

P11967

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Temporary Urgency)	ORDER:	WR 85-10
Change Order Regarding Permit 12721)		
(Application 5626) and 10 other Permits))	SOURCE:	Various sources
U. S. BUREAU OF RECLAMATION,)	COUNTIES:	Alameda, Sacramento,
)		Shasta, Trinity
Permittee)		

ORDER MODIFYING AND REISSUING
TEMPORARY URGENCY CHANGE IN
POINT OF DIVERSION AND REDIVERSION

BY THE BOARD:

The U. S. Bureau of Reclamation (Bureau) having filed a petition for a temporary urgency change in point of diversion and rediversion pursuant to Chapter 6.6 (commencing with Section 1435), Part 2, Division 2 of the Water Code; the Board having consulted with the Department of Water Resources (DWR) and the Department of Fish and Game (DFG); Board Member Ruiz having concluded from available information that the Bureau qualifies for a temporary urgency change and having issued a temporary urgency change order, subject to review and validation by the Board as provided by Water Code Section 1435; the Bureau having submitted a petition requesting modification of the order; the Board having duly considered the petition for a temporary urgency change, the petition requesting a modification and other related information; the Board finds as follows:

Substance of the Proposed Change

1. On October 2, 1985, the Bureau filed a petition for a temporary urgency change in the point of diversion and redirection under the 11 water right permits specified in Table I below:

TABLE I
WATER RIGHT PERMITS COVERED BY
THE PETITION FOR TEMPORARY URGENCY CHANGE

<u>Application</u>	<u>Permit</u>
5626	12721
5628	11967
9364	12723
9368	12727*
13370	11315
15375	11969
15764	12860**
16767	11971
17374	11973*
17376	12364
18115	13776

*Permits 12727 and 11973 allow direct diversion of water only and cannot be used to place water into storage at San Luis Reservoir under this petition.

**Permit 12860 allows diversion of water at Permittee's Tracy Pumping Plant for storage in San Luis Reservoir.

The October 2, 1985 petition requests that, in addition to the points of diversion and redirection specified in the permits, the permittee be allowed to divert or redirect water temporarily under said permits at the California Aqueduct Intake for the Banks Pumping Plant at the following location:

California Coordinates, Zone 3, N486,035; E 1,695,057; within
NW 1/4 of SE 1/4 of projected Section 20, T1S, R4E, MDB&M.

2. The petition for a temporary urgency change requests that the diversion and rediversion at the Banks Pumping Plant be authorized from October 18, 1985 to April 15, 1986 with the total amount diverted or rediverted not to exceed 50,000 acre-feet for use in duck ponds on State, federal and private lands.

Temporary Urgent Need

3. The urgent need to utilize facilities of the State Water Project (SWP) arises as a result of federal and State wildlife management agencies and private duck clubs in the Grasslands area deciding not to use agricultural drainage water this season on duck ponds which may be contaminated with excessive amounts of selenium.

4. Agricultural drainage water supplies to the State and federal wildlife areas have experienced dramatic increases in selenium levels. These increases have resulted from the bypass of drainage water by upstream duck clubs in the south Grasslands area. In the past, the south Grasslands clubs have accepted drainage water. The marsh habitat in the clubs effectively removed large quantities of selenium. Because of the recent knowledge concerning bioaccumulation of selenium, the south Grasslands clubs have opted to bypass agricultural drainage flows. Therefore, the historic removal of selenium by the south Grasslands area is no longer taking place and the selenium content downstream is higher than in previous years.

5. The 1985 fall waterfowl migration season has started. The only alternate source of water available to the State and federal wildlife management agencies is from the Delta Mendota Canal. Approximately 28,000 acre-feet of the additional Central Valley Project (CVP) water is proposed for use in duck ponds on the federal and State lands. The remaining 22,000 acre-feet was requested

for use in duck ponds on private lands. A condition of any private lands receiving water is that they first use any uncontaminated supply available to them.

6. Existing commitments for CVP water deliveries require replacement of the capacity used to deliver water for the duck ponds prior to the 1986 irrigation season. Replacement is proposed by using the SWP Banks Pumping Plant and the California Aqueduct to wheel an equivalent amount of water to O'Neill Forebay for storage in the federal portion of San Luis Reservoir under the Bureau's water rights. The wheeling will not commence until November 15, 1985, and will be completed by March 1, 1986, in order to minimize any adverse effects to the Delta fishery and irrigation. The extended period of replacement was requested so that the capacity available at the Banks Pumping Plant may be more economically used and to provide a margin of safety if either plant should be down for any length of time prior to replacement. The Board finds that emergency conditions exist within the meaning of Water Code Section 1435(c) which require immediate action by the petitioner to protect the public health and welfare.

Notice and Responses

7. Notice of the petition for a temporary change was provided by publication and by mail to interested parties. The Board received responses from nine interested parties, five of which supported the proposed change, one of which conditionally supported the proposed change, and three of which opposed the proposed change. The Board has considered the objections and finds that none of the objections have raised issues necessitating a hearing, nor have any of the objections shown that the proposed change would cause injury to any lawful user of water or have unreasonable effect upon fish, wildlife, or other instream beneficial uses.

Other Findings by the Board

8. Permits 12727 and 11973 (Applications 9368 and 17374) allow direct diversion of water only and cannot be used to place water into storage.
9. Permits 12721, 11967, 12723, 11315, 11969, 11971, 12364 and 13776 (Applications 5626, 5628, 9364, 13370, 15375, 16767, 17376 and 18115) allow transfer of stored water to San Luis Reservoir through the permittee's Tracy Pumping Plant.
10. Permit 12860 (Application 15764) allows diversion at the permittee's Tracy Pumping Plant to storage in San Luis Reservoir.
11. Board staff has consulted with representatives of the Department of Fish and Game who stated that the proposed temporary urgency change would not unreasonably affect fish and wildlife.
12. The staff of DWR has informed the Board that DWR is willing to pump water for the Bureau through the Banks Pumping Plant in the southern Delta and the California Aqueduct for storage in San Luis Reservoir.
13. The temporary urgency change as approved in this order does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water and does not unreasonably affect fish, wildlife or other instream beneficial uses.
14. The permittee has a temporary but urgent need for the proposed change in order to protect the public health and welfare as set forth in Section 1435 of the Water Code.

15. A staff analysis has shown that the proposed action will assure the maintenance of waterfowl areas in a safe and healthful condition for waterfowl and not result in significant adverse environment impacts.

Action by Board Member Ruiz

16. In accordance with the authorization of Water Code Section 1435, the Board has adopted Resolution 84-2 delegating authority to individual Board members to approve temporary changes on projects where no detrimental effects are anticipated.

17. In accordance with the delegation of authority in Resolution 84-2, Board Member Darlene Ruiz issued a change order on October 25, 1985 allowing a temporary change in the point of diversion and rediversion, subject to several specified conditions.

Action by the Permittee

18. In a letter delivered October 30, 1985, the Bureau requested "...that the October 25, 1985 Order Allowing Temporary Urgency Change in Point of Diversion and Rediversion be modified by: (1) changing paragraph 3 of the Order to reflect a reduction in the quantity of water to be diverted from 50,000 to 28,000 acre-feet; (2) clearly stating that the 28,000 acre-feet of water made available by this Order will be delivered solely to state and federal wildlife refuges and management areas in the West Grasslands area to alleviate emergency water shortage conditions existing on these lands; and (3) eliminating conditions 7, 8 and 9 from the Order."

Board Findings Based on Requested Modification to October 25 Order

19. On October 31, 1985, Board staff contacted the managers of the State and federal wildlife areas and Central Valley Regional Water Quality Control Board staff to discuss the modifications proposed by the Bureau. The area managers presented information demonstrating that these wildlife areas have historically received water generally low in selenium concentrations. They stated that the water draining from the wildlife areas will also be low in selenium (less than 5 ppb and likely less than 2 ppb). Regional Board staff confirmed these statements and expressed their belief that leaching of salts or boron will be insignificant. Also the area managers stated that their experience shows the clay soils and surrounding water table in these areas limit seepage from the ponds to extremely low rates.

20. State Board staff will report to the Board on the water quality in the State and federal wildlife areas receiving water by virtue of this permit. This report will be made prior to the discharge of this water to the San Joaquin River system. The report will contain data on selenium, boron, electrical conductivity and molybdenum.

21. On October 31, 1985, the State Water Resources Control Board staff prepared a Notice of Exemption specifying that under Class 7 of the CEQA Guidelines categorical exemptions (14 Cal. Admin. Code, Section 15307), the proposed action described above qualifies for an exemption in accordance with the California Environmental Quality Act (CEQA).

22. Having reviewed the changes requested by the Bureau and related information, the Board finds that the October 25, 1985 order by Board member Ruiz should be modified and that a temporary urgency change should be reissued to reflect the changed conditions requested by the Bureau and to eliminate terms 7, 8, and 9 of the October 25 order.

ORDER

IT IS ORDERED THAT:

1. The permittee may temporarily divert or redivert water to storage in San Luis Reservoir using the Banks Pumping Plant of the California Department of Water Resources at the following location:

California Coordinates, Zone 3, N 486,035;
E 1,695,057; within NW 1/4 of SE 1/4
of projected Section 20, T1S, R4E, MDB&M.

under the following permits:

- a) Diversion to storage in San Luis Reservoir under Permit 12860 (Application 15764).
 - b) Rediversion to transfer stored water to San Luis Reservoir under Permits 12721, 11967, 12723, 11315, 11316, 11971, 12364 and 13776 (Applications 5626, 5628, 9364, 15374, 15375, 16767, 17376 and 18115).
2. Diversion or rediversion of water at the Banks pumping plant under this order shall be effective for a period starting November 15, 1985 and ending March 1, 1986. At the end of this period, this authorization shall be of no further force and effect.
 3. The total quantity of water diverted or rediverted under this temporary urgency change shall not exceed 28,000 acre-feet. Any water made available by this order shall be delivered solely to State and federal

wildlife refuges and management areas in the west Grasslands area to alleviate emergency water shortage conditions existing on those lands.

4. The maximum combined rate of diversion and rediversion under these permits from both the Banks Pumping Plant and the Tracy Pumping Plant shall not exceed 4,600 cubic feet per second.
5. No water shall be diverted pursuant to this order at any time when such diversion will jeopardize the existence of adequate water levels for agricultural pumping in southern Delta channels. South Delta Water Agency or any other party requesting that diversion of water pursuant to this order be restricted due to inadequate water levels should immediately define inadequate water levels with precise engineering criteria and send that information to the permittee, the Department of Water Resources (Department) and the Board. South Delta Water Agency shall inform representatives of the permittee, the Department and the Board of the existence or the potential for the existence of inadequate water levels as soon as reasonably possible.
6. The permittee shall report to the State Water Resources Control Board by May 1, 1986, the daily combined diversion and rediversion of the Tracy Pumping Plant and that portion of the diversion and rediversion of the Banks Pumping Plant made under this change order. The report shall also state the total acre-feet diverted and rediverted at the Banks Pumping Plant under this change order.
7. Pond discharge shall not cause adverse impacts to beneficial uses in the San Joaquin River system. The Board reserves jurisdiction to take such action as may be necessary including revocation of this order if the

Chief, Division of Water Rights determines that adverse impacts to beneficial uses are occurring in the San Joaquin River system as a result of activities authorized by this order.

8. This temporary urgency change order is issued and permittee takes it subject to the California Water Code, Division 2, Chapter 6.6, Section 1435 et seq. This temporary urgency change order 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 at the discretion of the Board.
9. The Board shall supervise the use of water under the temporary urgency change order for the protection of vested rights and instream beneficial uses and for compliance with change order conditions.
10. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this temporary urgency change order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion. The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this temporary urgency change order with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.
11. Except as expressly provided herein, all terms and conditions of the permits covered by this order shall remain in effect.

12. This order supersedes the order allowing temporary urgency change in point of diversion and point of redirection issued by Board Member Darlene E. Ruiz on October 25, 1985.

CERTIFICATION

The undersigned, Interim Executive Director of the State Water Resources Control 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 November 6, 1985.

Aye: Raymond V. Stone
 Darlene E. Ruiz
 E. H. Finster
 Eliseo M. Samaniego

No: None

Absent: None

Abstain: None

Raymond Walsh

Raymond Walsh
Interim Executive Director