



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

FEB 14 2010

In Reply Refer to:  
GSB:A005632

Yuba County Water Agency  
c/o Mr. Terry Olson  
Barkiewicz, Kronick & Shanahan  
1011 22<sup>nd</sup> Street  
Sacramento, CA 95816

Dear Mr. Olson:

ORDER APPROVING YUBA COUNTY WATER AGENCY'S PETITION FOR TEMPORARY  
URGENCY CHANGE OF PERMIT 15026 (APPLICATION 5632)

The enclosed Order approves the petition for temporary urgency change for Permit 15026.  
Please review the conditions of the Order and retain the Order with your permit.

If you have any questions, please contact Greg Brown at (916) 323-1847 or by email at  
greg.brown@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board  
Division of Water Rights  
Attn: Greg Brown,  
P.O. Box 2000  
Sacramento, CA 95812-2000

Sincerely,

Amanda Montgomery, Manager  
Permitting and Licensing Section  
Division of Water Rights

Enclosure

cc: See next page.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Yuba County Water Agency  
c/o Mr. Terry Olson



cc: Mr. Curt Aikens, General Manager  
Yuba County Water Agency  
1220 F Street  
Marysville, CA 95901

Ms. Annette Tenneboe  
Central Region  
Department of Fish and Wildlife  
1234 East Shaw Avenue  
Fresno, CA 93710

Ms. Pamela Creedon  
Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

State Water Resources Control Board  
FEB 14 2008

Yuba County Water Agency  
c/o Mr. Terry Olson  
Behavior, Klonik & Spenshan  
1011 32nd Street  
Sacramento, CA 95816

Dear Mr. Olson

ORDER APPROVING YUBA COUNTY WATER AGENCY'S PETITION FOR TEMPORARY  
URGENCY CHANGE OF PERMIT 16028 (APPLICATION 5825)

The enclosed Order approves the petition for temporary urgency change for Permit 16028.  
Please review the conditions of the Order and retain the Order with your permit.

If you have any questions, please contact Greg Brown at (916) 323-1847 or by email at  
greg.brown@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board  
Division of Water Rights  
Attn: Greg Brown  
P.O. Box 2000  
Sacramento, CA 95812-2000

Sincerely,

Amanda Montgomery, Manager  
Permitting and Licensing Section  
Division of Water Rights

Enclosure

cc: See next page

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

**DIVISION OF WATER RIGHTS**

**In the Matter of Permit 15026  
(Application 5632)**

**Yuba County Water Agency**

**ORDER APPROVING TEMPORARY URGENCY CHANGE**

SOURCE: North Yuba River and Yuba River

COUNTY: Yuba

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION**

On January 23, 2014, Yuba County Water Agency (YCWA) filed a Temporary Urgency Change Petition (TUCP) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change pursuant to California Water Code section 1435. Members of the San Luis and Delta-Mendota Water Authority (SLDMWA) have conserved up to approximately 7,400 acre-feet (af) of Yuba Accord project water purchased in 2013 from the Department of Water Resources under the *Agreement for the Long-Term Purchase of Water from YCWA by the Department of Water Resources*. The TUCP proposes to add San Luis Reservoir as a point of rediversion (PORD) in YCWA Permit 15026 to enable the approximately 7,400 acre-feet (af) of Yuba Accord project water currently stored in San Luis Reservoir to be carried over into the next Central Valley Project (CVP) contract year, which begins on March 1, 2014. An approved TUCP would allow SLDMWA to enter into a Warren Act contract with the U.S. Bureau of Reclamation (Reclamation) for the use of San Luis Reservoir for the storage of this water.

The request would enable SLDMWA members to put the 7,400 af of water currently stored in San Luis Reservoir to beneficial use in 2014 and would allow the districts to exercise multiple water management strategies to efficiently and beneficially use the stored water to the greatest extent under the critically dry hydrologic conditions of 2014.

The temporary urgency change would be effective for 180 days from the date of the approved Order.

**2.0 BACKGROUND**

YCWA's TUCP involves Permit 15026. YCWA is currently authorized under Corrected Order WR 2008-0014 for the long-term transfer of up to a total of 200,000 af per calendar year of water under Permit 15026 until December 31, 2025, subject to the terms and conditions in the Board Order. The Corrected Order also: (a) approved the inclusion of Yuba Accord streamflow requirements in the permit; (b) added the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, and 4 on file with Application 5629) and the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626) to the place of use in Permit 15026 for the duration of the long-term transfer; and (c) approved the addition of the Central Valley Project's (CVP) and the State Water Project's (SWP) south Delta export diversion facilities as PORDs in Permit 15026 for the term of the Water Purchase Agreement, which ends on December 31, 2025.

### **3.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

YCWA prepared an addendum to its Yuba Accord Final EIR (Final EIR) for the proposed temporary change of adding San Luis Reservoir as an authorized temporary PORD and for the carry-over to storage of water in San Luis Reservoir in 2014. YCWA's addendum evaluated the proposed project and documented that the proposed project will not result in: (a) new significant environmental impacts not analyzed in the Final EIR, (b) substantial increases in the severity of significant impacts analyzed in the Final EIR, or (c) in any other conditions or circumstances that would require preparation of a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guideline section 15162. The addendum did not identify any additional mitigation measures for inclusion in the permit; however, YCWA proposed conditions for inclusion in any order approving the TUCP. The State Water Board has considered the environmental documentation and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The State Water Board will file a Notice of Determination within five days from the issuance of an order.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board may approve a temporary urgency change only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1435, subd. (b)(4).) The State Water Board has considered the information provided by YCWA, including the addendum on the Final EIR, and has determined that with the inclusion of the ordering conditions below, the State Water Board's public trust responsibility has been met.

