

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Conditional Temporary Urgency Change Order for Permitted Application 5626 and 12 others, as listed in Table 1	)	ORDER: WR 89-21
	)	SOURCE: Old River
	)	COUNTY: CONTRA COSTA
U. S. BUREAU OF RECLAMATION, Permittee	)	

ORDER VALIDATING THE ISSUANCE OF A  
CONDITIONAL TEMPORARY URGENCY CHANGE ORDER  
ADDING A POINT OF DIVERSION AND REDIVERSION  
TO DELIVER WATER TO KERN NATIONAL WILDLIFE REFUGE

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 State Water Resources Control Board (Board) having consulted with the U. S. Fish and Wildlife Service (Service), the Department of Fish and Game (DFG) and the Department of Water Resources (DWR); on August 23, 1989, Board Chairman Maughan having concluded from available information that a conditional temporary urgency change order was appropriate, issued said order subject to review and validation by the Board within 30 days, as provided by Water Code Section 1435(d); the Board finds as follows:

**SUBSTANCE OF THE PROPOSED CHANGE:**

1. On August 3, 1989, the Bureau filed a petition for a temporary urgency change to add the State Water Project's (SWP) Clifton Court Forebay, the intake to the DWR's Harvey O. Banks Pumping Plant (SWP Banks) as an additional temporary point of diversion and rediversion for the September 15, 1989 through December 31, 1989 period. The petition requests authorization to pump up to 8,200 acre-feet (af) of Bureau entitlement water through SWP Banks under the water rights listed in Table 1, for use by the Service. Use of SWP Banks was requested to wheel Bureau water through the California Aqueduct to the Kern National Wildlife Refuge (Kern NWR) for wintering migratory waterfowl this fall.

TABLE 1

Water Right Applications and Permits Covered by the  
Petition for Temporary Urgency Change

<u>Application</u>	<u>Permit</u>
5626	12721
5628	11967
9363	12722
9364	12723
9368	12727
13370	11315
13371	11316
15374	11968
15375	11969
15764	12860
16767	11971
17374	11973
17376	12364

under CEQA together with certain water transfers from the Yuba River and the operations of the State Water Project and the Central Valley Project. CSPA points out that Section 15065(c) of Title 14 of the California Code of Regulations (CEQA Guidelines), requires that a project be found to have a significant effect on the environment and that an EIR be prepared in instances in which a project has possible environmental effects which are individually limited but "cumulatively considerable" when viewed in connection with the effects of past projects, other current projects, and probable future projects.

In this instance, information provided by DFG led Division staff to conclude that the project would not have a significant adverse environmental effect and that the project was categorically exempt from CEQA under Section 15307 of the CEQA Guidelines. Based on the information before the Board, we find no reason to change that determination with respect to this particular project. The Board notes, however, that this project and similar water transfers involving increased exports of water from the Delta appear to be increasing. Thus, while this individual project may not have significant environmental effects, at some point we believe that water transfers resulting in increased Delta exports could have significant adverse environmental effects.

Therefore, in the future, the Board will not approve projects which involve increased Delta exports in the absence of an adequate environmental assessment which addresses potential fishery impacts and other environmental effects of the proposed project. In the case of temporary urgency changes or temporary permits, the required environmental assessment must comply with CEQA.<sup>1</sup>

- b. CSPA commented that the notice did not identify where the stored water for the project is located and will be diverted, and asked some questions. However, the notice identifies the State Water Project's Harvey O. Banks Pumping Plant as the added point of diversion and lists all of the permits that will be affected. Listing the permits and their application numbers is adequate to identify the sources and original diversion points of the water. Consequently, the notice is sufficient. The questions involve project operations and should be directed to the petitioners.

<sup>1</sup> In the case of temporary transfers or exchanges of water or water rights pursuant to Water Code Section 1725 et seq., the Legislature has determined that the formal requirements of CEQA are inapplicable (Water Code Section 1729). Nevertheless, in view of the potential for cumulative impacts in the future, the Board concludes that an assessment of the environmental effects of the proposed transfer of water through the Delta should be provided in order that the Board can make the evaluation and findings with respect to fish and wildlife which are required by Water Code Section 1727.

