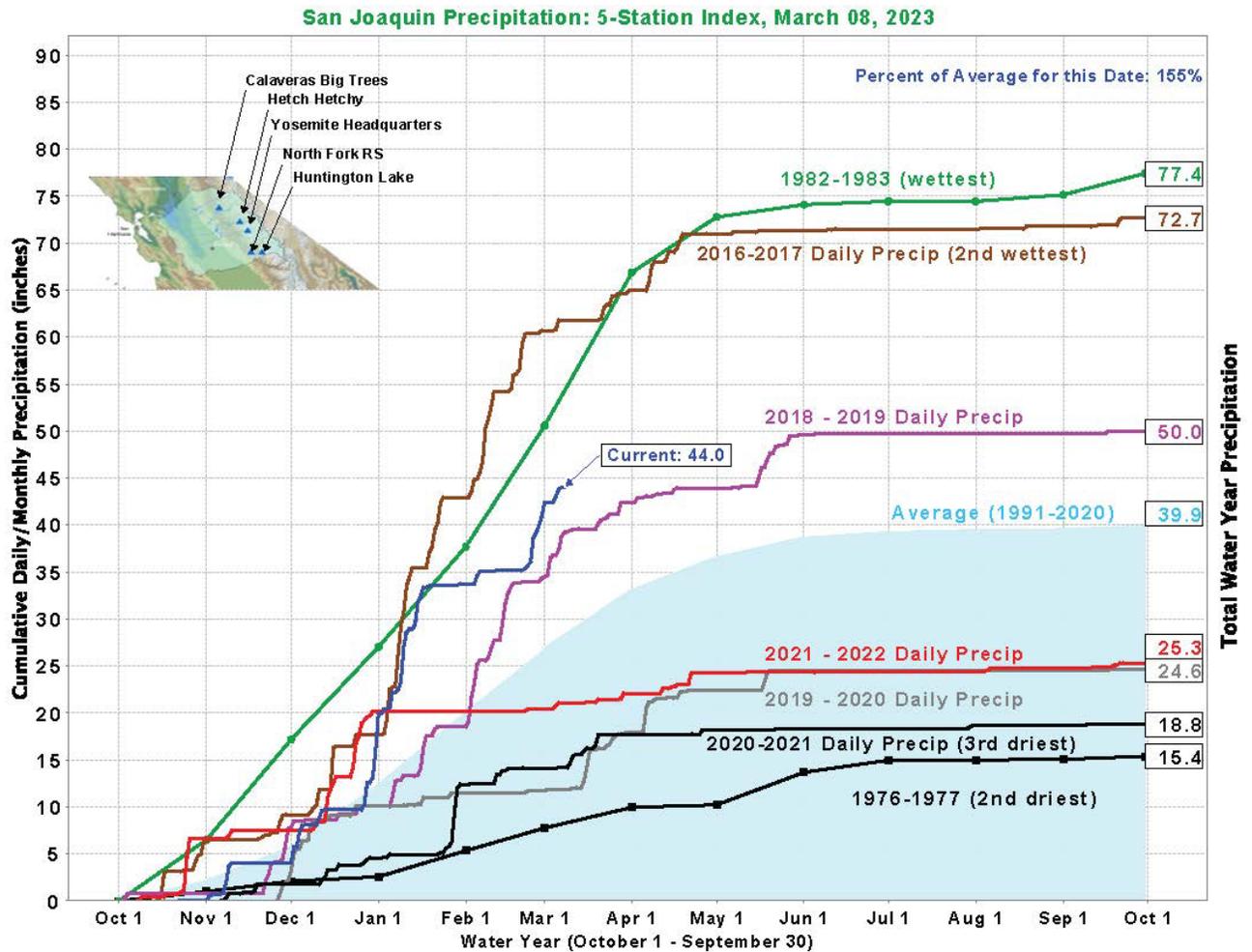


Figure 2. San Joaquin Precipitation: 5-Station Index. Source: https://cdec.water.ca.gov/reportapp/javareports?name=PLOT_FSI.pdf, accessed March 8, 2023.

As of March 8, 2023, the statewide average snow water equivalent (SWE) was at 47.2 inches, 181 percent of the April 1 average and 192 percent of normal for the date.⁴ For the Northern Sierra/Trinity region, it was at 43.0 inches, 147 percent of the April 1 average and 156 percent of normal for the date. For the Central Sierra region, it was at 49.3 inches, 184 percent of the April 1 average and 196 percent of normal for the date. When the February 21 Order was issued, the statewide average SWE was at 36.8 inches, 139 percent of the April 1 average and 174 percent of normal for the date. For the Northern Sierra/Trinity region, it was at 32.9 inches, 114 percent of the April 1 average and 144 percent of normal for the date. For the

⁴ Statewide Snow Water Content: Current Regional Snowpack from Automated Snow Sensors. <https://cdec.water.ca.gov/reportapp/javareports?name=swccond.pdf>. https://cdec.water.ca.gov/reportapp/javareports?name=PLOT_SWC.pdf. Accessed March 8, 2021.

