

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0051-DWR

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IN THE MATTER OF PERMITS 13856 & 13858 (APPLICATIONS 18085 & 18087)  
PETITIONS FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 20,000 ACRE FEET OF WATER  
FROM THE PLACER COUNTY WATER AGENCY  
TO THE SAN DIEGO COUNTY WATER AUTHORITY

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ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,  
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITIONS**

On May 6, 2009,

Placer County Water Agency  
c/o Hanspeter Walter  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), two Petitions for Temporary Change pursuant to Water Code section 1725 et seq. Pursuant to the petitions, Placer County Water Agency (PCWA) seeks to transfer up to 20,000 acre-feet (af) of water to the San Diego County Water Authority (SDCWA). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

**1.1 Description of Temporary Change.** PCWA proposes to transfer up to 20,000 af of water currently stored in Ralston Afterbay Reservoir on the Middle Fork of the American River, under Permits 13856 and 13858 (Applications 18085 and 18087) to SDCWA. Ralston Afterbay Reservoir is located downstream of French Meadows Reservoir and Hell Hole Reservoir (Middle Fork Project Reservoirs). The petitions state that transfer water would be released between the effective date of this order and December 31, 2009, but would most likely occur during July, August, and September, 2009. The water would be released to the Middle Fork American River and temporarily stored in Folsom Reservoir. The transfer water would then be available for release to the Lower American River thence the Sacramento River to the Delta for export at the State Water Project (SWP)'s Banks Pumping Plant and delivery to SDCWA. To accomplish this transfer, it may be necessary for SDCWA to execute a Warren Act contract or other wheeling/storage agreement with the U.S. Bureau of Reclamation (USBR) in order to provide operational flexibility to first store the transfer water in Folsom Reservoir before its conveyance through the Delta. Additionally, the Department of Water Resources (DWR) and USBR will coordinate SWP and Central Valley Project (CVP) operations to convey the transfer water through the Delta. The SWP will

divert the transfer water from the Delta. The Metropolitan Water District of Southern California (Metropolitan) will assist SDCWA in wheeling the transfer water to the SDCWA service area, subject to available capacity, consistent with Articles 55 and 56 of Metropolitan's State Water Project Long Term Water Supply Contract. Due to the additional amount of export pumping associated with this transfer, additional Delta inflow will be required to maintain water quality objectives within the Delta. Accordingly, a portion of the transfer water (typically referred to as 'carriage water') will be used for salinity control, fish and wildlife enhancement, and water quality control.

In the absence of this transfer, up to 20,000 af of the subject water would remain in storage in PCWA's Middle Fork Project Reservoirs.

**1.2 Refill Agreement.** The *Refill Agreement for 2009 Water Transfer from Placer County Water Agency to San Diego County Water Authority* (Refill Agreement) was made on May 22, 2009 by and between USBR and PCWA. The Refill Agreement is intended to protect the CVP and SWP from injury due to the refill of reservoir space made available from this transfer. The Refill Agreement provides for maximum allowable storage in PCWA's reservoirs based on the final storage in Folsom Reservoir.

**1.3 Other Agency Consultation.** Prior to submitting the petitions to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

## **2.0 BACKGROUND**

**2.1 Substance of PCWA's Permits.** Permits 13856 and 13858 (Applications 18085 and 18087), issued on January 10, 1963, authorize PCWA to divert to storage up to a maximum of 133,700 af per year (afa) in French Meadows Reservoir and up to 208,400 afa in Hell Hole Reservoir. These permits also authorize the direct diversion of up to a total of 2,025 cfs between November 1 of each year and July 1 of the succeeding year. The authorized purposes of use under Permits 13856 and 13858 are irrigation, municipal, industrial, recreation and incidental domestic and the place of use is shown on PCWA's map set dated July 31, 1996.

PCWA also holds Permits 13855 and 13857 (Applications 18084 and 18086), issued on January 10, 1963. These permits authorize similar direct diversion and storage totals and locations as Permits 13856 and 13858; however, these permits are for non-consumptive uses (i.e., power generation and recreation). Accordingly, Permits 13855 and 13857 are not included in the petitions for temporary change.

**2.2 The Middle Fork Project.** PCWA owns and operates the Middle Fork Project (located within the upper American River watershed) which consists of the French Meadows and Hell Hole Reservoirs, with combined storage capacity of approximately 342,000 af, and associated canals, pipelines, powerhouses and regulating reservoirs. French Meadows Reservoir is located on the Middle Fork American River and Hell Hole Reservoir is located on the Rubicon River (which is tributary to the Middle Fork American River). PCWA's Federal Energy Regulatory Commission (FERC) licenses require PCWA to maintain minimum instream flows in the Middle Fork American River and Rubicon River (below both reservoirs) based on the season and water year type. Water stored in French Meadows Reservoir may be pumped via underground pipeline to Hell Hole Reservoir and, during normal operations, PCWA uses Hell Hole Reservoir as the release point for most of the water it uses for power generation and its authorized consumptive uses.

**2.3 Proposed Temporary Changes.** The proposed transfer would temporarily add the service areas of SDCWA (as shown on map submitted with the petitions) to the authorized place of use under Permits 13856 and 13858. The SWP's Banks Pumping Plant would be temporarily added as a point of diversion under Permits 13856 and 13858. Folsom Reservoir would be added as an alternate point of diversion. Salinity control, fish and wildlife enhancement, and water quality control would be temporarily

added as purposes of use under Permits 13856 and 13858 consistent with carriage water requirements described above.

**2.4 Water Quality Requirements.** In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the SWP's Banks Pumping Plant or the CVP's Jones Pumping Plant as points of diversion/redirection to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the State Water Project and Central Valley Project (Projects) meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petitions) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/redirection to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/redirection to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, redirection of water at the Banks Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta, this Order does not require compliance with the salinity objectives in the southern Delta.

### **3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE**

Public notice of the petitions for temporary change (dated May 14, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 16, 2009. The California Sportfishing Protection Alliance (CSPA) and the South Delta Water Agency (SDWA) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

#### **3.1 Comments of the California Sportfishing Protection Alliance.**

- a. The petitions request a transfer that would occur along with numerous other transfers requested through the Drought Water Bank (DWB). Among the DWB transfers, is one noticed by the State

Water Board on June 4, 2009, for up to 12,000 af of water from storage in PCWA reservoirs that would otherwise have been delivered to the South Sacramento Water District. The proposed transfer from PCWA to SDCWA is thus one of many simultaneous transfers whose cumulative effects have not been analyzed. Therefore, the exemption from the California Environmental Quality Act (CEQA) is without legal basis.

- b. The petitions request the addition of a point of redirection in the SWP and a point of storage in the CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer, in combination with DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley Chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with this transfer and the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- d. On June 4, 2009, the National Marine Fisheries Service issued a Biological Opinion for the Operations Criteria and Plan of the CVP and SWP, for Central Valley steelhead, green sturgeon and Chinook salmon (both spring- and winter-run). Analysis is required to determine whether the contemplated transfer from PCWA to SDCWA violates or is inconsistent with the Reasonable and Prudent Alternative put forth in the Biological Opinion.
- e. The proposed transfer may also have impacts within the American River watershed. The water will most likely be transferred in July through September 2009. This is a time period when flows in the Lower American River are typically high, in order to support irrigation demand by the CVP. In 2008, Folsom Reservoir was severely drawn down in the summer, leaving insufficient water to maintain streamflows and causing elevated water temperatures in the lower American River in the fall period when spawning anadromous salmonids entered the river. Water that is released over the summer is not available for use in the critical fall time period.
- f. PCWA has transferred 20,000 af of water out of basin in more than half of the dry water years over the last ten years. This is sufficient to call this a consistent pattern of water sales in dry water years. As such, it should not be subject to the CEQA exemption accorded to temporary changes, but rather should be analyzed under CEQA for its long-term and other cumulative effects.
- g. PCWA has recently constructed a new facility that can make deliveries of up to 50 cfs from the former Auburn Dam site on the North Fork American, downstream of Middle Fork American confluence, through the Auburn Tunnel to the South Canal just below Wise Powerhouse, at a point directly adjacent to the Auburn Wastewater Treatment Plant. Water from the Middle Fork Project could therefore be used to replace water that is currently exported from the Yuba system. The South Yuba River has been officially proposed for 303 (d) listing by the Central Valley Regional Water Quality Control Board as temperature-impaired. Temperature monitoring performed for the Upper Yuba River Studies Program, and for the relicensing of the Yuba-Bear and Drum-Spauling hydroelectric projects, has shown that summer water temperatures in the South Yuba River routinely exceed standards for cold freshwater habitat for almost the entire length of the river from just downstream of Lake Spaulding all the way to Englebright Reservoir. Export of water from this impaired watershed, when other options are available for consumptive use in the area of destination, constitutes unreasonable use of water, contrary to the Water Code.

PCWA has the ability to supply water to Auburn Ravine through the Auburn Tunnel at a point just upstream of the Auburn Wastewater Treatment Plant. Each fall after the irrigation season ends on about October 15, outages in the Drum-Spauling delivery system substantially de-water Auburn Ravine.



### State Water Board Responses:

- a. The subject petitions were filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Temporary changes pursuant to Water Code sections 1725 through 1732 are exempt from the requirements of CEQA. (Wat. Code, § 1729.) Note that the DWB transfer mentioned by CSPA, for up to 12,000 af of water from storage in PCWA reservoirs, would otherwise have been delivered to the Sacramento Suburban Water District (not the South Sacramento Water District).
- b. The petitions request the addition of the SWP's Banks Pumping Plant and the CVP's Folsom Reservoir as points of rediversion to Permits 13856 and 13858. Nothing in the Water Code precludes these changes simply because they entail the use of both SWP and CVP facilities.
- c. DFG was provided a copy of the subject petitions and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks 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 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 (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations. There is no evidence that the proposed transfer, subject to these conditions, will adversely affect fishery resources or water quality.
- d. See response given for item c., above.
- e. In the absence of the transfer, the transfer water would remain in storage in either French Meadows Reservoir or Hell Hole Reservoir for future use by PCWA's customers. This water would not be available in Folsom Reservoir for fall temperature control.
- f. Water Code sections 1725 through 1732 do not prohibit approval of a series of similar temporary changes in successive years. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 through 1732. Approval of the petitions addressed in this order does not commit the State Water Board to any particular action on future petitions. As stated above, temporary changes pursuant to sections 1725 through 1732 are exempt from CEQA requirements. (Wat. Code, § 1729.)
- g. Water Code section 1727 subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727 subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not modify or amend PCWA's permits, or place conditions upon this temporary change to mitigate alleged affects of PCWA's diversions from the Yuba River.

### **3.2 Comments of the South Delta Water Agency.**

- a. Transfers such as these can only be made in compliance with the restrictions for JPOD operations. These terms and conditions include compliance with the southern Delta salinity standards.
- b. SDWA continues to assert that transfers under Sections 1725, et seq., are limited to water that would have been consumptively used, or previously stored (or conserved). The clear intent of the

statute is that a transfer should not result in an increase in the consumptive use of the supply. In cases such as this where the transferee/seller intends to refill the stored water at a later time, there is clearly an increase in the amount of consumed water. Under the statutes, transfers should only occur when the seller consumes less water, and thus the net amount of consumptive use remains the same. The SWRCB continues to misinterpret these statutes to allow increases in net consumptive use. That practice encourages a greater and greater demand on a static supply of water.

State Water Board Responses:

- a. See Section 2.4 of this Order for a complete discussion of Delta water quality requirements.
- b. Section 1725 limits the amount of water that can be transferred to the amount that would have been consumptively used or stored in the absence of the transfer. In this case, the water to be transferred consists of water that would have been stored by PCWA in the absence of this transfer. SDWA is incorrect in asserting that Water Code sections 1725 through 1732 preclude the transfer of stored water if the transferor intends to refill the storage reservoir in question. Limitations on refill may be necessary, however, to ensure that the transfer will not injure other legal users of the water or unreasonably affect fish, wildlife, or other instream beneficial uses. See section 4.2, below.

**4.0 REQUIRED FINDINGS OF FACT**

**4.1 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 or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) The water proposed for transfer consists of surface water made available through release from Ralston Afterbay Reservoir which is located downstream of French Meadows Reservoir and Hell Hole Reservoir. In the absence of the transfer the water would be stored in PCWA's French Meadows Reservoir and Hell Hole Reservoir (Middle Fork Project Reservoirs).

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

**4.2 No Injury to Other Legal Users of Water.** Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of 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).) Potential injury to other legal users of water may occur during refill of the reservoir space made available from this transfer. The Refill Agreement contains criteria necessary to protect other legal users of water from injury during the refill period. This Order requires compliance with the Refill Agreement.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant as a point of redirection to Permits 13856 and 13858. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta, this Order does not require compliance with the salinity objectives in the southern Delta.

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

**4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses.** The water proposed for transfer pursuant to this temporary change consists of water previously stored in French Meadows Reservoir and Hell Hole Reservoir pursuant to Permits 13856 and 13858. In the absence of the proposed transfer, the water would remain in storage for future use by PCWA.

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

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks 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 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 (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

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

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

## **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 petitions filed for temporary change in the place of use, purpose of use, and point of redirection under Placer County Water Agency (PCWA)'s Permits 13856 and 13858 (Applications 18085 and 18087) to authorize the transfer of up to 20,000 af of water are approved. The temporary change is effective commencing on the date of this Order through September 30, 2009.

All existing terms and conditions of Permits 13856 and 13858 remain in effect, except as temporarily amended by the following provisions:

1. The place of use under Permits 13856 and 13858 is temporarily amended to include the service area of the San Diego County Water Authority as shown on map submitted with the petitions and on file with the State Water Board under Applications 18085 and 18087.
2. Folsom Reservoir is temporarily added as an authorized point of redirection under Permits 13856 and 13858.
3. The State Water Project (SWP)'s Banks Pumping Plant is temporarily added as an authorized point of redirection under Permits 13856 and 13858. Redirection of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Redirection of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of Department of Water Resources (DWR) and U.S. 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), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/redirection, 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, with the exception of the three interior southern Delta salinity compliance locations.
4. Power generation, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under Permits 13856 and 13858.
5. The criteria delineated in the *Refill Agreement for 2009 Water Transfer from Placer County Water Agency to San Diego County Water Authority* (Refill Agreement), submitted with the petitions, shall govern the conditions under which the excess storage capacity in the Middle Fork Project Reservoirs resulting from this transfer is refilled.
6. During the period of the transfer, petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the petitioner.
7. Within 60 days of the completion of the transfer, and no later than November 30, 2009, PCWA shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
  - a. General locations where the transferred water was used;
  - b. The daily average rate water is released from Folsom Reservoir pursuant to this Order; and
  - c. The daily values of the Refill Reservation, as defined in the Refill Agreement.

Should the amount of the Refill Reservation exceed zero at the time of this report, PCWA shall submit subsequent annual reports until the Refill Reservation reaches zero. These reports shall contain the daily values of the Refill Reservation.



8. 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.

9. 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 permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. 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

*James W. Kassel*  
for *Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: **JUL 20 2009**