

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
DECEMBER 2, 2015**

ITEM 11

SUBJECT

CONSIDERATION OF A PROPOSED ORDER DENYING EL DORADO IRRIGATION DISTRICT'S PETITION FOR RECONSIDERATION OF THE STATE WATER BOARD'S SEPTEMBER 18, 2015 ORDER REVOKING TEMPORARY URGENCY CHANGE FOR WASTEWATER CHANGE PETITION WW0020 AND STATE WATER BOARD ORDER WR-95-09 FOR THE DEER CREEK WASTEWATER TREATMENT PLANT.

DISCUSSION

The El Dorado Irrigation District (EID) owns and operates the Deer Creek Wastewater Treatment Plant (WWTP). By order dated October 8, 1994 the State Water Resources Control Board (State Water Board) approved Wastewater Change Petition 20 (WW0020), later amended by State Water Board [Order WR-95-09](#). Order WR-95-09 requires certain minimum treated wastewater discharges from the Deer Creek WWTP into Deer Creek, which is tributary to the Cosumnes River in El Dorado County.

On March 10, 2014, EID filed a TUCP regarding Order WR-95-09. With the TUCP, EID requested to discontinue its treated wastewater discharge to Deer Creek during the remainder of 2014 due to drought conditions. EID requested to instead use the treated wastewater for irrigation purposes within its service area. The State Water Board approved the TUCP with an Order dated June 5, 2014, which was amended August 1, 2014. In approving the TUCP, the State Water Board allowed EID to reduce its discharge initially to 0.43 million gallons per day (mgd) and to lower the discharge based on an adaptive monitoring program. During the term of the temporary urgency change order, EID's discharges to Deer Creek dropped to as low as 0.32 mgd by October 2014. The June 5 Order was in effect until December 2, 2014.

On May 5, 2015, EID filed another TUCP requesting approval of temporary changes to Order WR-95-09 pursuant to Water Code section 1435. With the TUCP, EID requested authorization to temporarily reduce the minimum treated wastewater discharge into Deer Creek from the required minimum of 0.5 mgd to 0.32 mgd for 180 days, allowing EID to maximize its reclamation of treated wastewater and reduce use of potable water for irrigation.

Pursuant to Water Code section 1438 and California Code of Regulations, title 23, section 806, the Deputy Director for the Division of Water Rights (Deputy Director) issued, under delegated authority, an Order Renewing Temporary Urgency Change (Renewal Order) on July 15, 2015, and provided public notice of the petition on July 16, 2015.

EID began a reduction in the treated wastewater discharge to 0.32 mgd on July 19, 2015. As of July 28, 2015, Division staff began receiving objections to the Renewal Order, pursuant to Water Code section 1438 and California Code of Regulations, title 23, section 806. The State Water Board received over 35 objections during the identified public comment period for the Renewal Order. A majority of the objections specifically contend deterioration of the riparian corridor is a direct result of the reduction in discharge from the Deer Creek WWTP.

On September 18, 2015, the State Water Board's Executive Director issued an Order revoking the Renewal Order (Revocation Order). In the Revocation Order, the Executive Director concluded that, based on adverse impacts to the riparian corridor of Deer Creek near Latrobe Road and the importance of maintaining California's wetlands and riparian areas, and to sustain and enhance the delivery of ecosystem services, he could not find that the changes approved by the Renewal Order could be made without an unreasonable impact upon the riparian habitat of Deer Creek.

EID filed a timely petition for reconsideration of the Revocation Order. EID alleges that cause for reconsideration exists because "the Revocation Order is materially inaccurate, lacks substantial evidence to support its conclusions, and constitutes an abuse of discretion" and because EID was "deprived of any meaningful or fair opportunity to be heard."

The proposed order denies the petition for reconsideration.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed order.

<p>State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Water Board's Strategic Plan: to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.</p>

DRAFT

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2015-

In the Matter of Petition for Reconsideration of
**Order Revoking Temporary Urgency Change Regarding El Dorado Irrigation District's
Wastewater Change Petition 20 (WW-20)**

ORDER DENYING RECONSIDERATION

1.0 INTRODUCTION

On September 18, 2015, the State Water Resources Control Board's (State Water Board, Board or SWRCB) Executive Director issued an order (Revocation Order) revoking the July 15, 2015 Order (TUC Order) approving El Dorado Irrigation District's (EID, District or Petitioner) Temporary Urgency Change Petition (TUCP). The Revocation Order was based on the fact that the Executive Director determined that, based on evidence submitted as part of the TUCP process but subsequent to issuance of the TUC Order, he could no longer make all the required findings for a temporary change order pursuant to Water Code section 1435, specifically that the change would be made without unreasonable effect on fish, wildlife, or other instream beneficial uses of water. Petitioner filed a petition for reconsideration, which was received on September 24, 2015.

2.0 GROUND FOR RECONSIDERATION

Any person interested in any application, permit or license affected by a State Water Board decision or order may petition for reconsideration of the decision or order. (Cal. Code Regs. tit. 23, § 768.)¹ The legal bases for reconsideration are: (a) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;

¹ All further regulatory references are to the State Water Board's regulations located in title 23 of the California Code of Regulations unless otherwise indicated.

DRAFT

(b) the decision or order is not supported by substantial evidence; (c) there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or (d) error in law. (*Id.*)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (§ 770, subd. (a)(1),) Alternatively, after review of the record, the State Water Board may deny the petition if the State Water Board finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

3.0 LEGAL AND FACTUAL BACKGROUND

The El Dorado Irrigation District owns and operates the Deer Creek Wastewater Treatment Plant (WWTP). By order dated October 8, 1994 the State Water Board approved Wastewater Change Petition 20 (WW-20), later amended by State Water Board Order WR 95-9. Order WR-95-9 requires certain minimum treated wastewater discharges from the Deer Creek WWTP into Deer Creek, which is tributary to the Cosumnes River in El Dorado County.

On March 10, 2014, EID filed a TUCP regarding Order WR 95-9. With the TUCP, EID requested to discontinue its treated wastewater discharge to Deer Creek during the remainder of 2014 due to drought conditions. EID requested to use the treated wastewater instead for irrigation purposes within its service area. The State Water Board approved the TUCP with an Order dated June 5, 2014, which was amended August 1, 2014. In approving the TUCP, the State Water Board allowed EID to reduce its discharge initially to 0.43 mgd and to lower the discharge based on an adaptive monitoring program. During the term of the temporary urgency change order, EID's discharges to Deer Creek dropped to as low as 0.32 mgd by October 2014. The June 5 Order was in effect until December 2, 2014.

On May 5, 2015, EID filed another TUCP requesting approval of temporary changes to Order WR 95-9 pursuant to Water Code section 1435. With the TUCP, EID requested authorization to temporarily reduce the minimum treated wastewater discharge into Deer Creek from the required minimum of 0.5 million gallons per day (mgd) to 0.32 mgd for 180 days, allowing EID to maximize its use of treated wastewater for irrigation and reduce use of potable water for

DRAFT

irrigation. The TUCP contends that because EID's recycled water demand exceeds its supply, the increase in available recycled water would result in reduced usage of potable water to supplement the recycled water supply used for irrigation.

Pursuant to Water Code section 1438 and California Code of Regulations, title 23, section 806, the Deputy Director for the Division of Water Rights (Deputy Director) issued, under delegated authority, an Order Renewing Temporary Urgency Change (Renewal Order) on July 15, 2015, and provided public notice of the petition on July 16, 2015.

EID began a reduction in the treated wastewater discharge to 0.32 mgd on July 19, 2015. On July 28, 2015, the State Water Board began receiving objections to the Renewal Order pursuant to Water Code section 1438 and California Code of Regulations, title 23, section 806. The State Water Board received over 35 objections during the identified public comment period for the Renewal Order. A majority of the objections contend deterioration of the riparian corridor is a direct result of the reduction in discharge from the Deer Creek WWTP. Many of the objectors identified themselves as residents living near the Latrobe Road Bridge over Deer Creek, located approximately four miles downstream of the WWTP. Specifically, the residents are very concerned that Deer Creek is completely dewatered upstream of Latrobe Road Bridge, something they indicate has never happened since issuance of Order WR 95-9.²

The area surrounding Deer Creek immediately upstream of Latrobe Road is within the National Wetlands Inventory (NWI), as designated by U.S. Fish and Wildlife Service. The wetland area immediately upstream of Latrobe Road is classified under the NWI as "Palustrine Forested and Seasonally Flooded." Also, pursuant to the NWI, Deer Creek both upstream and downstream of Latrobe Road is classified as "Riverine, Upper Perennial, with Unconsolidated Shore/Bottom and Permanently Flooded."

EID's consultants, Robertson-Bryan, Inc. (RBI), conducted two monitoring events downstream of the Deer Creek WWTP in July and August 2015 subsequent to the reduction in treated wastewater discharge to 0.32 mgd, as required by the Renewal Order. Both of RBI's reports indicate that Deer Creek was dry the last 0.5-to-one mile upstream of Latrobe Road during their

² Information included in Order WR 95-9 indicates that "flows historically have extended 8.5 miles downstream of the Deer Creek WWTP during the summer." (Order WR 95-9, p. 33.) Latrobe Road is approximately 4 miles downstream of the WWTP.

DRAFT

monitoring events. Both reports also indicate that Deer Creek surface flow is normally intact as far as one to two miles downstream of Latrobe Road during the summer months with flows persisting further downstream in wetter years.

On September 18, 2015, the Executive Director issued Revocation Order. In the Revocation Order, the Executive Director concluded that, based on adverse impacts to the riparian corridor of Deer Creek near Latrobe Road and the importance of maintaining California's wetlands and riparian areas, and to sustain and enhance the delivery of ecosystem services, he could not find that the changes approved by the Renewal Order could be made without an unreasonable impact upon the riparian habitat of Deer Creek.

On September 24, 2015 EID filed for reconsideration, claiming that "the Revocation Order is materially inaccurate, lacks substantial evidence to support its conclusions, represents a significant abuse of discretion, and deprived the District of any fair opportunity to be heard." (Petition, p. 2.) The petition for reconsideration does not allege that there is material evidence that could not have been produced in the exercise of reasonable diligence, or error in law.

4.0 DISCUSSION

4.1 PETITIONER HAS NOT COMPLIED WITH CALIFORNIA CODE OF REGULATIONS, TITLE 23, SECTION 769

Pursuant to California Code of Regulations, title 23, section 769, subdivision (a), [a]ny petition for reconsideration of a decision or order shall be submitted in writing and shall contain the following:

1. Name and address of the petitioner.
2. The specific board action of which petitioner requests reconsideration.
3. The date on which the order or decision was made by the board.
4. The reason the action was inappropriate or improper.
5. The specific action which petitioner requests.
6. A statement that copies of the petition and any accompanying materials have been sent to all interested parties.

DRAFT

(Cal. Code Regs., tit. 23, § 769.) EID's petition for reconsideration is inadequate in several respects. Specifically, the petition does not include the date on which the order or decision was made by the Board, any specific action Petitioner requests, and a statement that copies of the petition was sent to all interested parties. While it can be inferred from the petition what specific action EID requests reconsideration of, section 769 calls for a petition for reconsideration to clearly state not only the specific action that the petitioner requests reconsideration of but also to specify the date on which that action was taken by the Board, since the Board has been directed by the legislature to "order or deny reconsideration on a petition therefor not later than 90 days from the date on which the board adopts the decision or order." (Wat. Code, § 1122.)