Central Sierra region, it was at 38.5 inches, 141 percent of the April 1 average and 176 percent of normal for the date.

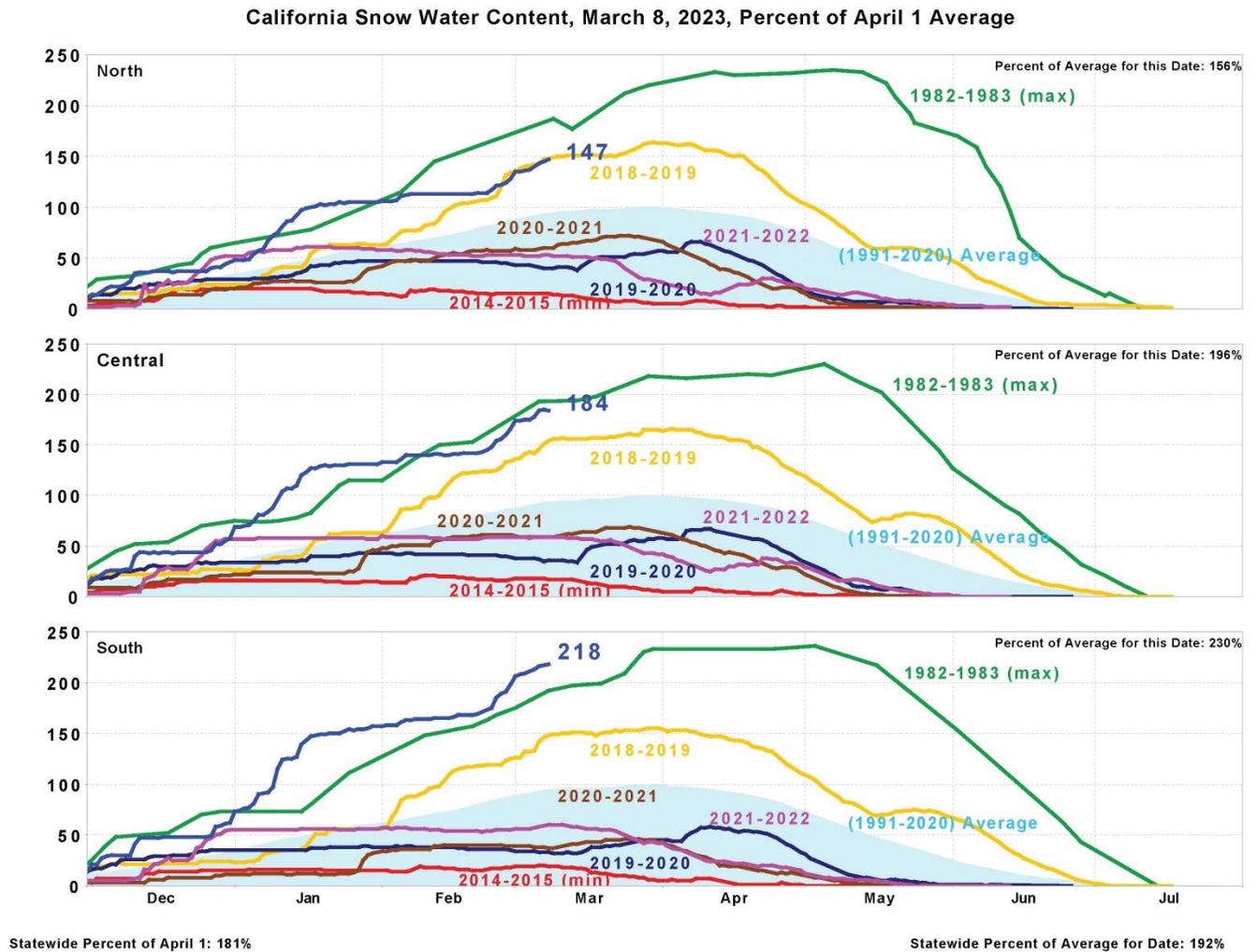


Figure 3. California Snow Water Content. Source: https://cdec.water.ca.gov/reportapp/javareports?name=PLOT_SWC.pdf, accessed March 8, 2023.

In addition, the statewide drought conditions have improved as more areas have been downgraded to lower intensity droughts since the issuance of the February 21 Order. According to US Drought Monitor data,⁵ as of March 7, 2023, 73.2 percent of California is currently experiencing Abnormally Dry conditions, 43.1 percent is in Moderate Drought, and 19.0 percent is in severe drought, while no area is under Extreme Drought (Figure 4). In addition, 26.8 percent of the state is not under any drought conditions.

For comparison, as of February 14, 2023, 84.6 percent of California was experiencing moderate drought and 32.6 percent was in severe drought and no area was under extreme

⁵ U.S. Drought Monitor Map as of March 7, 2023. <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA>. Accessed March 9, 2023.

drought. As of February 15, 2022, 99.6 percent of California was under moderate drought, 66.4 percent under severe drought, and 1.4 percent under extreme drought.

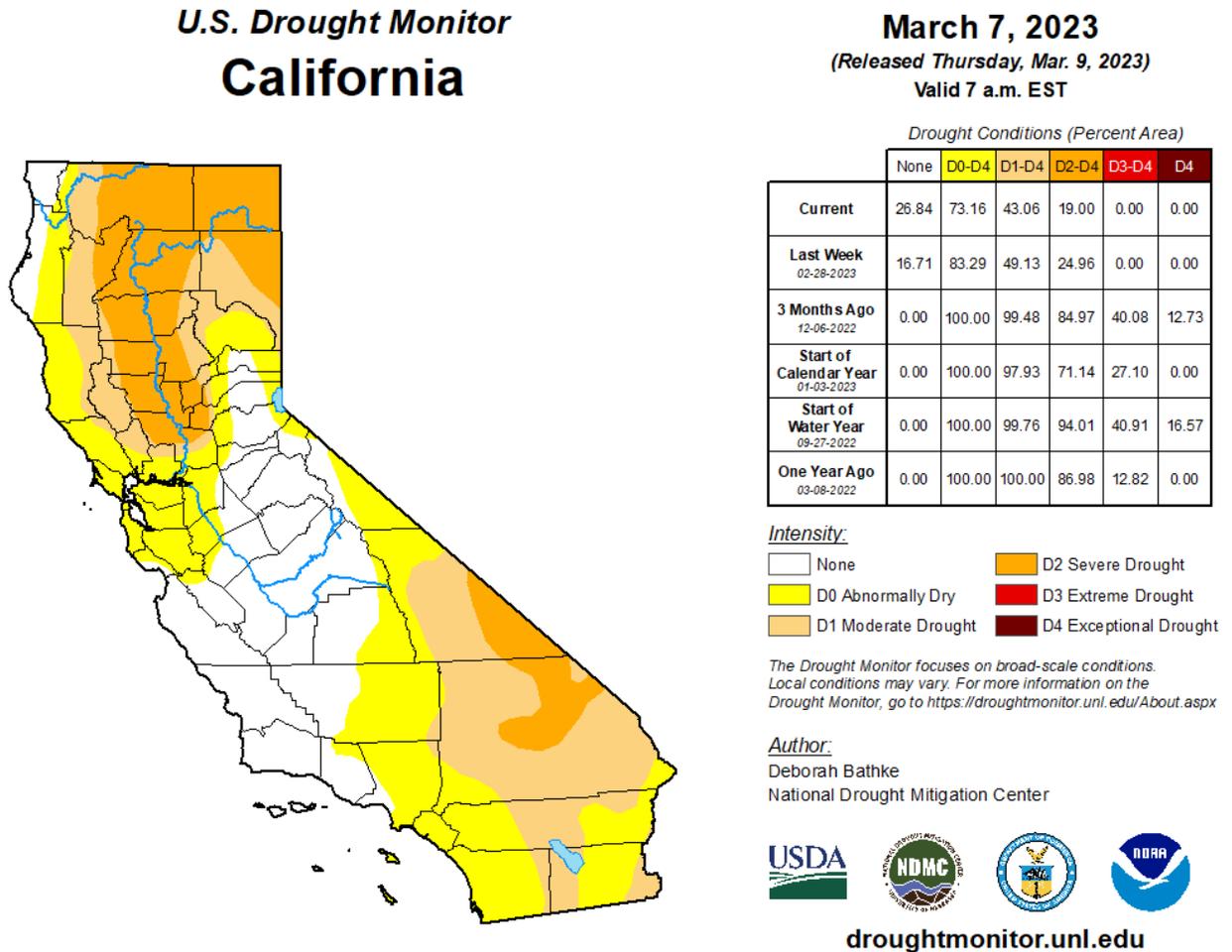


Figure 4. U.S. Drought Monitor data for California. Source: <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA>, accessed March 9, 2023.

DWR’s Bulletin 120 and Water Supply Index⁶ updated on March 1 (issued March 8) reflects the changing hydrologic conditions for the Delta watershed since the issuance of the February 21 Order. The March 1 Water Supply Forecast identifies Sacramento River unimpaired runoff of 20.2 million acre-feet (MAF) for the water year at the 50 percent probability of exceedance (114 percent of average) and 16.1 MAF at the 90 percent probability of exceedance (91 percent of average). The March 1 forecasted Sacramento Valley Water Year Type Index (SVI: 40-30-30) is 8.02 MAF at the 50 percent probability of exceedance, categorized as an Above Normal water year type; and 6.56 MAF at the 90 percent probability of exceedance, categorized as a Below Normal water year type. For comparison, the Sacramento River

⁶ Bulletin 120 and Water Supply Index, <https://cdec.water.ca.gov/snow/bulletin120/>

unimpaired runoff forecast, as of February 1, 2023, was 20.0 MAF for water year 2023 at the 50 percent probability of exceedance (113 percent of average) and 15.4 MAF at the 90 percent probability of exceedance (87 percent of average). The February 1 SVI was 7.86 at the 50 percent probability of exceedance (Above Normal water year type) and 6.27 at the 90 percent probability of exceedance (Dry water year type).

The March 1 Bulletin 120 Forecast identifies unimpaired flows for the San Joaquin River tributaries of 11.8 MAF at the 50 percent probability of exceedance and 9.8 MAF at the 90 percent probability of exceedance for the water year. The forecasted San Joaquin Valley Water Year Type Index (SJI: 60-20-20) for water year 2023 is 5.65 MAF at the 50 percent probability of exceedance and 4.64 at the 90 percent probability of exceedance, categorized as a wet water year for both forecasts. For comparison, forecasted unimpaired flows for the SJI as of February 1, was 10.3 MAF at the 50 percent probability of exceedance and 8.3 MAF at the 90 percent probability of exceedance for the water year. The forecasted SJI was 4.75 MAF at the 50 percent probability of exceedance (Wet water year type) and 3.77 MAF at the 90 percent probability of exceedance as of February 1 (Above Normal water year type).

3.1.2 Reservoir Storage Levels

Water storage levels in Project reservoirs have increased since the February 21 Order was issued, with storage expected to continue to increase as the result of current and impending storm events and snowmelt runoff, with some reservoirs implementing flood control operations due to expected large runoff events. As of February 14, 2023, Lake Shasta was at 58 percent of capacity, whereas it now stands at 61 percent (36 percent a year ago).⁷ Lake Oroville currently is at 75 percent of capacity, whereas on February 14 it stood at 69 percent of capacity (46 percent a year ago).

South of the Delta, the principal storage facility for the SWP and CVP is San Luis Reservoir, which relies predominantly on water exported from the Delta. It currently stands at 82 percent of capacity compared to 72 percent on February 14. This value was 45 percent a year ago. Figure 5 shows the storage levels of major water supply reservoirs in California as of March 7, 2023.

⁷ <http://cdec.water.ca.gov/reportapp/reservoir.html>

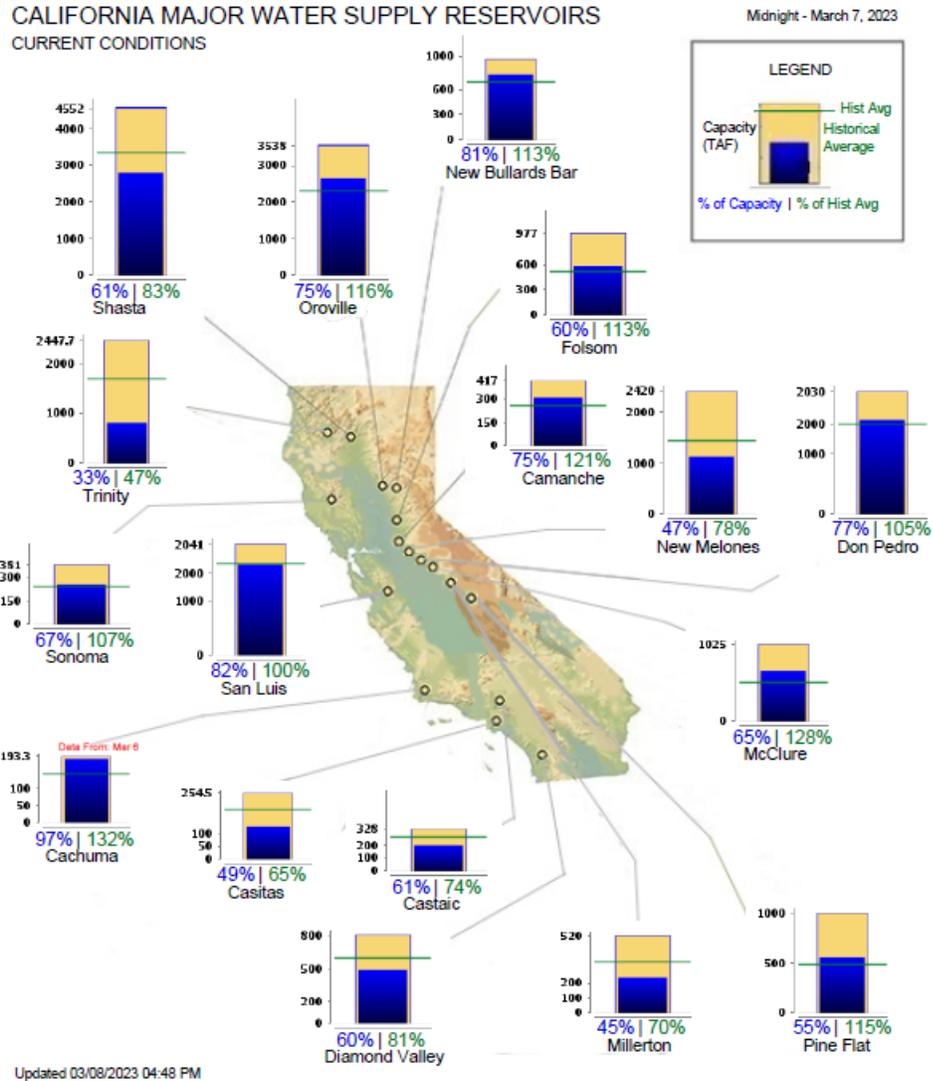


Figure 5. Major Reservoir Conditions in California as of March 7 2023
Source: <https://cdec.water.ca.gov/reportapp/javareports?name=rescond.pdf>, accessed March 8, 2023.

