

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**ORDER WR 2006-0010-DWR**

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**IN THE MATTER OF PERMIT 15026 (APPLICATION 5632)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 125,000 ACRE-FEET OF WATER  
FROM THE YUBA COUNTY WATER AGENCY  
TO THE DEPARTMENT OF WATER RESOURCES**

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ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,  
PURPOSE OF USE, AND POINT OF REDIVERSION  
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On November 18, 2005,

Yuba County Water Agency  
c/o Curt Aikens  
1402 D Street  
Marysville, CA 95901

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. Yuba County Water Agency's (YCWA) petition requests a temporary change to facilitate the transfer of up to 125,000 acre-feet (af) of water appropriated under Permit 15026 (Application 5632) to the Department of Water Resources (DWR) for use by the Environmental Water Account (EWA) and possible use by DWR's 2006 Dry Year Water Purchase Program.<sup>1</sup> Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year.

**1.1 Description of the Transfer** YCWA proposes to transfer up to 125,000 af of water under Permit 15026 (Application 5632) to DWR pursuant to its 2006 Pilot Program. To facilitate the transfer, YCWA proposes to release up to 125,000 af of water stored in the New Bullards Bar Reservoir between April 1, 2006 and February 28, 2007.<sup>2</sup> Water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Power House) to the Yuba River (through Daguerre Point Dam) thence the Feather River thence the Sacramento River to the Sacramento-San Joaquin River Delta Estuary (Delta). Water reaching the Delta would be available for use by DWR to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Tracy Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas.

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<sup>1</sup>Based on unresolved concerns regarding impacts to fish and wildlife within the Delta, this order does not approve delivery of water to the 2006 Dry Year Water Purchase Program.

<sup>2</sup>This order is effective from its date through February 28, 2007.

**1.2 Place of Use and Purposes of Use Under the Proposed Transfer** The service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with the State Water Board under Application 5629) and CVP (as shown on map 214-208-12581 on file with the State Water Board under Application 5626) would be temporarily added to the place of use of Permit 15026. Municipal use and salinity and water quality control would be temporarily added as additional purposes of use under Permit 15026.

**1.3 Points of Rediversion under the Proposed Transfer** The proposed temporary change would add the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion under Permit 15026.

**1.4 Flow Schedule** YCWA submitted a schedule with the petition which defines the proposed instream flow releases (based on hydrologic conditions) for the 2006 Pilot Program. The schedule is based on the North Yuba Index (an indicator of the amount of water in the North Yuba River available for release from New Bullards Bar Reservoir) and provides for seven different flow schedules based on the value of the North Yuba Index. YCWA will make flow releases based on this schedule.

**1.5 Groundwater Substitution** YCWA's petition states that up to 85,000 af of the 125,000 af transfer total may consist of surface water made available through an increase in groundwater pumping for use within YCWA's service area (groundwater substitution). The YCWA contractors participating in the proposed groundwater substitution plan are Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Dry Creek Mutual Water Company, Hallwood Irrigation Company, Ramirez Water District, and South Yuba Water District. YCWA has submitted a *Groundwater Monitoring and Reporting Program* and a report titled "*Analysis of the Groundwater Substitution Portion of the Yuba County Water Agency—CALFED Environmental Water Account/Department of Water Resources 2006 Transfer*" regarding the potential impacts of this groundwater substitution plan. The report concludes that the groundwater substitution program associated with the proposed temporary change (as specified in the *Groundwater Monitoring and Reporting Program*) will not have any significant negative unmitigated impacts on the groundwater resources of Yuba County or on the residents and groundwater users of Yuba County and the surrounding areas.

**1.6 Refill Conditions** The petition also states that the other portion of the transfer total consists of water previously stored in New Bullards Bar Reservoir. YCWA's petition includes an agreement with DWR intended to ensure that future refill of the reservoir space that results from water transferred from storage (i.e., the transfer total minus the total excess groundwater pumped) in New Bullards Bar Reservoir does not adversely impact the SWP or CVP. The agreement between YCWA and DWR provides for an accounting of refill of New Bullards Bar Reservoir resulting from the proposed transfer during balanced conditions in the Delta. Under the specified accounting procedures, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and USBR during subsequent balanced conditions.