Even more critical to the Board acting on a petition for reconsideration is the petitioner's obligation to identify what action it would like the Board to take as a result of the petition for reconsideration. Presumably EID in this case wants more than the Board to "reconsider its Revocation Order" which is in any case required of the Board upon receipt of a timely and complete petition for reconsideration. If the specific action EID requests is that the Board "work with the District to address the [Board's] concerns," there is no indication in the petition why that necessitates reconsideration of the prior action. The purpose of the specific requirements for a petition for reconsideration under section 769 is for the petitioner to clearly identify the purported error in a specific Board action, why it was an error, how the Board should correct the error, and to alert other interested parties to the complained-of Board action that the matter will be reconsidered by the Board pursuant to the applicable Water Code and Board regulatory provisions.

Lastly, Petitioner has failed to notice interested parties regarding the petition for reconsideration, as required under section 769, subdivision (a)(6). As identified in the Order Revoking Temporary Urgency Change, a significant number of parties objected to the initial issuance of the Board's Order Renewing Temporary Change. These objections were submitted as part of the Board's process for addressing temporary urgency change petitions. (See Wat. Code, §§ 1438, subs. (a), (d), (e), 1439, 1440; Cal. Code Regs., tit. 23, § 806.) Pursuant to Water Code section 1438, subdivision (d) the Board sent a copy of each of the objections it received to EID.³

³ Most commenters sent EID a copy of their comments directly, as the Board's public notice requested that objections should be sent to both the Division of Water Rights and EID. On September 16, Elizabeth Wells, Engineering Manager for EID, sent State Water Board staff an email stating that EID didn't have copies of all of the comments that were on the list staff had previously given her, at which time
[footnote continues on next page]

DRAFT

It should be obvious that all parties objecting to the issuance of the Order Renewing Temporary Change would also be interested in a petition for reconsideration of the Board's revocation of that order. Despite the fact that it had or could have gotten from the Board the contact information for each of the people who had submitted objections, and the fact that the Revocation Order specifically called out facts contained in these objections as a basis for the revocation, EID did not notice interested parties regarding the petition for reconsideration as required under section 769, subdivision (a)(6). For the above-stated reasons, the petition for reconsideration is denied for failure to comply with the requirements of section 769.

Notwithstanding Petitioner's failure to include all information required of a petition for reconsideration by section 769, the Revocation Order was appropriate and proper for the reasons discussed below.

4.2 PETITIONER WAS NOT DENIED A FAIR HEARING

Petitioner asserts that the State Water Board "failed to comply with the revocation process set forth in Water Code section 1410 et seq., and thereby deprived the District of any meaningful or fair opportunity to be heard." (Petition, p. 4.) Petitioner also asserts that the State Water Board "breached its duty of good faith" (*Ibid.*), and complains that "[t]he Revocation Order also includes references to issues never raised by the SWRCB or CDFW either in the 2014 TUC Order or the 2015 TUC Order, such as wetlands designation and impacts." (*Id.*, p. 5.) Finally, Petitioner disputes the authority of the Executive Director of the State Water Board to issue the Revocation Order. (*Id.*, p. 6.)

Water Code section 1410 identifies the process for revocation of permits to appropriate water. Permits to appropriate water are issued by the Board pursuant to division 2, part 2, chapter 6 of the Water Code. Neither WW-20 nor the Temporary Urgency Change are permits to appropriate water issued pursuant to chapter 6. Specifically, the Temporary Urgency Change revoked by the Revocation Order was adopted pursuant to division 2, part 2, chapter 6.6, which pertains to temporary urgency changes. Water Code section 1440, not section 1410, applies to temporary urgency changes. That section states that "[a]ny temporary change order issued

those comments were emailed to Ms. Wells. Some of the comments were sent to the Board immediately following the reduction in discharge and were not submitted in direct response to the public notice.

