



December 26, 2008

Division of Water Rights
c/o Greg Wilson
P.O. Box 2000
Sacramento, CA 95812-2000
FAX: (916) 341-5400

Ms. Louise Lindgard
U.S. Bureau of Reclamation
Division of Resources Management
2800 Cottage Way
Sacramento, CA 95825
FAX: (916) 978-5292

**Re: Notice Of Petition For Temporary Urgency Change
Involving The Transfer Of 10,000 Acre-Feet Of Water
From The United States Bureau Of Reclamation's Orland Project To Areas Within The
Orland-Artois Water District**

Dear Ms. Louise Lindgard and Mr. Greg Wilson,

Butte Environmental Council, a public benefit corporation representing 850 members, and the California Sportfishing Protection Alliance are submitting the following comments and questions for the *Notice Of Petition For Temporary Urgency Change Involving The Transfer Of 10,000 Acre-Feet Of Water From The United States Bureau Of Reclamation's Orland Project To Areas Within The Orland-Artois Water District* (Application 2212) (Project). The proposed transfer is promoted by the USBR, which explains that the District is suffering an urgent need for additional water to meet the water needs of permanent crops during what is depicted as a statewide drought. As we compose these comments a series of major winter storms is bringing significant precipitation into the affected region. While these storm events will relieve the immediate need to irrigate the permanent crops it is impossible to accurately predict the precipitation patterns that may occur during the 180 day (6 month) term of the "temporary urgency change."

We are concerned that Application 2212 does not comply with the requirements of the California Environmental Quality Act (CEQA). First, we believe that the State Water Resources Board and the USBR must prepare an environmental impact report ("EIR") on this proposed "temporary" transfer as it is related to other inter-connected actions by the California Department of Water Resources, the USBR, numerous water districts, and others in the Sacramento Valley, and which has the potential to have significant and far-reaching environmental impacts. Second, the transfer violates the dictates of CEQA because, among other things, it fails to provide a reasoned analysis and explanation that the proposed Project is in the public interest, and may be made without

injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

BEC finds that the lead agency has not described the proposed Project in its entirety, has not provided ample evidence in the notice of petition to demonstrate that the proposed “Temporary” urgency change will not have a significant impact on the environment and, therefore, the USBR and the SWRCB must fully analyze potential impacts in an EIR ([*Porterville Citizens for Responsible Hillside Development v. City of Porterville*](#) (2007) 157 Cal.App.4th 885). We include, by reference, all other letters submitted in response to this Notice of Petition Application 2212.

I. The Agencies Must Prepare an Environmental Impact Report on the Proposed Temporary Urgency Change

The Application for Temporary Urgency Change is insufficient. As set forth below, there is a fair argument that the proposed Project may have significant impacts on the environment; therefore a Notice of Petition for Temporary Urgency Change is not appropriate under the California Environmental Quality Act (21068). Please consider the following issues.

The agencies have failed to take a hard look at the environmental impacts of the entire Project as described in the Notice of Petition for Temporary Urgency Change. As detailed below, there are substantial questions about whether the 10,000 acre-foot (af) transfer will have significant effects on the region’s environmental and hydrological conditions. There are also substantial questions about whether the proposed transfer will have significant adverse environmental impacts when considered in conjunction with the other related water projects underway and proposed in the region. The Agencies simply cannot, consistent with CEQA, allow these foreseeable environmental impacts to escape full analysis in an EIR of the proposed water transfer. The transfer is part of much larger projects such as the Sacramento Valley Integrated Regional Water Management Plan (SVIRWMP) and the Sacramento Valley Water Management Agreement (Phase 8) that have not been analyzed under CEQA and NEPA. The Orland-Artois Water District (District) has closely collaborated with the Department of Water Resources (DWR) in the development of the SVIRWMP (Sacramento Valley Integrated Regional Water Management Plan Participating Entities, 2007). To date there hasn’t been any programmatic or tiered environmental review for the SVIRWMP that would create a scientific basis upon which the Agencies or the District can arrive at a justifiable conclusion that the proposed Temporary Urgency Change has no adverse environmental effect.

1. The Project may result in significant adverse environmental impacts and poses significant unknown risks to the environment.

The Notice does not clearly explain how the Transfer will allow the rate and timing of diversions by the Orland Project to remain unaltered or how the ability of the USBR or the Orland Unit Water Users Association will be able to maintain minimum flows in lower Stony Creek, nor does the Notice discuss in detail how the Project will allow the agencies to meet the requirements of the Biological Opinion issued by the National Marine Fisheries Service on the effects of Lower Stony Creek Water Management on winter-run Chinook salmon, spring-run Chinook salmon, fall/late fall-run Chinook salmon, and steelhead. It is impossible to predict the rate and timing of precipitation during the next 180 days that may require stored

water to meet streamflow requirements. This alone warrants the preparation of an EIR. Additionally, an EIR is necessary where a project's effects are highly uncertain or involve unique or unknown risks. Here, the Notice fails to adequately address the risks or the strategy to meet the requirements of the Biological Opinion should precipitation fail to meet both the streamflow requirements and the desired deliveries to the irrigators. Gaps in precipitation/reservoir storage/streamflow analysis affect the ability of the Agencies to accurately assess the Project's environmental impacts.