Forecasted inflows (50 percent probability of exceedance) to the major reservoirs upstream of the Delta have increased significantly since the February 21 Order was issued. As shown in Table 1, total forecast inflow to the four major Project reservoirs increased by over 500 thousand acre-feet (TAF) between the February 1 and March 1 forecasts. These changes in hydrologic forecasts indicates that the potential for drier conditions for the remainder of winter and spring of 2023, cited in the TUCP, has not materialized.

Table 1. Summary of Two Estimates of Watershed Inflows associated with major Project Reservoirs (February – July 2023) made on February 1 and March 1, 2023.

Watershed	Major Reservoir	Feb 1 Estimated Inflow (TAF)	Mar 1 Estimated Inflow (TAF)
		Feb - Jul	Feb - Jul
Sacramento River, upper	Shasta	3,188	2,768
Feather River	Oroville	3,110	3,539
American River	Folsom	2,493	2,786
Stanislaus River	New Melones	1,436	1,656
	Total	10,227	10,749

Note: Inflow values here are approximations indicated by the forecast unimpaired flows from Bulletin 120 as of February 1 and March 1, 2023. The estimate assumes that diversions and storage above the major reservoirs and other streamflow depletions will be moderately small. Watershed estimated runoff values from Bulletin 120, Water Supply Forecast, with 'Inflow to Shasta' for Sacramento River, upper; 'Feather, Oroville' for Feather River; 'American, Folsom' for American River; and 'Stanislaus, Goodwin' for Stanislaus River. Data accessed on <https://cdec.water.ca.gov/reportapp/javareports?name=B120DIST> on February 15 and March 8, 2023.

3.1.3 Precipitation Forecasts

As discussed in Section 3.1.1 and illustrated in Figures 1 through 3, conditions in the Delta watershed have been relatively wet with additional precipitation events since the February 21 Order. In addition, the near-term forecasts indicate that the remainder of March is expected to experience more precipitation events with more intense atmospheric rivers affecting the state. The 6-day precipitation forecast by the California Nevada River Forecast Center (CNRFC), as of March 8, forecasts up to 10 inches of additional precipitation throughout the Delta watershed (Figure 6). In addition, the precipitation outlook for March 16-22, 2023, issued by the National Weather Service, predicts that the southwestern United States will experience above normal precipitation conditions (Figure 7).

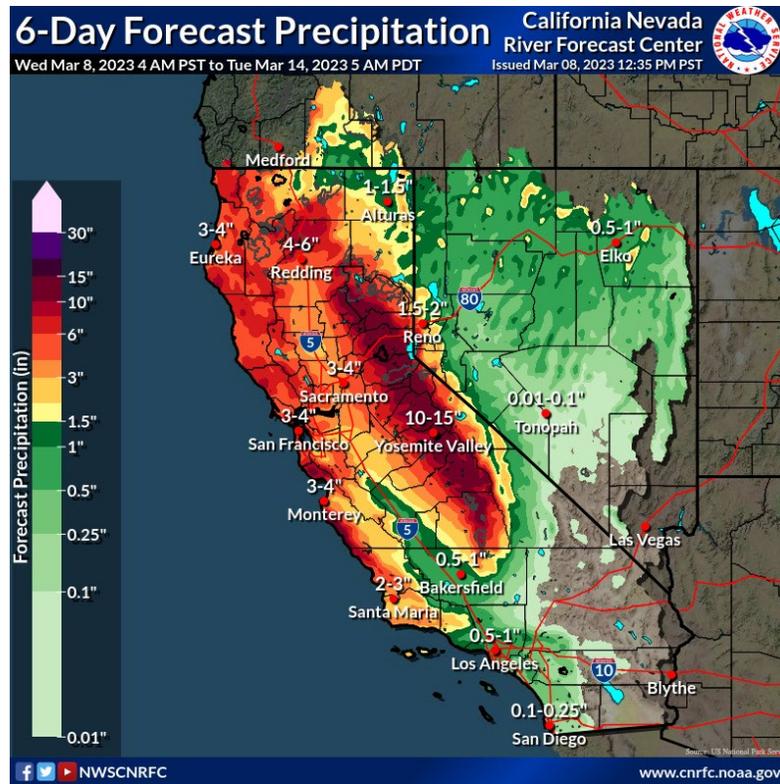


Figure 6. California Nevada River Forecast Center 6-Day Forecast Precipitation issued March 8, 2023. Source: <https://www.cnrfc.noaa.gov/precipForecast.php?cwa=RSA&imgNum=1>, accessed March 8, 2023.

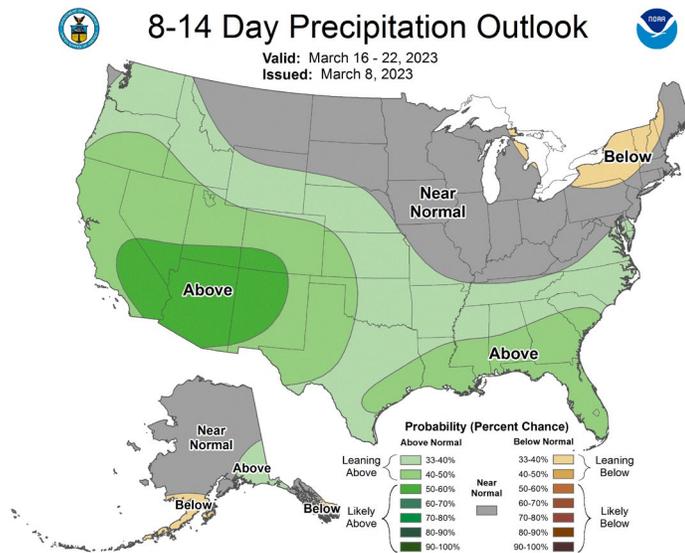


Figure 7. Precipitation probability of 8-14 day precipitation outlook issued by the Climate Prediction Center issued March 8, 2023. Source: <https://www.cpc.ncep.noaa.gov/products/predictions/814day/>, accessed March 8, 2023.

3.2 Substance of the 2023 Temporary Urgency Change Petition

DWR and Reclamation filed the TUCP pursuant to Water Code section 1435 et. seq on February 13, 2023. The TUCP requested that the State Water Board temporarily modify a requirement included in the water right permits and license for the SWP and CVP imposed by D-1641, which requires DWR and Reclamation to meet flow and water quality objectives established in the Bay-Delta Plan. Specifically, during February through March 2023, DWR and Reclamation requested to:

- Modify footnote [d] of Table 4 in D-1641 to state “This standard does not apply to February and March 2023.”

The requested action was to effectively remove the Port Chicago Delta outflow requirement, modifying that requirement from 29,200 cfs to 11,400 cfs or moving the required electrical conductivity (EC) compliance location upstream by approximately 10 kilometers for the days the Port Chicago requirement applied.

3.3 Required Finding of Fact

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a temporary urgency change in their water rights.

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.

(Wat. Code, § 1435, subd. (b)(1-4).)

The State Water Board exercises continuing supervision over temporary, urgency change orders (TUCO) and may modify or revoke them at any time. (Wat. Code, §§ 1439, 1440.) The authorization to divert and use water under a TUCO expires automatically 180 days after issuance, unless the TUCO is revoked, or an earlier expiration date is specified. (*Id.*, § 1440.) The 180-day period does not include any time required for monitoring, reporting, or mitigation. (*Ibid.*) The State Water Board may renew a TUCO for a period not to exceed 180 days. (*Id.*, § 1441.)

3.4 Substance of the February 21 Order

In response to the TUCP, the State Water Board issued the February 21 Order,⁸ conditionally approving the changes requested in the TUCP. At the time of the February 21 Order, an

⁸ Available at <https://www.waterboards.ca.gov/drought/tucp/docs/2023/20230221-final-tuco.pdf>

urgent need to make the proposed changes was present considering the severe magnitude of the drought over the last three years and the uncertainty in future hydrology. The Executive Director found that there was an urgent need for the changes to stabilize water supplies for human uses in 2023 if dry conditions, such as those in 2022, were to follow the early season storms. Considering the urgent need for water supplies and the California Department of Fish and Wildlife's (CDFW) determination that the changes would not have substantial impacts on fish and wildlife,⁹ the State Water Board found that the changes would not have unreasonable impacts to fish and wildlife, despite the potential impacts to resident and migratory species of fish in the Delta. Additionally, the State Water Board found that the changes would not result in injury to other legal users of water, and the proposed changes would be in the public interest.

The February 21 Order suspended the Port Chicago outflow requirement for February and March (Condition 1) and required compliance with the Port Chicago standard in April if conditions absent the TUCP changes would have triggered the requirement (Condition 6). Among other conditions, the Order also required additional monitoring and reporting (Conditions 3, 8, & 9); required DWR and Reclamation to evaluate opportunities to use a portion of the additional water supplies resulting from the changes to benefit fish and wildlife (Condition 4); specified that the State Water Board reserved the authority to modify the February 21 Order upon the occurrence of significant additional precipitation and runoff or based on public comments or objections (Conditions 5 and 12); and specified that the Order did not authorize the unauthorized taking of listed species or any other act prohibited under the California Endangered Species Act or federal Endangered Species Act (Condition 13).

4.0 DISCUSSION

As discussed above, before issuing a TUCO, the State Water Board must find that there is an urgent need to make the proposed change. (Wat. Code, § 1435, subd. (b)(1).) As explained above, due to improvements in hydrologic conditions, currently an urgent need for Petitioners' proposed changes to the Delta outflow requirements does not exist.