**1.7 Hydrologic Analysis** YCWA submitted a report titled "*Hydrologic Analysis of the Yuba County Water Agency Lower Yuba River Accord Pilot 2006 EWA/DWR Transfer*" which included several analyses comparing the storage in New Bullards Bar Reservoir, releases to the Lower Yuba River, and temperatures at various points in the Lower Yuba River resulting from implementation of the RD-1644 interim and long-term flow requirements and the Yuba Accord flow release schedules. The report also includes a discussion comparing the projected end-of-year storage in New Bullards Bar Reservoir with the proposed temporary change to the projected storage absent the proposed temporary change.

**1.8 Environmental Analysis** The petitioner submitted a study titled "*Environmental Analysis for the Proposed Yuba County Water Agency One-Year Water Transfer to the California Department of Water Resources and 2006 Pilot Program Lower Yuba River Accord Fisheries Agreement*" (EA) in support of its petition. YCWA concludes in the EA that the proposed transfer is unlikely to have significant unreasonable impacts on instream beneficial uses associated with the proposed transfer. This conclusion is not based on specific mitigation measures; however, the EA includes a "*Fisheries Agreement for 2006 Lower Yuba River Pilot Program*" (2006 Fisheries Agreement) which YCWA contends "fairly, reasonably and appropriately specifies instream flows and temporary amendments to RD-1644 for [the period of the proposed temporary change, April 1, 2006 through February 28, 2007]". The 2006 Fisheries Agreement includes (but is not limited to) provisions specifying the flow schedule for the transfer period, ramping rates, conditions for temporary alteration of flow schedules, and the establishment of a River Management Team to coordinate

operations during the transfer period.

## 2.0 BACKGROUND

**2.1 Substance of YCWA's Permit** Permit 15026 authorizes the diversion to storage of 490,000 af of water per year from the North Yuba River between October 1 and June 30 of the succeeding year. Permit 15026 also authorizes the direct diversion of up to a total of 1593 cfs from the North Yuba and Yuba Rivers between September 1 and June 30 of the succeeding year. Authorized points of diversion/rediversion under Permit 15026 are located at New Bullards Bar Dam and Daguerre Dam. The authorized purposes of use under Permit 15026 are irrigation, industrial, recreation, fish mitigation and enhancement and domestic purposes within the place of use shown on map EJ-05-08-R3 (on file with the State Water Board under Application 5632).

On July 16, 2003, the State Water Board adopted Revised Water Right Decision 1644 (RD-1644), to address fishery protection and water right issues involving the diversion and use of water from the Yuba River. The decision established two sets of instream flow requirements for protection of fish in the lower Yuba River between Englebright Dam and Marysville as conditions of YCWA's consumptive water right permits, including Permit 15026; (1) interim flow requirements that have been in effect since the original adoption of Decision 1644 in 2001 and which are scheduled to remain in effect until April 21, 2006; and (2) long-term flow requirements which are scheduled to come into effect on April 21, 2006.

**2.2 Lower Yuba River Accord** On April 21, 2005, YCWA, in cooperation with 16 other local, State, federal and environmental organizations (including DFG) approved principles of agreement for a proposed settlement of instream flow requirements on the Lower Yuba River. The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related proposed agreements: (1) a Fisheries Agreement, (2) a Water Purchase Agreement, and (3) a Conjunctive Use Agreement. Together, the three agreements form a framework that is intended to resolve conflicts over instream flow requirements for the lower Yuba River. The Yuba Accord covers years from 2006 through 2016.

The Yuba Accord proposes to provide modified instream flows for fish, a portion of which would be transferred to DWR and the United States Bureau of Reclamation (USBR). The subject petition is intended to implement the 2006 Pilot Program during the 2006 water year, which is based on the instream flow requirements in the Fisheries Agreement and the transfer accounting rules in the Water Purchase Agreement. Information regarding the Yuba Accord is available on YCWA's website at [www.ycwa.com/Accord%201.html](http://www.ycwa.com/Accord%201.html).

**2.3 Petition to Extend RD-1644 Interim Flows** In order to implement the 2006 Pilot Program, on November 18, 2005, YCWA submitted a petition to change the effective date of the long-term flow requirements established in RD-1644 to March 1, 2007. The State Water Board held an evidentiary hearing regarding the change petition on January 10, 2006, and adopted WR Order 2006-0009 on April 5, 2006. This order extended the effective date of the interim flows to March 1, 2007, and left the remaining provisions of RD-1644 in place.

The Department of Fish and Game (DFG) participated in the evidentiary hearing and presented a policy statement. DFG stated that members of its staff actively participated in the development of the flow schedule for the Yuba Accord. DFG also indicated that YCWA is in the process of completing an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed Yuba Accord. DFG stated that it believes that the analysis performed for the EIR/EIS will demonstrate the Yuba Accord agreements will provide an equivalent or better level of protection for fish in the Lower Yuba River, as compared to the existing regulatory requirements. DFG also stated that the EWA enables the fish agencies to modify water project operations at key times to benefit fish by allowing for replacement of water supplies affected by these modifications. Accordingly, DFG stated that the water transfer portion of the Yuba Accord will provide benefits to aquatic resources throughout the State. DFG requested that the State Water Board approve the subject petition for temporary change.

**2.4 Environmental Water Account** EWA was established to provide water for protection and recovery of at-risk fish species within the Delta beyond water available through existing regulatory actions

related to the operations of the SWP and CVP. In order to accomplish this goal, EWA acquires alternative sources of project water supply (also referred to as EWA assets) that are used to (1) augment stream flows or Delta outflow; (2) modify export operations; (3) provide fishery benefits; and (4) to replace the regular project water supply interrupted by the changes to project operations for EWA purposes. Water transferred to EWA pursuant to the proposed temporary change is likely to be used to replace project water supplies from spring and early summer Delta export reductions. Water transferred to EWA pursuant to the proposed temporary change will not result in a net increase in the amount of water exported from the Delta. Operational decisions for the EWA are made in coordination with DFG, the United State Fish and Wildlife Service, and the National Marine Fisheries Service.

**2.5 2006 Dry Year Water Purchase Program** The Dry Year Water Purchase Program was initiated by DWR to assist municipalities and other water users in securing water from willing sellers during drier hydrologic conditions. Water transferred to the Dry Year Water Program pursuant to the proposed temporary change typically results in a net increase in the amount of water exported from the Delta.

**2.6 Current Hydrologic Conditions** The current (March 1) hydrologic forecast for the Sacramento valley water year index is wet. Based on this information it is unlikely that DWR will implement its 2006 Dry Year Water Purchase Program. Additionally, based on the accumulated inflow into New Bullards Bar Reservoir, the water year type as calculated pursuant to RD-1644 is wet. Under the water year index used to calculate flows for the 2006 Pilot Program (the North Yuba Index), the water year will fall into Category 1 (the wettest year type under the North Yuba Index). It is unlikely that YCWA will utilize groundwater substitution as part of the proposed temporary change.

### **3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER**

Public notice of the petition for temporary change (dated November 23, 2005) was provided via regular mail to interested parties and by publication in the Marysville Appeal-Democrat on November 28, 2005. Timely comments regarding the proposed temporary change were submitted by the Metropolitan Water District of Southern California (MET), and the California Sportfishing Protection Alliance (CSPA). Timely comments were also jointly submitted by Trout Unlimited, the Bay Institute, Friends of the River, and the South Yuba River Citizen's League (herein after collectively referred to as the Conservation Groups). USBR submitted late comments shortly after the close of the comment period. Following the close of the comment period, YCWA submitted a letter in response to CSPA's comments. Finally, at the request of State Water Board staff, DFG submitted a letter restating their position on the potential impacts to fish and wildlife of the proposed temporary change. The comments are summarized below, followed by the State Water Board's responses. Original copies of all comments and responses are on file with the State Water Board under Application 5632.

#### **3.1 Comments of the Department of Fish and Game**

Comment: DFG stated that the flows resulting from the 2006 Pilot Program and the collaborative efforts of the River Management Team established by the 2006 Fisheries Agreement will protect anadromous fish in the Yuba River. DFG indicated that the portion of the 2006 Pilot Program transfer total intended for EWA will be used in conjunction with Delta export pumping curtailments (typically occurring in the spring) to reduce impacts of those exports to fish. DFG stated that the benefit for Delta fish from the planned reduction in spring export pumping made possible by the transfer of water to EWA will outweigh any potential detrimental impact of an increase in summer pumping of equal volume. DFG noted that the investigations of recent pelagic organism declines in the Delta performed by the Interagency Ecological Program project work team do not suggest that summer export pumping is likely to be a contributing factor to the decline.

