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2009 MAR -4 PM 2:05

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

PETITION FOR TEMPORARY URGENCY CHANGE
(Water Code 1435) (and 23 CCR 791(e))

X Change in Permit Term
_____ Point of Diversion, ____ Point of Rediversion, _____ Place of Use, _____ Purpose of Use

Application # 14858A, 14858B; 19304 Permit #16597; 20245; 16600 License # _____ Statement or Other _____

I (we) **Bureau of Reclamation** hereby petition for a temporary urgency change(s) noted above and
(Water Right Holders Name)
shown on the accompanying map and described as follows:

Point of Diversion or Rediversion (Give coordinate distances from section corner or other ties as allowed by Cal CR 715, and the 40-acre subdivision in which the present & proposed points lie.)

Present **On file with SWRCB**

Proposed **No Change**

Place of Use (If irrigation then state number of acres to be irrigated within each 40-acre tract.)

Present **On file with SWRCB**

Proposed **No Change**

Purpose of Use

Present **On file with SWRCB**

Proposed **No Change**

Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See WC 1707)? **NO**

The temporary urgency change(s) *is to be effective* from **March 1, 2009** to **March 31, 2009**
(Cannot exceed 180 days)

Will this temporary urgency change be made without injury to any lawful user of water? **YES**

Will this temporary urgency change be made without unreasonable effect upon fish, wildlife, and other instream beneficial uses? **YES**

State the "Urgent Need" (Water Code 1435(c)) which is the basis of this temporary urgency change petition: **See Supplement**

$1000.00 SWRCB Check was not received. Delivery via Walk-in

3/4/09-MS

Rec'd $850.00 3/4/09 MS

If the point of diversion or rediversion is being changed, is any person(s) taking water from the stream between the old point of diversion or rediversion and the proposed point? **N/A**

Are there any persons taking water from the stream between the old point of return flow and the new point of return flow? **N/A**

If yes, give name and address, as well as any other person(s) known to you who may be affected by the proposed change.

N/A

I (we) consulted the California Department of Fish and Game concerning this proposed temporary change. **Yes.**

If yes, state the name and phone number of the person contacted and the opinion concerning the potential effects of your proposed temporary urgency change on fish and wildlife and state the measures required for mitigation.

Jim White (916) 445-1287 CDFG provided an informal response and raised concerns regarding impacts to outmigrating juvenile steelhead.

THIS TEMPORARY URGENCY CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE. THIS TEMPORARY URGENCY CHANGE IS REQUESTED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS OR LESS.

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated **3/4**, 2009 at **Sacramento**, California

Ronald Milligan — 916 - 979 - 2199

(Signature) (Telephone No.)

2800 Cottage Way, Sacramento, CA 95825

(Address)

NOTE: A **$1000 filing fee**, for each Application listed, made payable to the State Water Resources Control Board and an **$850 fee** made payable to the Department of Fish and Game must accompany this petition for change.

California Environmental Protection Agency

State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
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ENVIRONMENTAL INFORMATION FOR PETITIONS

☒ **Petition for Change** ☐ **Petition for Extension of Time**

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period. **See supplement to petition.**

☐ *See Attachment No.* ___

2. COUNTY PERMITS N/A

a. Contact your county planning or public works department and provide the following information:

Person contacted: _____ Date of contact: _____

Department: _____ Telephone: (____) _____

County Zoning Designation: _____

Are any county permits required for your project? ☐ YES ☐ NO If YES, check appropriate box below:
☐ Grading permit ☐ Use permit ☐ Watercourse ☐ Obstruction permit ☐ Change of zoning
☐ General plan change ☐ Other (explain):

_____

_____

b. Have you obtained any of the required permits described above? ☐ YES ☐ NO
If YES, provide a complete copy of each permit obtained.
☐ *See Attachment No.* ___

3. STATE/FEDERAL PERMITS AND REQUIREMENTS N/A

a. Check any additional state or federal permits required for your project:
☐ Federal Energy Regulatory Commission ☐ U.S. Forest Service ☐ Bureau of Land Management
☐ Soil Conservation Service ☐ Dept. of Water Resources (Div. of Safety of Dams) ☐ Reclamation Board
☐ Coastal Commission ☐ State Lands Commission ☐ Other (specify) _____

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

☐ *See Attachment No.* ___

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? ☐ YES ☐ NO
If YES, explain: _____

_____

_____

_____

_____

_____

_____

_____

_____

☐ *See Attachment No.* ___

d. Have you contacted the California Department of Fish and Game concerning your project? ☐ YES ☐ NO
If YES, name and telephone number of contact: _____