### **4.0 PUBLIC NOTICE OF THE TEMPORARY URGENCY CHANGE PETITION**

The State Water Board will issue and deliver to YCWA as soon as practicable, a notice of the temporary urgency change order pursuant to Water Code section 1438(a). Pursuant to Water Code section 1438(b)(1), YCWA is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion are located. The State Water Board will post the notice of the temporary urgency change and the TUCP (and accompanying materials) on its website. The State Water Board also will distribute the notice through an electronic notification system. Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice.

### **5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE**

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.  
(Wat. Code, § 1435, subd. (b)(1-4).)

### **5.1 Urgency of the Proposed Change**

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented . . ." However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, an urgent need exists for the proposed temporary change due to the current critically dry hydrologic conditions that are facing the State of California in 2014. SLDMWA seeks to store the 2013 Yuba Accord water to increase their 2014 supplemental supplies since they anticipate that Reclamation's February allocation to the South of Delta CVP Agricultural Service Contractors in 2014 will be 0%. The SLDMWA has indicated that "if YCWA's urgency petition was not granted, 7,400 af of water could not be put to beneficial use in 2014, harming farmers within the districts by stranding at least in part the investments in Yuba Accord water and forcing the fallowing of nearly 3,000 acres of productive farm land. Such fallowing would result in the loss of agriculture-related jobs in the areas served by Westlands, Pacheco, and Panoche in Fresno, Merced, and Kings Counties – among the most vulnerable populations in the State." SLDMWA has also indicated that denial of YCWA's urgency change petition would prevent Westlands, Pacheco, and Panoche from completing other transfers that bring supplemental water into the districts, since having the ability to store Yuba Accord water would free up capacity on delivery schedules.

### **5.2 Governor's 2014 Drought State of Emergency Proclamation**

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

### **5.3 No Injury to Any Other Lawful User of Water**

The water that would be stored through the 2014-2015 CVP contract year is already present in San Luis Reservoir as a result of 2013 diversions of Yuba Accord water under YCWA's Permit 15026 pursuant to Corrected Order WR 2008-0014. Accordingly, granting this TUCP will not result in any injury to any other lawful users of water. In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(2) that the proposed change may be made without injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

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

There is no information in the record to indicate that approval of the TUCP would have an unreasonable effect upon fish, wildlife, or other instream beneficial uses. The amount requested for storage is already resident in San Luis Reservoir. Division staff has contact the Department of Fish and Wildlife (DFW)

regarding the proposal and the DFW has not indicated any concerns for the project. There will be no instream flow changes associated with this action. The amount of Yuba Accord water (7,400 af) stored in San Luis Reservoir would be a small portion of the offstream reservoir's storage capacity. Approval of the TUCP would temporarily add a PORD under Permit 15026, and allow the water to be stored through the next CVP contract year so that water could be beneficially used by purveyors. Diversions at the temporary PORD at San Luis Dam would be subject to all terms of any biological opinions and incidental take permits that apply to the operation of San Luis Reservoir by Reclamation and DWR.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

### 5.5 The Proposed Change is in the Public Interest

Approval of the TUCP will enable SLDMWA members to carry-over Yuba Accord water that was stored from 2013 into 2014 for beneficial use by the districts. It is in the public interest to conserve this water supply for beneficial use during the present critically dry hydrological conditions in 2014.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

### 6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The permittee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water;
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change, with the modifications described above, is in the public interest.

### ORDER

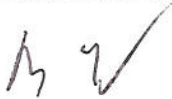
**NOW, THEREFORE, IT IS ORDERED THAT:** the Petition filed by YCWA for a 180-day temporary urgency change in Permit 15026 is approved.

All existing terms and conditions of the subject permit remain in effect, as modified by the State Water Board Revised Decision 1644 (RD-1644) and Corrected Order WR 2008-0014, except as temporarily amended by the following provisions:

1. The temporary PORD at San Luis Dam and storage in San Luis Reservoir are authorized. The PORD location is on San Luis Creek: NAD 83, Zone 3, North 1,848,478 feet and East 6,393,579 feet, being within SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of projected Section 15, T10S, R8E, MDB&M.

2. The maximum quantity of water that may be stored in San Luis Reservoir under this Order is 7,400 af.
3. Diversions at the temporary PORD at San Luis Dam are subject to all terms of any biological opinions and incidental take permits that apply to the operation of San Luis Reservoir by Reclamation and DWR.
4. The addition of San Luis Dam as an authorized temporary PORD shall not authorize any diversions of water under Permit 15026 at Clifton Court Forebay and Jones Pumping Plant other than those authorized by the Corrected Order.
5. YCWA shall provide a report describing the storage of water in San Luis Reservoir authorized under this Order to the Deputy Director for Water Rights with the annual electronic report(s) of water diversion and use for Permit 15026 covering the period of this Order.
6. This Order does not authorize any act that results in the taking of a candidate, threatened or endangered species, or any act that 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 Order, the permittee shall ensure authorization for an incidental take permit is obtained prior to operation of the project.
7. The State Water Board reserves jurisdiction to supervise the temporary urgency change 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.
8. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. The temporary urgency changes approved in this Order shall automatically expire 180 days after the date of its issuance or unless it has been revoked.
9. Use of water under this temporary urgency change order is contingent on compliance with the following: (a) urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.), and (b) agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.), including all water conservation requirements therein.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

**FEB 14 2014**

Dated:

