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

DIVISION OF WATER RIGHTS

TEMPORARY PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION T032704 TEMPORARY PERMIT 21373

Permittee: Eastside Water District
P.O. Box 280
Denair, CA 95316

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the Permittee in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **July 26, 2016**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

Application for Temporary Permit

Eastside Water District (District or Permittee) filed Application T032704 to appropriate water by temporary permit on July 26, 2016, pursuant to Water Code section 1425 et seq. The District proposes to divert up to 5,000 acre-feet per annum (afa) of water, at a maximum diversion rate of 210 cubic feet per second (cfs) from Mustang Creek to underground storage for later irrigation use of 62,000 irrigated acres within the District's service area. The District proposes diversions from Mustang Creek from November 1, 2016 through April 30, 2017 via the use of an existing bifurcation facility for the diversion and an existing flood control basin for groundwater recharge.

The existing bifurcation facility was designed to divert flood flows into a 95-acre-foot offstream flood control basin with a surface area of 74 acres. These facilities are owned and currently operated by Merced County and the City of Turlock. The District proposes to use the existing facilities by obtaining permission from these entities. A new infiltration basin covering about 50 acres was also proposed in the original application, but was removed from the application pursuant to the District's submittals on October 14, 2016, and October 19, 2016.

The existing flood control bifurcation structure is a concrete section of the channel that is about 100 feet long, 20 feet wide, with sidewalls about 5 feet high. A concrete weir measuring 4 feet high and 50 feet wide is the limiting section of the structure controlling diversions into the flood basin. The downstream outlet of the bifurcation structure to Mustang Creek consists of a permanent 5-foot wide open channel with two slide gates that can be opened to allow additional streamflow to pass downstream under extremely high flow situations. The District will not modify the bifurcation structure or its normal operation for purposes of the project. Pursuant to the October 19 submittal from the District, overflow of water from Mustang Creek from the bifurcation structure to the flood control basin is only known to have occurred in very wet years such as 1986 and 1997. The District recognizes that, dependent on fall/winter precipitation conditions, Mustang Creek flow may not overflow into the flood basin.

The District plans to enhance percolation in the 74-acre infiltration basin by constructing several 15 to 20 foot deep sediment basins within the existing infiltration basin to serve as silt-traps to help reduce sedimentation loading in the infiltration basin. The bottom of the infiltration basin will likely require "ripping" to improve percolation of water through areas of potential impermeable clay or hardpan layers that will be better characterized as the current soils and geological investigation progresses. Dry wells may also be drilled to promote groundwater recharge past the impermeable layers. The District is waiting for drilling permits from Merced County and a dry weather forecast to proceed with the investigation.

The District proposed an annual diversion limit of 5,000 afa in its application, which was based on the use of two infiltration basins (a proposed new infiltration basin covering about 50 acres and the 74-acre existing basin). When the District removed the proposed 50-acre infiltration basin from the application pursuant to the District's submittals, the District did not reduce the requested diversion amount of 5,000 afa, even though the reduction in infiltration area would likely reduce the opportunity for diversion of water to underground storage. In addition, the District estimated the diversion amount for the 74-acre existing basin based on an infiltration rate of 0.70 feet per day, over a 74 acre area for 96 days of percolation. Based on the evidence that water only entered the bifurcation structure on a few occasions during the past three decades, it is highly unlikely that water will be available for percolation in the basin for the stated 96 days, but more likely will only be available for a few days even under extremely wet conditions. Further, it is likely that the percolation rate will diminish after the initial fill of the basin due to sediment.

There is limited flow data available for Mustang Creek to determine a reasonable annual permit limit based on the total number of days that Mustang Creek flow would spill into the basin for percolation. The District submitted information that a flow of 207 cfs was recorded in Mustang Creek in February of 2004. Although this flow rate did not result in diversion into the basin, it will be used for a minimum bypass limitation in the permit. Historical Turlock precipitation data indicated that in February 2004, the maximum single day precipitation for the month was 0.98 inches. This single day precipitation amount was used as the absolute minimum precipitation needed in 24 hours to achieve diversion into the basin. The Division then evaluated the recorded maximum 24-hour precipitation for each month during a six-month diversion season (November through April) for the years spanning between 1920 and 2016. The recorded maximum 24-hour precipitation events exceeded 0.98 inches in four different months in the same year only twice (1938 and 1958). The data is not complete as it only reports a single maximum 24-hour event of the month. It is possible that several days within a month may have exceeded 0.98 inches. Based on the historical rarity of these events compounded by the absence of adequate data, the Division increased the potential diversion limit by adding two more events (six events total) to fill the infiltration basin for the purpose of testing this pilot project in the event of historically wet conditions.