A. Increased demands on water supply in the region and for transfer out of basin combined with unpredictable weather patterns discredit the opinion that the transfer is temporary and that there will be no unreasonable effect upon fish, wildlife and other instream beneficial uses.

The Notice fails to provide mathematical logic to support the temporary nature of the transfer. As the District expands the installation of permanent crops, the irrigation flexibility of annual plantings is eliminated and the expectation of full annual supply is hardened. The Notice explains that the District has 26,918 acres under contract that require *at least* 2.5 af/ac. Total annual demand therefore is at least 67,295 af and may be higher than 72,679 af. Even at 100% allocation, the District is allowed only 52,967 af. This leaves a permanent deficit of at least 14,328 af/yr and, during 40% allocation, a deficit of at least 51,492 af/yr. The Notice does not describe fallowing of annual crop acreage in response to low water years as a strategy in providing reliable water supply to permanent crops.

Second, the primary focus of the transfer is to provide irrigation water to an ever-hardening demand put forth by the shift to permanent crops and inevitably places the permanent habitat requirements of fish and wildlife in a secondary tier of importance. While the Notice goes into some detail about the impacts to crops associated with less-than-optimal irrigation it provides no analysis of habitat impacts to anadromous fisheries associated with less-than-optimal streamflow. The Notice asserts that the proposed Project may be made without unreasonable effect upon fish, wildlife or other instream beneficial uses, yet the conclusory statements are not supported in the Notice. On what basis are the conclusions reached?

Third, the Notice fails to address the impacts to groundwater and associated surface water flows that are the inevitable result of irrigation demands that exceed allocated supply. The permanent deficit in the hydrologic budget of this region will require increasingly complex transfer of surface water along with unrelenting increases in groundwater removal. In explaining the urgent need for the proposed temporary urgency change, the USBR's petition states, "Landowners with wells are noticing a decline in the groundwater of about 40 feet. These landowners are lowering wells where they can or drilling new wells. Currently the waiting list for a new well is between 1 and 1_ years."

As the hydrologic head between the aquifer layers and the surface water increases a corresponding increase in stream/aquifer leakage can be expected. Increased stream and aquifer leakage negatively impacts riparian habitat, aquatic habitat and irrigation supply. In light of this downward trend in regional groundwater levels, the Agency environmental review of the proposed Urgency Changes should closely analyze questions regarding the sustainability of conjunctive management of the surface/groundwater resources that are being developed in the region.

2. Alternatives

Alternatives to the proposed Project should be presented to the public. An EIR must describe a reasonable range of alternatives to the project that could feasibly obtain the Project's objectives. The EIR must evaluate the merits of each alternative and must include a no-project alternative. "Compliance with CEQA is not optional." (*Stanislaus Audubon Society, supra*, 33 Cal.App.4th at 159, fn. 7.) Preparation of an EIR is not excused by claims that "an EIR costs a hell of a lot of money," or "is an exercise in futility." (*Id.*) Even if the Agencies or their experts are of the "opinion that preparation of an EIR is just another big added expense, without commensurate benefits, compliance with CEQA is not optional," (*Id.*). An EIR, as opposed to a Notice of Petition for Temporary Urgency Change, would contain analysis of project alternatives, including a "no project" alternative. (Pub. Resources Code § 21100(b)(4); and CEQA Guidelines § 15126(d).) An EIR would consider different cropping options and other methods to reduce water demand, which could significantly reduce the Petition's need. In addition, an EIR would necessarily contain further analysis on biological, hydrologic, land use, cumulative, and growth-inducing impacts.

An EIR must be required for the Project.

3. Cumulative Impacts

The Agencies May Not Avoid Consideration of the Significant Environmental Impacts By Improperly Segmenting the Proposed Activities.

The USBR, California DWR and the OAWD are involved in numerous current and reasonably foreseeable water programs and projects that are not disclosed in the Notice and have not been reviewed under CEQA or NEPA. This includes, but is not limited to:

- Sacramento Valley Water Management Agreement (Phase 8) 2001
- Butte County Integrated Water Management Plan 2005
- Sacramento Valley Integrated Regional Water Management Plan 2006

This must be rectified in an EIR, so that all the impacts associated with the rapidly evolving California Water Supply system may be fully disclosed to the public for review and comment.

BEC refers the Agencies to language in the Public Resources code:

15064. Determining the Significance of the Environmental Effects Caused by a Project

2. (c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.

(g)(h) After application of the principles set forth above in Section 15064(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

The Project clearly has the potential to affect the environment and the public is owed full disclosure under CEQA and the opportunity to comment on the myriad impacts not divulged in the Notice of Petition.

II. Project Description:

BEC objects to the petition because the need, timing and purpose of the Project is not clear in the Notice.

A. Need:

The Notice describes a total amount of water as 10,000 af needed to irrigate permanent crops but fails to describe how much water is available through existing infrastructure and how much water is needed immediately (to prevent frost damage and bud development) compared to how much may be needed later in the year (to promote foliage and fruit/nut production). Furthermore, the Notice fails to describe trends in cropping patterns that are hardening water demand during drier years/decades. Have the agencies already diverted the entire amount prior to the close of comment period? Will the agencies commit even more water than this petition requests during the 2009 growing season to the OAWD? Are there permanent crops currently utilizing pressurized drip irrigation that will shift to flood irrigation to access the new surface water delivery? Will new permanent crop plantings be discouraged or encouraged by this urgent surface water diversion?

B. Timing:

The Petition contains two time-lines: an immediate change starting on November 26, 2008 and ending 5 days after the comment period and a longer 180 day (6 month) period that presumably would extend until May 26, 2009. While the petition states that the Orland Project (which is the original recipient of the stored water) will not need the water during this final month of 2008 it fails to describe how much the Orland Project water needs during the subsequent 5 months of 2009. Will the Stony Creek water be available to other Orland Project needs? Will the 180 day period extend to June 26, 2009?

C. Purpose:

The Notice describes the total District acreage under contract as 26,918 and the estimated acreage of permanent crops as 15,000. The Notice explains that the water derived from the Project would be used on these permanent crops but the Notice fails to clearly indicate if all 15,000 acres of permanent crops are under contract covered by the Notice. Furthermore,

the Notice describes the amount of water needed to irrigate permanent crops as 2.5-2.7 af/ac but fails to quantify the amount of water required to irrigate the annual crops that exist on District acreage under contract. The notice fails to describe the amount of water available from groundwater to the OAWD. The purpose of this Notice of Change is to provide urgently needed irrigation water to permanent crops in the District. This must be accomplished only within reasonable water budget availability. It is impossible to accurately estimate the District irrigation needs and existing supplies with the information provided in the Notice.

BEC requests notification of any meeting that addresses the proposed Project or any other OAWD project that requires any consideration of NEPA and/or CEQA. In addition, please send any additional documents that pertain to this project.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Vlamis". The signature is written in a cursive style with a prominent flourish at the end.

Barbara Vlamis, Executive Director
Butte Environmental Council
116 W. Second Street, Suite 3
Chico, CA 95926

Sacramento Valley Integrated Regional Water Management Plan

Participating Entities¹

Joint Exercise of Powers²

Anderson-Cottonwood Irrigation District	Tehama-Colusa Canal Authority,
Biggs-West Gridley Water District	including:
Browns Valley Irrigation District	Colusa County Water District
Butte Water District	Corning Water District
Feather Water District	Davis Water District
Glenn-Colusa Irrigation District	Dunnigan Water District
Maxwell Irrigation District	4-M Water District
Meridian Farms Water Company	Glenn Valley Water District
Orland Unit Water User's Association	Glide Water District
Paradise Irrigation District	Holthouse Water District
Pelger Mutual Water Company	Kanawha Water District
Princeton-Cordora-Glenn-Irrigation District	Kirkwood Water District
Provident Irrigation District	LaGrande Water District
Reclamation District No. 108	Myers-Marsh MWC
Richvale Irrigation District	Orland-Artois Water District
Yuba County Water Agency	Proberta Water District
Yuba County Water District	Thomes Creek Water District
	Westside Water District

Other Water Agencies

Garden Highway Mutual Water Company
 Natomas Mutual Water Company
 Reclamation District No. 1004
 River Garden Farms
 South Sutter Water District
 Sutter Extension Water District
 Sutter Mutual Water Company
 Western Canal Water District
 Westside Water District
 Yolo County Flood Control & Water Conservation District

Other Local Governments

Colusa County
 Glenn County
 Shasta County
 Tehama County
 Yolo County WRA
 Yuba County
 Yuba City

Supporting Organizations

California Waterfowl Association
 Ducks Unlimited
 Family Water Alliance
 Sacramento Valley Landowners Association

¹These entities have all adopted resolutions or letters supporting the Sacramento Integrated Regional Water Management Plan

²These Northern California Joint Exercise of Power entities all have resolutions adopting the IRWMP. The Joint Exercise of Powers formally adopted the IRWMP under Water Code §10541 on December 12, 2006