DFG also addressed the possibility of water being transferred to "other parties in the export service area" (for this transfer the other parties would be served under DWR 2006 Dry Year Water Purchase Program) pursuant to the proposed temporary change. DFG noted the current wet conditions, and, based on discussions with DWR staff, does not anticipate that capacity will be available at the Delta export facilities to transfer water to these other parties until October, 2006. Additionally, DFG noted that the current wet

hydrologic conditions will likely limit the demand for additional water transferred from YCWA.

DFG concludes that the proposed transfer of water to EWA and the “anticipated small amount” of water likely to be transferred to the 2006 Dry Year Water Purchase Program would have no unreasonable effect on fish and wildlife within the Delta. Additionally, DFG concludes that the proposed transfer would not unreasonably affect fish and wildlife in the Yuba River.

State Water Board Response: The information provided by DFG was taken into consideration in reaching the findings in this order regarding the effects of the proposed temporary change on fish, wildlife and other instream beneficial uses.

### **3.2 Comments of Metropolitan Water District of Southern California**

Comment: MET comments that the Yuba Accord is a significant water agreement which provides broad benefits for the Yuba County area and California as a whole. MET states that since the 2006 Pilot Project is an integral piece of the Yuba Accord, MET supports the proposed temporary change.

State Water Board Response: The State Water Board notes MET’s support for the proposed temporary change.

### **3.3 Comments of Conservation Groups**

The Conservation Groups’ comments address two issues regarding the proposed temporary change. The Conservation Groups state that the flows associated with the proposed temporary change would result in equivalent or better protection to Yuba River fisheries as compared to the long-term flow requirements contained in D-1644. The Conservation Groups indicated that for this reason they support the proposed temporary change.

However, the Conservation Groups also note that they do not support increases in the rates of or capacity for Delta export pumping. The Conservation Groups note the current population decline in delta smelt and other Delta pelagic organisms. The Conservation Groups state that while a number of factors have been identified as potential stressors, the summer/fall pumping associated with the proposed temporary change may result in further adverse impacts to these species. The Conservation Groups indicate that the State Water Board should, in coordination with DFG, the United State Fish and Wildlife Service, and the National Marine Fisheries Service, consider what operational criteria will be used for Delta pumping associated with the proposed temporary change. The Conservations Groups also state that a comprehensive study of the impacts of the summer/fall Delta pumping will be a significant part of the Environmental Document prepared for the long-term transfer associated with the Yuba Accord.

State Water Board Response: The State Water Board notes the Conservations Groups’ comments regarding the level of protection of fish in the Lower Yuba River from the flows associated with the proposed temporary change. Additionally, this Order contains several conditions intended to prevent unreasonable effect to fish and wildlife resulting from Delta pumping associated with the proposed temporary change. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions. Finally, since water delivered to the 2006 Dry Year Water Purchase Program may result in a net increase in the total amount of water exported from the Delta (as opposed to water delivered to EWA which does not increase the net amount of water exported from the Delta), this Order only authorizes delivery of water to EWA.

### 3.4 Comments of California Sportfishing Protection Alliance

Comment: CSPA objects to the proposed temporary change on the basis that it will have unreasonable adverse impacts to fish and that it is inconsistent with the provisions of Water Code section 1725, et seq. CSPA's specific allegations are summarized below.

- a. The proposed temporary change is a necessary part of the multi-year Yuba Accord. Since the Yuba Accord involves a multi-year water transfer, the proposed temporary change would be in violation of Water Code sections 1725, et seq.
- b. The proposed temporary change requires a reduction in the fishery protection flows and other protective measures contained in D-1644, resulting in adverse unreasonable adverse impacts to fish and wildlife in the Lower Yuba River and New Bullards Bar Reservoir. These impacts include reduction of fisheries habitat and the cold water pool within New Bullards Bar Reservoir, associated temperature impacts to spring- and fall-run Chinook salmon in the Lower Yuba River during the fall months, loss of juvenile fisheries habitat in the Yuba River, and impacts to outmigration of juvenile salmon and steelhead and the migration of American Shad. Additionally, the proposed temporary change would adversely impact angling activities associated with the affected fish.
- c. The proposed addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of diversion will result in unreasonable impacts on Delta fisheries and increase the take of State and Federally listed species.
- d. The petitioner has included a "Conjunctive Use Agreement" as an element of the proposed temporary change. This action does not meet the requirements of Water Code section 1725, et seq.