DRAFT

under this chapter shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the board....” (Wat. Code, § 1440.) Accordingly, Water Code section 1410 is inapplicable to the revocation of the Temporary Change Order and any “failure to comply with the revocation process set forth” in that section cannot be a basis for supporting denial of a fair hearing.

EID does suggest that “[a]lthough the Revocation Order at issue revokes a Temporary Urgency Change Order, rather than a permit, the Water Code sets forth no alternative procedure for revocation specifically applicable to temporary urgency changes.” (Petition, p. 4.) This contention ignores critical differences between an appropriative water right permit and a temporary urgency change. A permit is issued only after notice to and opportunity for hearing by parties that file protests, while a temporary urgency change may be issued even before notice to parties that may want to file objections. (Compare Wat. Code, §§ 1300 et seq., 1330 et seq., 1340 et seq. with *id.*, §§ 1435 et seq.) The deliberative and time-consuming process before issuing a permit makes it less likely that circumstances will arise requiring prompt revocation. In addition, a temporary urgency change is only in effect for a period not to exceed 180 days. (*Id.*, § 1440.) This both reduces the extent of water right holder’s reliance on the continued availability of the approval, and means that it is unlikely that the time-consuming procedures applicable to permits could be completed before the approval expires. Water Code section 1440 specifies that temporary urgency change orders “shall be subject at all times to modification or revocation in the discretion of the board.” Applying the Water Code provisions for permit revocation would impose both procedural requirements and limitations on the causes for revocation that would be inconsistent with the broad discretion provided by this section.

Petitioner also contends that it was denied a fair hearing because “[t]he Revocation Order also includes references to issues never raised by the SWRCB or CDFW either in the 2014 TUC Order or the 2015 TUC Order, such as wetlands designation and impacts.”⁴ As discussed

⁴ Petitioner alleges also that the Revocation Order is not supported by substantial evidence because the Deputy Director, in issuing the TUC Order, made the required finding at that time that a reduction to 0.32 mgd would not unreasonably impact fish, wildlife or other instream beneficial uses, and because the TUC Order was explicitly limited by CDFW’s ability to determine that unreasonable effects on fish or were occurring. As discussed above, the Board is not estopped from making later findings in conflict with those the TUC was originally based on, and as discussed in section 4.3, *infra*, the Revocation Order is based on substantial evidence.

DRAFT

above, Water Code section 1440 provides the Board broad discretion to modify or revoke an approved temporary change, without any limitation to issues raised before approval. The expedited approval process necessitates the ability to consider later issues that may have been overlooked. Excluding considerations such as wetlands impacts, as EID suggests, would be inconsistent with Water Code section 1439, which states that “[t]he Board shall supervise diversion and use of water under the temporary change order for the protection of all other lawful users of water and instream beneficial uses and for compliance with change order conditions.” (Wat. Code, § 1439.) Furthermore, the process for Board action on a TUCP, which includes the potential for notice and an opportunity for objections *after* Board action on the petition, is inconsistent with Petitioner’s contention that Board action after issuance of a temporary change order cannot be based on issues that may not have been raised prior to all objections being received. (Wat. Code, § 1438, subds. (a), (d) and (e); see also Cal. Code Regs., tit. 23, § 806.) Nowhere in the petition does Petitioner explain how or why the statutory and regulatory process applicable to temporary change orders precludes the Board from considering any and all evidence of impacts of a temporary change order after issuance, and doing so would be unfair to parties who may have objections.

Although Petitioner asserts that the State Water Board “breached its duty of good faith,” this assertion is belied by the facts included in the petition for reconsideration. As Petitioner notes, it received a courtesy call from the Board identifying that the Board would be issuing a revocation of the TUC order, and was told that the Board ““had concerns about the riparian corridor,”” (Petition, p. 4.) Petitioner also notes that it requested and was granted an opportunity to meet with Board staff, including the Executive Director, before the Board took any further action.

