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Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
P.O. Box 2000
Sacramento, CA 95812-2000

April 12, 2011

Subject: Conservation Groups' Comment Letter on Draft Order 2011-00XX Denying Stay of Investigation Order Water Rights (WRO) 2011-0003-EXEC for the Merced Irrigation District, Merced River Hydroelectric Project, Federal Energy Regulatory Commission, Project No. 2179

Dear Ms. Townsend:

Merced River Conservation Committee, Trout Unlimited, California Sportfishing Protection Alliance, Friends of the River, Golden West Women Flyfishers, Northern California Council of Federation of Fly Fishers, and American Rivers (collectively, "Conservation Groups") hereby provide comments in response to Draft Order 2011-00xx ("Draft Order," transmitted April 6, 2011) denying a stay of Water Rights Investigation Order 2011-03-EXEC.

Water Rights Order ("WRO" or "Order") 2011-03-EXEC was issued by the State Water Resources Control Board ("Board") on January 28, 2011. It requires the Merced Irrigation District ("Merced ID") to perform reasonable studies that will, in part, inform the Clean Water Act Section 401 water quality certification for the ongoing federal relicensing of the Merced River Project, FERC No. 2179. Merced ID's existing license expires in 2014, and a new license cannot be issued unless the Board grants or waives water quality certification. On February 28, 2011, Merced ID filed a Petition for Reconsideration of WRO 2011-0003-EXEC; this petition was noticed by the Board on March 4, 2011. On March 24, 2011, Conservation Groups filed comments on Merced ID's petition for reconsideration

addressing substantive and legal issues, as well as procedural issues raised therein. The present comments of Conservation Groups are limited to the more narrow procedural question of denial of stay and to the question posed in the transmittal letter, which solicits comments regarding a potential Board technical workshop or workshops to discuss the technical aspect of the Investigation Order.

As a procedural issue, Conservation Groups note that the April 6, 2011 transmittal letter states that the Board will be addressing Draft WRO-2011-00xx on April 19, 2011, and that parties will be allowed up to three minutes to speak on the issue. Conservation Groups respectfully request, in lieu of offering three minutes of discussion from each of our organizations, that a panel of two to four persons representing our organizations be allowed to make a fifteen minute presentation to the Board. This will offer a more efficient and likely more expeditious presentation of our views, and a more focused opportunity for the Board to pose questions.

Stay of WRO 2011-0003-EXEC should be denied.

Conservation Groups support the denial of stay of WRO 2011-0003-EXEC, as proposed in the Draft Order. As stated by the Board in the Draft Order and explained in Conservation Groups' comments of March 24, 2011, delay of 401 Certification and of gathering the information to support certification would be harmful to the public interest. Moreover, as stated in the Draft Order and argued in our March 24 comments, Merced ID will not be substantially harmed if a stay is not granted.

Conservation Groups are concerned with the one-year timeline for reconsideration suggested in the April 6, 2011 transmittal letter and respectfully request that the Board move to substantively address the Petition for Reconsideration as soon as reasonably possible. Conservation Groups affirm our previous comments that the Petition for Reconsideration should be denied. Should the Board decide to hold a hearing, we request that such a hearing be expedited and that, similar to our potential stay-proceeding party-status request contained in our March 24, 2011, letter to Jennifer Watts of the Board staff (p. 18), we be granted party status in any potential reconsideration proceeding.

**A technical workshop should be held as soon as possible
but should not delay ruling of the merits of WRO 2011-0003-EXEC.**

Conservation Groups support a technical workshop or workshops to address information gathering to support the 401 Certification for the relicensing of the Merced River Project. We suggest that an initial workshop be held in May 2011, and note that there may be efficiencies created by such timing due to the fact that Merced ID is also preparing two new study plans during that time period as required by the Federal Energy Regulatory Commission ("FERC").

Conservation Groups recommend that the FERC project lead for the relicensing, and other FERC personnel as appropriate, be invited to attend such a technical workshop or

workshops held by the Board. We also recommend that Board staff continue to participate in ongoing discussion of new study development that will be taking place in the next two months within the context of FERC's relicensing process, while carefully honoring *ex parte* constraints regarding related matters pending before the Board.

However, Conservation Groups see no good reason why such a workshop or workshops should delay ruling on the merits. Both technical and legal questions regarding WRO 2011-0003-EXEC should be resolved as promptly as possible.

Conclusion

Thank you for the opportunity to comment on Draft Order 2011-00xx. We look forward to addressing the Board on these matters on April 19, 2011.

Respectfully submitted,



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