#### State Water Board Response:

- a. Water Code section 1725, et seq., does not prohibit approval of a series of similar temporary changes in successive years, nor does it prohibit approval of a temporary change and transfer of water prior to action on a petition for a long-term change in the conditions of a water right permit. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Approval of the petition addressed in this order does not commit the State Water Board to any particular action on future petitions.
- b. As stated in section 2.3 of this Order, above, the State Water Board adopted WR Order 2006-0009 on April 5, 2006, extending the effective date of the interim flows contained in RD-1644 to March 1, 2007, while leaving the remaining provisions of RD-1644 in place. Since the water year type pursuant to RD-1644 is wet, the required instream flow releases required under the interim flows are identical to the required flow releases under the long-term flow. Thus, the proposed temporary change will not affect instream flow releases YCWA is required to make to the Lower Yuba River. Additionally, this Order requires YCWA to comply with all remaining provisions of RD-1644.
- c. See the State Water Board's response to the Conservation Groups' comments contained in section 3.3 of this Order, above.
- d. YCWA has submitted an analysis of the impacts of the groundwater substitution associated with the proposed temporary change. That analysis concludes that the groundwater substitution program associated with the proposed temporary change will not have any significant negative unmitigated impacts on the groundwater resources of Yuba County or on the residents and groundwater users of Yuba County and the surrounding areas. This Order requires YCWA to implement the Groundwater Substitution Program submitted with the petition if any groundwater substitution is utilized as part of the proposed temporary change.

### **3.5 Comments of United States Bureau of Reclamation**

USBR stated that the refill agreement between DWR and YCWA and the Groundwater Substitution Program submitted with the petition should prevent the proposed temporary change from adversely impacting the CVP. USBR requested that the State Water Board include a reference that YCWA has entered into these agreements and that the proposed temporary change is subject to these agreements. USBR also stated that it is currently reviewing the refill agreements, including the type used by the petitioner and DWR, and reserves the right to propose alternative refill criteria for future water transfers.

State Water Board Response: This order conditions refill of New Bullard Bar Reservoir with the provisions of the refill agreement between YCWA and DWR that was submitted with the subject petition. Though current hydrologic conditions make the use of groundwater substitution for the proposed temporary change unlikely, any groundwater substitution resulting from the proposed temporary change is subject to the conditions of the Groundwater Substitution Program submitted with the subject petition. The State Water Board considers each petition for temporary change on its own merits based on the relevant information at the time. USBR may adopt a different position regarding reservoir refill criteria that may be applicable to a future transfer based on different conditions or updated information or analyses.

### **4.0 REQUIRED FINDINGS OF FACT**

#### **Availability of Water for Transfer**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) Some or all of the water proposed for transfer was stored under provisions of Permit 15026. The hydrologic analysis submitted by YCWA indicates that in the absence of this transfer, up to 125,000 af of water would remain in storage within the New Bullards Bar Reservoir. Additionally, YCWA has submitted a report indicating that its proposed Groundwater Substitution Program will not cause a state of overdraft in the Yuba groundwater basin.

#### **No Injury to Other Legal Users of Water**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) This order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential lowering of water levels in southern Delta channels associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of redirection to Permit 15026;
- b. Future refill of New Bullards Bar Reservoir resulting from this temporary change, and
- c. Impacts resulting from increased groundwater pumping resulting from this temporary change.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer will not injure any legal user of the water.

#### **No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses**

Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Public Resources Code section 21000,

et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

This order contains several conditions intended to prevent unreasonable impacts from the proposed temporary change on fish, wildlife, and other instream beneficial uses in the Lower Yuba River. For the period of the proposed temporary change (the date of this Order through February 28, 2007) YCWA is required to maintain flows in the Yuba River as specified by the flow schedule submitted with the petition. YCWA is also required to adhere to ramping rates specified in the 2006 Fisheries Agreement. Additionally, YCWA is required to maintain the instream flow requirements and provisions to reduce water temperature impacts required by RD-1644 and State Water Board Order WR 2006-0009. The required instream flows must be maintained in addition to flows released for this transfer.