- c. CSPA commented that the notice does not contain findings under Water Code Section 1435(b). The notice is not required to contain these findings. These findings are contained in the conditional temporary urgency change order dated August 23, 1989.
- d. CSPA commented that the project has a potential to affect Chinook salmon resources, the Bay-Delta Estuary, and the amount of cold water in reservoir storage, and that the notice does not provide site-specific information to evaluate the effects on fish, wildlife, and other beneficial uses. This comment appears to refer to the findings required by Water Code Section 1435(b). We have received no evidence that the proposed temporary change will have an unreasonable effect on fish, wildlife, and other beneficial uses, or on the Bay-Delta Estuary, or on the amount of cold water in reservoir storage. Further, CSPA has not provided any such evidence. Considering that the proposed change will authorize the transfer of only 8200 acre-feet and is requested for the benefit of wildlife in the Kern National Wildlife Refuge, we find that the effect of this transfer will not be unreasonable.

Regarding CSPA's comment that the notice lacks site-specific information to evaluate the effects on

beneficial uses, we note that the function of the notice is to advise interested parties of the proposed change, not to present a detailed analysis of the project. A name and telephone number are included in the notice so that any interested person may request more information about the proposed change, or may obtain the names of the proponents' representatives and other people who can provide such information. The notice is sufficient.

- e. CSPA prefaced its comments with the observation that the petition was approved by Chairman Maughan before it was formally noticed. We note in response that Water Code Section 1438(a) expressly authorizes approval of a temporary urgency change "in advance of the notice required by this section".

In addition to its comments, CSPA has requested certain information and documents. These requests are being handled separately from this order.

**CONCLUSION:**

7. Based on the findings set forth above, the Board concludes that the conditional temporary urgency change order issued by Chairman Maughan on August 23, 1989 should be validated.

ORDER

IT IS HEREBY ORDERED THAT:

The issuance of the August 23, 1989, the conditional temporary urgency change order by Board Chairman Maughan temporarily authorizing an additional point of diversion and rediversion, under the permits listed in Table 1, is hereby validated subject to the terms and conditions specified in that order.

CERTIFICATION

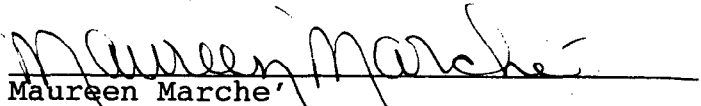
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 21, 1989.

AYE: W. Don Maughan  
Darlene E. Ruiz  
Edwin H. Finster  
Eliseo M. Samaniego  
Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board

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**ACTION BY BOARD CHAIRMAN:**

2. On August 23, 1989, Board Chairman Maughan in accordance with Water Code Section 1435(d) and the Board's Resolution No. 84-2, issued a conditional temporary urgency change order for the petitioned actions, subject to several specified conditions. The Board concurs in and incorporates herein by reference the findings set forth in that order.

**NOTICE OF THE PETITION:**

3. On August 28, 1989, Notice of the petition for the temporary urgency change was mailed to interested parties.

In accordance with Water Code Section 1438(b)(1), the Notice was published in the September 6, 1989 edition of the Contra Costa Times newspaper, since the temporary point of diversion and rediversion is located within Contra Costa County.

The final date for submitting objections was September 14, 1989.

**COMMENTS AND OBJECTIONS:**

4. The Office of Historic Preservation of the Department of Parks and Recreation commented that if this temporary urgency change

will affect historic properties, it must comply with Section 106 of the National Historic Preservation Act (16 U.S.C.A. Section 470f) and the regulations at 36 CFR Section 800 et seq. The federal lead agency is required to comply with the National Historic Preservation Act. The office says that this responsibility cannot be delegated to a non-federal agency such as the Board. Consequently, the U. S. Bureau of Reclamation or the U. S. Fish and Wildlife Service is responsible to comply with the National Historic Preservation Act.

5. The Semitropic Water Storage District did not object to the temporary urgency change, but commented that Semitropic should not be required to prepare an Environmental Impact Report for any additional diversion it requests for irrigation use, since the Board is not in this case requiring environmental documentation. The need for CEQA documentation for any project of Semitropic's is not an issue herein, and we do not comment upon it herein. Each case is evaluated on its facts to determine the need for and nature of CEQA documentation.
6. The California Sportfishing Protection Alliance (CSPA) commented on several features of the petitioned temporary urgency change:
  - a. CSPA commented that the Board's notice did not analyze the cumulative environmental impacts of this project