In the February 21 Order, the Executive Director and State Water Board reserved the authority to modify the Order if substantial precipitation and runoff were to occur in the Delta watershed. The Executive Director and State Water Board also reserved authority to modify the Order based on public comments or objections. As discussed above in Section 3.1, between the time of the February 21 Order and this Order, a series of precipitation events occurred in the Bay-Delta watershed causing flow conditions throughout the watershed to increase substantially. Additional significant precipitation events are also predicted in the coming weeks. As a result, in the absence of the proposed changes, Delta outflow requirements are expected to be met this month without affecting Project exports or reservoir storage. The concern articulated in the TUCP that dry conditions would persist no longer exists, and therefore an urgent need to change Delta outflow requirements for the month of March no longer exists.

⁹ See CDFW's February 20, 2023 letter to the SWRCB available at <https://www.waterboards.ca.gov/drought/tucp/docs/2023/cdfw-to-swrcb-re-swp-itp-minor-amendment-request-2023-tucp.pdf>

Given that there is no longer an urgent need for the changes, any impacts to fish and wildlife as a result of operating to the changed Delta outflow requirements in March would be unreasonable, and the changes are no longer in the public interest.

In light of improved hydrology, and taking into consideration public comments on and objections to the TUCP, as well as the petition for reconsideration of the February 21 Order, this Order modifies the February 21 Order to revoke the suspension of the Port Chicago Delta outflow requirement for the remainder of the month of March. As a result of this modification, Condition 6 is no longer necessary, and any Port Chicago requirements for April based on conditions during the last 14 days of March will be required as described in D-1641. Absent the conditions in February that were authorized by the February 21 Order, the conditions that trigger the Port Chicago Delta outflow requirement in March would have been met in accordance with footnote [d] of Table 4 in D-1641. Therefore, based on the Eight-River Index for February of 1665 TAF,¹⁰ the Petitioners are required to meet the Port Chicago Delta outflow requirement for 11 days¹¹ in March. The changes to the ordering conditions from the February 21 Order are identified in strikethrough and underline below.

¹⁰ Bulletin 120 - March 1, 2023 Forecast

¹¹ D-1641, Table 4, footnote [a]

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary urgency change in permit and license conditions under Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources (DWR) for the State Water Project (SWP) 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 (Reclamation) for the Central Valley Project (CVP); ~~is approved, subject to the following terms and conditions~~ **that was originally approved on February 21, 2023 is modified as follows.** Except as otherwise provided below, all other terms and conditions of the subject license and permits, including those added by the State Water Resources Control Board (State Water Board) in Revised Decision 1641 (Decision 1641) shall remain in effect. ~~The changes approved in~~ **conditions of** this Order shall ~~be effective from the date of this Order until March 31, 2023, and the other conditions shall remain effective until satisfied.~~

1. Except as otherwise provided below, unless this Order is amended or rescinded, the requirement that DWR and Reclamation meet Delta outflows listed for Port Chicago in Table 4 of Decision 1641 are suspended from ~~the date of this Order~~ **February 21, 2023** through March 9, of 2023. **DWR and Reclamation are required to meet the March 2023 Port Chicago Delta outflow requirements included in Decision 1641 that would have been required absent the changes to the requirements in February. Specifically, 11 days of compliance with the Port Chicago Delta outflow requirement are required in March.** All other Delta outflow requirements included in Decision 1641 remain in effect.
2. DWR and Reclamation shall consult on a regular basis with designated representatives from the State Water Board, the Department of Fish and Wildlife (CDFW), National Marine Fisheries Service (NMFS), and U.S. Fish and Wildlife Service (USFWS) (collectively fisheries agencies) concerning current conditions and potential changes to SWP and CVP operations needed to reasonably protect fish and wildlife beneficial uses of water.
3. DWR and Reclamation shall conduct necessary monitoring, modeling, and other evaluations to provide real time information to State Water Board staff and the fisheries agencies on at least a weekly basis, and more often if warranted or directed, regarding the effects of this change on native resident and migratory fish species, including to inform whether this change in combination with other operations may affect entrainment of native fish species at the SWP and CVP export facilities. DWR and Reclamation shall also conduct any additional monitoring and analyses that may be requested by State Water Board staff or fisheries agencies staff that the Executive Director determines is warranted. ~~Specifically, on a weekly basis~~ DWR and Reclamation shall evaluate expected entrainment effects with and without the changes

approved in this order, as feasible, **provide documentation of the methods used for the analysis**, and present that information to State Water Board staff and fisheries agency staff for review and input. The Executive Director reserves continuing authority to impose restrictions on exports or other conditions to avoid impacts to native fish species from this change, including limitations on reverse flows and measures to prevent native fish species from being drawn into the interior Delta with turbidity events.