This Order also contains several conditions intended to prevent unreasonable impacts from the proposed temporary change on fish, wildlife, and other beneficial uses within the Delta. In order to ensure that the proposed temporary change does not result in a net increase in exports from the Delta, this Order limits delivery of water transferred pursuant thereto to the EWA. Operational decisions for the EWA are made in coordination with DFG, the United State Fish and Wildlife Service, and the National Marine Fisheries Service. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions.

In light of the above, I find in accordance with Water Code section 1727(b)(2) that the proposed transfer will have no unreasonable effects on fish, wildlife or other instream beneficial uses.

## **5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY**

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to the delegation of authority in Resolution 2002-0106.

## **6.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change in the place of use, purpose of use, and points of rediversion under Yuba County Water Agency's (YCWA) Permit 15026 (Application 5632) to facilitate the transfer of up to 125,000 af of water is approved subject to the provisions of this order.

All existing terms and conditions of Permit 15026 as modified by State Water Board Revised Decision 1644 (RD-1644) and State Water Board Order WR-2006-0009 remain in effect, except as temporarily amended by the following provisions:

1. Water transferred pursuant to this order shall be delivered for use by the Environmental Water Account.
2. The transfer/exchange of water is limited to the period from the date of this order through February 28, 2007.
3. The place of use of Permit 15026 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).
4. The Clifton Court Forebay and the Tracy Pumping Plant are temporarily added as points of rediversion under Permit 15026. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions.
5. Municipal, salinity control, and water quality are temporarily added as purposes of use under Permit 15026.
6. YCWA shall release water to the Lower Yuba River for the transfer in accordance with the flow schedule contained in the *Fisheries Agreement for 2006 Lower Yuba River Pilot Program* (2006 Fisheries Agreement), on file with the State Water Board under Application 5632. Changes in flows due to the transfer shall be undertaken in a gradual manner in accordance with the provisions contained in section 4.5.3 of the 2006 Fisheries Agreement. During an emergency or other significant event, or for study purposes, YCWA may, with my approval, meet an alternate flow or ramping rate at the Marysville Gage in accordance with the provisions contained in section 5.1.4 of the 2006 Fisheries Agreement
7. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by RD-1644:
  - a. Maintain minimum instream flows at the United States Geological Service gaging installations at Marysville and Smartville as specified in State Water Board Order WR-2006-0009. The required instream flows must be maintained in addition to flows provided for transfer pursuant to this order.
  - b. Minimize water temperature impacts on anadromous fish and other public trust resources as specified for YCWA in Revised D-1644, Term 2.

8. The criteria delineated in *New Bullards Bar Reservoir Refilling Conditions And Procedures For Water Transfer From Yuba To The Department* (Refill Agreement) that were submitted with the petition shall govern the conditions under which future refill of the reservoir space that results from water transferred from storage pursuant to this Order occurs.
9. If YCWA increases the amount of groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer groundwater (groundwater substitution), YCWA shall be required to perform the following actions:
  - a. Implement the *Groundwater Monitoring and Reporting Program* submitted with the petition;
  - b. Prepare a monthly accounting of the actual groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer;
  - c. Provide to the Chief of the Division of Water Rights a map of the recent (circa spring 2006) groundwater levels in the North and South Yuba Groundwater Basins; and
  - d. Develop and submit to the Chief of the Division of Water Rights, by June 1 of each year following the transfer, a map defining the spring groundwater levels in the North and South Yuba Groundwater Basins, until such time as groundwater levels correspond to pre-transfer groundwater levels.
10. By June 1, 2007, YCWA shall provide to the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order and refill of storage resulting from this Order. The report shall include the following information:
  - a. General locations where the transferred water was used or stored;
  - b. The daily release rates of the transferred water from New Bullards Bar Reservoir;
  - c. The average daily streamflow measured at the USGS gaging stations located on the Yuba River at Marysville and Smartville;
  - d. The hourly temperature readings at the Smartville Gage, Daguerre Point Dam, and the Marysville Gage as required of YCWA in Term 2(d) of Revised D-1644;
  - e. The daily values of the Transfer Amount Account, as defined in the Refill Agreement; and
  - f. The monthly amounts of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.

Should the amount of the Transfer Amount Account exceed zero at the time of this report, YCWA shall submit subsequent annual reports until the Transfer Amount Account reaches zero. These reports shall contain the daily values of the Transfer Amount Account.

11. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

12. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take prior to commencing transfer of water. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
13. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

*ORIGINAL SIGNED BY*

*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated: April 10, 2006

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