4. ENVIRONMENTAL DOCUMENTS

a. Has any California public agency prepared an environmental document for your project? ☐ YES ☒ NO
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: _____

b. If NO, check the appropriate box and explain below, if necessary:
☐ The petitioner is a California public agency and will be preparing the environmental document.*
☒ I expect that the SWRCB will be preparing the environmental document.**
☐ I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: _____

_____

☐ *See Attachment No. ___*

Categorical Exemption: Existing Facilities Class 1 - 14 CCR Sec . 15301

* Note: When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

Statutory Exemption: Emergency Project – 14 CCR 15269(c)

** Note: CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

N/A

5. WASTE/WASTEWATER

a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?
☐ YES ☐ NO
If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

_____

☐ *See Attachment No. ___*

b. Will a waste discharge permit be required for your project? ☐ YES ☐ NO

Person contacted: _____ Date of contact: _____

c. What method of treatment and disposal will be used? _____

_____

_____

☐ *See Attachment No. ___*

N/A No construction involved.

6. ARCHEOLOGY

a. Have any archeological reports been prepared on this project? ☐ YES ☐ NO
b. Will you be preparing an archeological report to satisfy another public agency? ☐ YES ☐ NO
c. Do you know of any archeological or historic sites located within the general project area? ☐ YES ☐ NO

If YES, explain: _____

_____

_____

_____

_____

☐ *See Attachment No.* ___

N/A No construction or changes in points of diversion or rediversion involved.

7. ENVIRONMENTAL SETTING

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- ☐ Along the stream channel immediately downstream from the proposed point(s) of diversion.
- ☐ Along the stream channel immediately upstream from the proposed point(s) of diversion.
- ☐ At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: 4 Mar 2009 Signature: Ronald Milligan

Supplement to Petition for Change

Requested Change

As the State Water Resources Control Board (Board) is aware, last Friday the Governor of California issued a Proclamation declaring that California is in its third consecutive year of drought, and that annual rainfall, water content in the Sierra snowpack, and runoff have been significantly below the amounts needed to fill reservoir systems. The Proclamation further finds that despite the recent rain and snow, the three year cumulative water deficit is so large there is only a 15 percent chance that California will replenish its water supply this year. No one knows how long this drought will continue.

At paragraph 21 of the Governor's Proclamation, the Governor requests federal agencies to implement water use reduction plans for facilities within their control, including immediate water conservation efforts. This is an appropriate request given the low storage levels within the Stanislaus River basin, the much drier than normal conditions on the San Joaquin River, and the unknown length of the current drought.

However, the United States Bureau of Reclamation (Reclamation) finds itself once again in a position where the conditions on the ground are much drier than the studies underlying D-1641 assumed, and calling into question whether D-1641, specifically the San Joaquin River flow objectives at Vernalis, represents a prudent balancing of beneficial uses under the current circumstances. The San Joaquin River is currently classified as in a "critically dry" year. However, recent precipitation may change that classification to a "dry" year, increasing the flows called for under D-1641. Under the current circumstances, however, the recent precipitation is following such an extended dry period, that the precipitation has not increasing baseflows for the San Joaquin River or its tributaries, as it would in more normal conditions. The precipitation is being preserved or absorbed into the ground, but while some spikes in baseflows can be observed, the precipitation is not resulting in a steady increase in baseflows normally associated with even "dry" levels of precipitation. It appears the San Joaquin River baseflows will continue to respond at "critically dry" levels, despite recent precipitation.

Reclamation, therefore, hereby requests that the Board temporarily, for the month of March 2009, allow for the following amendment to D-1641 permit terms relating to River Flows on the San Joaquin River at Airport Way Bridge, Vernalis found in Table 3 (see D-1641, p. 184):

> "For March 2009, the minimum monthly average flow rate shall be 710 cfs or 1,140 cfs, (or 'critical year' flow rate values), even if the San Joaquin River is ultimately designated as a 'dry year' classification within the month of March 2009."

The classification of the water year type for purposes of determining the required flow rate under D-1641 will not occur until approximately ten days after March 1. It is

possible that the California Department of Water Resources may change the forecasted year type classification for the San Joaquin River basin, on or about March 10, from the current "critically dry" classification to a dry year classification under the 90% exceedance forecast.

Current Status of Vernalis Flows

As of late February, the flow at Vernalis is projected to remain near 1,600 cfs with flow recession under dry weather, and possible flow increases with future storm events and contributing creek flows. Currently, the releases from Goodwin Dam on the Stanislaus River are 250 cfs. Releases on the Tuolumne River are currently 165 cfs; Merced River releases are currently 320 cfs. If March 2009 is reclassified to a "dry year" status, meeting the "dry year" flow objectives (1,420 cfs or 2,280 cfs) would require Goodwin Dam releases to be nearly tripled to a rate of between 850 to 950 cfs.