Petitioner also complains that it “was not invited to respond to the comments received by the SWRCB or provide information that might assist the SWRCB, or even questioned about or made aware of the issues causing the SWRCB concern.” (Petition, p.4.) The Revocation Order was based on the fact that objection letters and Petitioner’s consultant’s Flow Reduction Field Monitoring reports, submitted pursuant to the TUC Order, showed the stream drying up well upstream of the area where surface flows are normally present in dry years. Petitioner was provided the objection letters that were submitted to the Board, and was therefore “made aware of” all the issues raised in those letters.

DRAFT

As identified in the Revocation Order, due to the wetland designation upstream of Latrobe Road and the fact that surface flows were eliminated upstream of there, something that did not occur under the prior TUC Order, the Board could no longer make the finding that the changes approved in the TUC Order could be made without unreasonable effect on the riparian habitat of Deer Creek.

4.3 THE ORDER IS BASED ON SUBSTANTIAL EVIDENCE

Petitioner asserts that the Revocation Order is not supported by substantial evidence and is “materially inaccurate.” (Petition, p. 2.) Aside from offering its own contrary conclusions regarding the evidence forming the basis for the Revocation Order, EID does not address the information the order is based on; choosing instead to highlight other evidence that could support a different conclusion.

Petitioner specifically contends that “neither the residents who reside along the Creek, nor the SWRCB has shared information with the District that identifies adverse impacts to the riparian habitat in the Creek.” (Petition, p. 2.) This is not correct; while the visible manifestations of impacts to riparian habitat may not have been specifically identified, photos of Deer Creek drying up 0.5 to one mile above Latrobe Road (approximately three miles above where surface flows normally cease in a dry year) were provided both in the objections received by the Board and in Petitioner’s own flow reduction monitoring report. Petitioner contends that “[p]ictures of a creek bed with no surface flow submitted by residents, notwithstanding their sensational appeal, do not, ipso facto, indicate “adverse impacts” to biological resources, including riparian habitat.” Whether or not this evidence is conclusive, it certainly provides substantial—indeed persuasive—evidence of adverse impacts to riparian habitat.

Petitioner also notes that its consultant, RBI, found “[b]ased on the information collected to date, the reduction in effluent discharge to 0.32 MGD has not unreasonably affected fish, wildlife, or other instream beneficial uses.” (Petition, p. 3, quoting RBI Technical Memorandum to EID, September 14, 2015.) As Petitioner agrees in its petition, RBI was tasked by the District to, consistent with the TUC Order, monitor the impacts of the TUC Order on fish. Inasmuch as RBI’s analysis was not focused on riparian habitat, and the Revocation Order is not based on unreasonable impacts to fish, Petitioner’s citation to RBI’s conclusory statement in its Technical

DRAFT

Memorandum is unpersuasive as to whether there is substantial evidence supporting the Executive Director's conclusion there are unreasonable impacts on riparian habitat.

The Revocation Order's conclusion that the Board can no longer find that changes approved in the temporary urgency change order are consistent with the requirements of Water Code section 1435 are supported by substantial evidence.

4.4 PETITIONER'S CONTENTIONS OF ERROR IN LAW ARE WITHOUT MERIT

Petitioner makes a number of additional contentions that are arguably contentions of error in law, including that the "Revocation Order contradicts [the Board's] own Recycled Water Policy and emergency conservation regulation, and seems to ignore Water Code section 13550, which declares that the use of potable water for nonpotable uses is an unconstitutional waste or an unreasonable use of water if recycled water is available for such use." (Petition, p. 1.) This District also contends that the Board's Executive Director is without authority to issue an order revoking a temporary change order.

Water Code section 13350 prohibits use of potable water for nonpotable use if recycled water is available, and specified conditions are met. Recycled water is not available as a substitute supply for a use of potable water, within the meaning of section 13350, where the recycled water is already being put to beneficial use and the effects of reducing or eliminating that existing beneficial use would be unreasonable. Here, the recycled water is not available as a supply for irrigation because it is needed for protection of riparian habitat. Moreover, one of the conditions specified in section 13350 that must be satisfied before recycled water must be used as a substitute for potable water, is that the State Water Board determine that the use of recycled water "will not . . . be injurious to plantlife, fish and wildlife." Here, the Executive Director determined that the use of recycled water for irrigation instead of for instream flows is injurious to riparian habitat. The Revocation Order is fully consistent with section 13350.

Similarly, the State Water Board's Recycled Water Policy seeks increased use of recycled water, and encourages substitution of recycled water for potable water supply, but nothing in the policy dictates that where recycled water is already being put to a beneficial use that beneficial use should be forgone so that the recycled water may be used for a different purpose. And the policy does not purport to override applicable water right requirements, including those requiring that unreasonable impacts on instream beneficial uses be avoided.

DRAFT

Petitioner does not explain its contention that the Revocation Order is inconsistent with the Board's emergency conservation regulation. Although the emergency regulation does not impose any specific reduction requirements on the use of recycled water this does not mean that there is no need to use recycled water efficiently, or that some uses of recycled water, such as landscape irrigation, should be given preference over other beneficial uses of recycled water. Municipal water suppliers all over the state are being required to reduce outdoor water use in order to protect water supplies and instream beneficial uses. While uses of recycled water have been exempted from specific requirements of the regulation, the regulations sets a minimum required level of conservation, not a ceiling. Nothing in the emergency regulation purports to override applicable requirements for the use of recycled water, including the requirement that changes in place or purpose of use not unreasonably affect instream beneficial uses. Petitioner also contends that the Executive Director is without authority to issue an order revoking a temporary change order. State Water Board [Resolution No. 2012-0029](#) delegates to the Deputy Director for Water Rights, and the Board members individually, the authority to undertake certain specified activities. Section 4.4.1 delegates to the Deputy Director the authority to "[a]ct on a petition for a temporary urgency change, or a request for renewal of a temporary change order, pursuant to chapter 6.6 (commencing with section 1435) of part 2 of division 2 of the Water Code." (Resolution No. 2012-0029, § 4.4.1.) That same delegation also provides that "If the State Water Board receives any objections to a petition for a temporary urgency change, the Deputy Director shall refer the matter to the Executive Director for action under section 2.2," which delegates the authority to act on those petitions to the individual Board members as well. (*Id.*, §§ 4.4.1, 2.2.) Inasmuch as section 4.4.1 creates and constrains the authority of the Deputy Director (as does Resolution No. 2012-0029 as a whole), it does not follow that that the Board's direction in section 4.4.1 for the Deputy Director to refer a matter to the Executive Director constrains the *Executive Director's* authority that is may have based on separate delegation. Such is the case here. [Resolution No. 2012-0061](#) delegates authority to the Executive Director to "conduct and supervise the activities of the State Water Board." (Resolution No. 2012-0061, § 1.) This delegation grants the Executive Director authority to act for the Board in all matters other than those identified in Section 3 of Resolution No. 2012-0061. Nowhere in Section 3, or elsewhere in Resolution No. 2012-0061, is the Executive Director's discretion in choosing to whether to act under his own delegated authority or to direct objected-to temporary urgency change permits to an individual Board member limited. Accordingly, the Executive Director had authority under Resolution No. 2012-0061 to issue the Revocation Order, and that authority was not limited by Resolution No. 2012-0029.

D R A F T

ORDER

For the foregoing reasons, the State Water Board finds that the decision to revoke the July 15, 2015 Order Renewing Temporary Urgency Change regarding El Dorado Irrigation District's Wastewater Change Petition 20 (WW-20) was appropriate and proper. Accordingly, EID's petition for reconsideration is denied.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 2, 2015.

Jeanine Townsend
Clerk to the Board