4. DWR and Reclamation shall evaluate opportunities to use a portion of the additional water supplies resulting from this change to improve water supplies to wildlife refuges and to provide for pulse flows for the benefit of native fish and wildlife. DWR and Reclamation shall provide a report to the Executive Director by April 3, 2023, identifying how a portion of the water supply improvements resulting from this change will be used for fish and wildlife purposes, and if not, the reason it is not going to be used for this purpose. The Executive Director reserves authority to direct use of a portion of the water supply gains resulting from this Order for fish and wildlife purposes.
5. Upon occurrence of significant additional precipitation and runoff in the Delta watershed, or other changed conditions or new information, the Executive Director reserves authority to modify this order to meet the required findings.
6. ~~The suspension of DWR and Reclamation's responsibility to meet the March 2023 Port Chicago Delta outflow requirement identified in Table 4 of Decision 1641 shall not alleviate DWR and Reclamation of the responsibility for meeting any Port Chicago requirements that would have applied in April without the changes approved by this order. DWR and Reclamation shall conduct an evaluation as directed by the Executive Director to determine whether, absent the suspension of the Table 4 Port Chicago Delta outflow requirement in March of 2023, and assuming DWR and Reclamation complied with the requirement, the Port Chicago Delta outflows would have been required in April 2023 pursuant to footnote [d] of Table 4. If compliance with Port Chicago Delta outflows would have been required pursuant to footnote [d] absent the changes approved in this order, DWR and Reclamation shall meet the Port Chicago requirement indicated in Table 4 during April 2023.~~
7. DWR and Reclamation shall ensure that the electrical conductivity gages at all Decision 1641 Delta outflow compliance stations, including at the Port Chicago (station D-10), Chipps Island (station C-14), and Collinsville (station C-2) stations are operational and calibrated and that monitoring data is quality controlled to ensure that the data is reliable for compliance and evaluation purposes. The Petitioners shall notify the State Water Board within 24 hours of any gage outages or malfunctioning monitoring instruments and describe steps that will be taken to expeditiously remedy the situation.
8. The Petitioners shall calculate and maintain a record of the following under the changes approved in this order as compared to without the changes: the change in Delta outflows; the change in the location of X2; the volume of additional exports; the increase in water supply allocations to specific groups of contractors, including refuges; and any expected increases in carryover storage that would provide for higher storage

levels going into water year 2024 north or south of the Delta, including the volume and location of those storage benefits. These records, **and associated documentation of the methods used for the analyses**, shall be submitted to the State Water Board and fisheries agencies within 10 business days after the first day of the following month, with the exception of the carryover storage information which is due by November 15, 2023.

9. Through the remainder of the water year, the Petitioners shall submit updated monthly water year operations outlooks identifying information described in a. through f. below. The outlooks shall be posted on DWR's website and updated as necessary based on changed conditions. Monthly updates shall be posted on DWR's website and provided to the State Water Board and fisheries agencies within 20 working days after the first day of the month.
 - a. Upstream: Inflows to and storage levels in the major reservoirs (Shasta, Folsom, Oroville, Trinity, Whiskeytown, San Luis, and New Melones). River releases from the aforementioned reservoirs.
 - b. Delta inflows, channel depletions, exports, and outflows.
 - c. SWP: deliveries to Feather River Service Area contractors, north-of-Delta Table A contractors, and south-of-Delta Table A contractors. Information regarding SWP deliveries shall include the monthly and total volume, volumes delivered to specific water users, and the basis of water right or contractual agreement under which the deliveries are made.
 - d. CVP: deliveries to Settlement contractors, American River municipal and industrial (M&I) contractors, Sacramento River agricultural water service contractors, Sacramento River M&I water service contractors, Contra Costa Water District, north-of-Delta refuges, exchange contractors, south-of-Delta agricultural water service contractors, south-of-Delta M&I water service contractors, south-of-Delta refuges, East side water right holders, New Melones East side, and Friant Unit. Information regarding CVP deliveries shall include the monthly and total volume, volumes delivered to specific water users, and the basis of water right or contractual agreement under which the deliveries are made.
 - e. South-of-Delta water transfers, including the transferors, transferees, and the quantities transferred. Water that is delivered by or from SWP or CVP facilities in lieu of or in exchange for groundwater or surface water.
 - f. Monthly coordinated operations agreement balances.
10. DWR and Reclamation shall operate consistent with the terms of the proposed Interim Operations Plan (IOP) submitted to the Court on September 30, 2022, until such time as the Federal District Court issues an Order. Following which, the Petitioners shall comply with the Federal District Court Order.

11. Pursuant to the requirements of this Order and State Water Board Order WR 90-5, Reclamation, in consultation with the fisheries agencies, shall implement the Water Year 2023 Sacramento River Temperature Management Plan as approved by the Executive Director.
12. This Order may be further modified by the Executive Director or the State Water Board based on public and agency comments or objections, or changed circumstances. Information concerning changes to this Order will be posted on the State Water Board's website within 24 hours.
13. This Order does not authorize any act that results in the taking of a candidate, threatened, or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the Petitioners shall obtain authorization for an incidental take permit prior to construction or operation of the project. Petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency changes authorized under this Order.
14. Petitioners shall immediately notify the Executive Director of the State Water Board if any significant change in conditions occurs that warrants reconsideration of this Order.

~~February 24~~ **March 9**, 2023

Dated



Eileen Sobeck,
Executive Director