Anticipated additional water cost or carryover loss potential in order to comply with March 2009 Vernalis Flow requirements.

The San Joaquin River Basin is in its third year of drought conditions. With an assumption of current flows at Vernalis of approximately 1,600 cfs and a Goodwin release of 250 cfs, it would be anticipated that Reclamation would need to increase Goodwin releases by approximately 700 cfs, to a total Goodwin release of 950 cfs. This action taken over the entire month would possibly equate to an additional 43 TAF of release during March 2009. This is an extremely rough estimate due to a great deal of uncertainty as to whether flows at Vernalis will recede or improve during March 2009 with lack of rainfall or production of rainfall contributing to Vernalis flows. It is highly unlikely that additional reservoir releases from the Tuolumne River or Merced River will improve flow conditions at Vernalis during water year 2009 due to very low reservoir storages in each river system as part of the continuing drought conditions.

Current Status of New Melones Reservoir/Stanislaus River Basin

New Melones Reservoir entered water year 2009 with carryover storage of approximately 1.1 MAF, or roughly 38% of capacity. Based on the February 1, 2009 water supply projections, Reclamation has estimated that the inflows to New Melones Reservoir for water year 2009 would be:

New Melones Inflow Projection	90% Exceedence Forecast	50% Exceedence Forecast
Feb 1 Estimates	331 TAF	709 TAF

Basic Stanislaus River Water Right based Demands from New Melones on an annual basis:

1. OID/SSJID WR Stipulation 420 to 600 TAF*

*(may be reduced if inflow to New Melones is less than 600 TAF for water year 2009)

2. 1987 DFG fishery agreement	98.3 TAF
3. Summertime Dissolved Oxygen estimates	36 TAF
Total	549 to 735 TAF
General seasonal water releases required greater than DFG and D.O. flows for water quality dilution at Vernalis	~50 TAF
Grand Total	~599 to 785 TAF

New Melones Carryover Loss	90% Exceedence	50% Exceedence
Feb 1 Estimates	-268 TAF	-80 TAF

In both scenarios, it is anticipated that New Melones Reservoir would continue to draw upon carryover storage going into water year 2010, just to meet the basic Stanislaus Basin water right commitments and water right terms and conditions. The requested change could very well save an additional 30 to 40 TAF in New Melones Reservoir, which is needed to continue to supply water needs for all beneficial uses; fish and wildlife, M&I, and agriculture for the rest of 2009, and improve further carryover to protect from potential continuing drought conditions in 2010 and beyond.

On February 20, 2009, utilizing Reclamation's 90% exceedence forecast of operations for New Melones Reservoir operations, Reclamation announced a 0% allocation for CVP water supply contracts for the Eastside Division (New Melones).

The request is made specifically because the amount of precipitation falling in the San Joaquin, despite the potential upgrade from a "critically dry" to a "dry" year classification, is not resulting in a normal increase to baseflow amounts, due to past and continuing drought conditions. Under these extremely dry circumstances, the assumptions underlying D-1641's river flow requirements for the San Joaquin at Vernalis are inadequate, and call into question whether reservoir releases are a reasonable use of water.

The U.S. Department of the Interior has long made the Board aware of D-1641's short comings and potential conflicts during extended dry conditions, especially for the San Joaquin flow objectives. During the Board's 2004-05 review of the Water Quality Control Plan for the Delta, Interior agencies made the following statement to the Board:

> During the past 10 years and particularly during the recent drier years, Department of the Interior (Interior) agencies have observed that achieving the Vernalis flow standard may require substantial releases of water from New Melones Reservoir on

the Stanislaus River resulting in potential conflicts with other operational objectives and water quality parameters. Because of these conflicts, Interior has been unable to fully meet the Vernalis flow standard in some years. This has been documented by actual operations in the last several years and from long-term OCAP operation modeling studies and has been the basis for the Bureau of Reclamation (Reclamation) to reinitiate ESA Section 7 consultation with the Fish and Wildlife Service (Service).

(Exhibit 1, page 1). Interior went on to request flexibility, and a review of the standards to include:

> (1) Improved hydrology information, (2) the interrelated water management programs, (3) salinity management, (4) water supply reliability, and (5) flow needs for instream fishery management.

(Exhibit 1, page 2). The Board did not grant any flexibility during its review of the Water Quality Control Plan, and has yet to undertake a review of the San Joaquin objectives.

During the Board's 2006 review of the draft Water Quality Control Plan for the Delta, Interior submitted the following comments to the Board regarding the Vernalis flow objectives:

> The Board is well aware that Reclamation has a history of not fully achieving the Vernalis Spring Flow Objectives in dry conditions. (Order WRO 2005-0010, p. 4). When the objectives were originally adopted in the 1995 Plan, it was known that the Vernalis Spring Flow Objectives would be difficult for Reclamation to achieve in dry conditions. In the hearings for D-1641, Reclamation testified, as it did before the Board in 1995, that, "it may not be possible or prudent to meet all the standards under all conditions, but we will make our best effort to do so." (See D-1641, p. 45, citing to USDI 4, p. 4, Testimony of Lowell Ploss, citing 1995 testimony of Roger Patterson). Now that Reclamation has over six years of experience implementing the Vernalis Spring Flow Objective, it is clear that Reclamation's initial concerns are coming to bear, as evidenced by the history of requests for temporary urgency change orders seeking flexibility in implementing the Vernalis Spring Flow Objectives filed by Reclamation.

(Exhibit 2, p. 10). Interior went on to again request flexibility and suggested that the Water Quality Control Plan's Program of Implementation expressly recognize the need for temporary urgency change petitions to temporarily modify the Vernalis flow objectives. (Exhibit 2, p. 11).

In response, the Board stated the following:

> The scope of a water quality control plan does not typically include restatement of the procedures that may be used to initiate and conduct a water right proceeding to obtain relief from a condition in a water right. Permit or license. [sic] The State Water board intends to schedule a workshop to receive additional evidence on the San Joaquin River flow and Pulse Flow Objectives following completion and peer review of the San Joaquin River salmon escapement model anticipated for summer of 2007. However, the State Water Board has not modified the Program of Implementation to include the

> recommended language regarding the filing of a temporary urgency change petition. The findings required for approval of a petition for temporary urgency change are delineated in Water Code sections 1435 through 1442. These findings may not be changed by modifications to the program of implementation of a water quality control plan. USBR and DWR may petition the State Water Board for a temporary urgency change regarding the San Joaquin River Spring Flow Objective (or any other objective in the 2006 Plan) regardless of any statement in the program of implementation for the 2006 Plan. Additionally, the State Water Board must base its approval of petitions for temporary change on the circumstances existing at the time the petition is filed and must not prejudge potential actions. Accordingly, so as not to prejudge potential actions, the program of implementation for the 2006 Plan will not include the language proposed by DOI.

(Exhibit 3, p. 12). Interior was not requesting a change in the standards for temporary urgency change petitions, merely the recognition in the Plan's Program of Implementation that the objectives have inherent conflicts and are based on hydrologic assumptions that are not always achieved. In other words, the San Joaquin gets drier than D-1641 contemplates, and D-1641 does not balance beneficial uses under these drier circumstances.

Therefore, we are in a hydrologic circumstance not addressed by D-1641. With New Melones at 38% capacity, and the current inflow projections to New Melones, in Reclamation's assessment, releasing 43 TAF from New Melones to meet the March 2009 "dry" year flow objectives is imprudent and could cause even more severe shortages later in the year for all impacted beneficial uses, and for carryover next year.

This requested amendment to D-1641 could potentially save up to 43 TAF for future beneficial uses. Therefore, we believe that the requested amendment is necessary to put the water resources of the State to beneficial use to the fullest extent possible, and to prevent waste. We believe the requested amendment would protect, not harm, other legal users of water. The requested amendment has the potential to effect fish and wildlife as the objective we seek to amend is for the protection of fish and wildlife. Reclamation will work with the fishery agencies to determine the extent of any effects. However, due to low storage levels, and low inflow projections, the requested amendment has the potential to significantly increase water available for fish later in the year. The requested amendment is a prudent water savings for all beneficial uses dependent on San Joaquin Vernalis flows, and therefore in the public interest.

Conclusion

This petition asks the Board squarely: Should D-1641 be temporarily modified to accurately reflect the current observed hydrologic conditions and relationships in the San Joaquin and to conserve water for future beneficial uses, or should Reclamation release as much as 43 TAF, or any amounts necessary, to meet the D-1641Vernalis flow objectives, which are not reflective of current conditions?

It is Reclamation's recommendation to recognize that the current San Joaquin River baseflows, under the current drought circumstances, are more indicative of a "critically dry" year, despite recent precipitation amounts which may reclassify the San Joaquin to a "dry year." Reclamation would monitor Vernalis flows throughout March 2009 and ensure that the monthly average at Vernalis remains above 1,140 cfs. Reclamation will also monitor Vernalis salinity quality and make appropriate release increases from Goodwin Dam to manage for the Vernalis salinity objective during March 2009. Reclamation believes this strategy of management is reflective of total water supply conditions in the San Joaquin Basin for the drought-like conditions being experienced in the basin and is prudent given the total water supply picture in the San Joaquin Basin.

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