As a result, the Division finds that the requested diversion amount of 5,000 afa is based on an overestimate of the capacity of the diversion works and of the likely number of days unappropriated water would be available for diversion in Mustang Creek. To allow ample opportunity to test the project while ensuring reasonable and protective annual limitations based on the existing capacity of the basin and the limited availability of water through normal operation of the diversion structure, and considering the temporary nature of the permit which does not result in any vested right, the Division is limiting the annual diversion based on an estimate of six complete fillings of the infiltration basin. Based on the available information, the annual diversion limitation is reduced to 570 afa, equivalent to six filings of the infiltration basin which has a capacity of 95 acre-feet.

Water diverted to underground storage is to be used for irrigation purpose during the 2017 irrigation season. The District proposes to monitor 16 existing monitoring wells (5 of which are California Statewide Groundwater Elevation Monitoring (CASGEM) wells) within its service area to track water withdrawal from underground storage. Well owners within the District's service area extract substantial volumes of groundwater for irrigation. According to information provided by the District, the volume of annual use varies depending on surface water deliveries and crop types but exceeds the amount requested under the application in most years. The amount of water diverted and percolated will be computed as the difference between the measured flows entering and

leaving the infiltration basin. The permit contains a term requiring agreements between the District and the individual well owners to ensure that water withdrawn from wells for irrigation use pursuant to this permit is not also claimed as beneficially used under another basis of right.

Comments by Interested Parties

The State Water Board issued a public notice of Application T032704 pursuant to Water Code section 1428, subdivision (a) on September 2, 2016. The noticing period ended on October 3, 2016. Pursuant to Water Code section 1428, subdivision (a), the District was 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 District published the notice on September 8, 2016, in the Modesto Bee. During the noticing period, the Division received letters from the following: U. S. Bureau of Reclamation (Reclamation), the State Department of Fish and Wildlife (CDFW), and the North Coast Stream Flow Coalition (NCSFC).

Reclamation Letter: Reclamation's objection letter alleges that the proposed project could adversely impact water rights and operations of the Central Valley Project (CVP). Reclamation requested the State Water Board's Standard Permit Terms 80, 90, 91 and 93 to be included in the permit to protect Reclamation's water rights held for operation of the CVP.

Response: To protect downstream users on the Merced River, the San Joaquin River, and the Sacramento-San Joaquin Delta, standard permit terms 80, 91, and 93 are included in this temporary permit. Standard permit term 90 is not included in this temporary permit because a more stringent term 0359999 is included to protect downstream senior right holders and public health and safety.

CDFW Letter: The CDFW comment letter raises the following issues:

1) Substantial diversion proposed by the project may cause potential adverse impact to the Merced River flows from McSwain Reservoir to its confluence with the San Joaquin River;
2) The project may cause potential impacts to state-listed species, including the State threatened California tiger salamander *(Ambystoma californiense)* and state threatened Swainson's hawk *(Buteo swainsoni),* and tricolored blackbird *(Agelaius tricolor)* a species of special concern;
3) Substantial diversion proposed by Application T032704 warrants notification pursuant to Fish and Game Code section 1602; and
4) Because CEQA does not apply to the project, the District has not discussed impacts to the above-mentioned species and stream flow resulting from the proposed diversion. Absent biological surveys, CDFW cannot make specific assessments about impacts to sensitive biological resources.

Response: On October 20, 2016, Division staff forwarded the District's October 19 letter to inform CDFW that the District no longer proposes to modify the existing bifurcation structure and that operationally there would be no difference in the occurrence or amount of water overflowing the structure than would occur under non-project conditions. On October 25, 2016, Division staff contacted CDFW staff to discuss any concerns to special status species or their habitat caused by the District's proposed modifications to the existing impoundment basin for percolation enhancement. CDFW staff indicated that they had reviewed the District's letter and is concerned about potential impacts to special status species, namely California tiger salamander and Swainson's hawk. CDFW staff indicated it is not likely that vernal pool habitat occurs within the flood basin. With respect to item 1, diversions would only occur during very high flows (i.e., in excess of 207 cfs during high flow events) and diversions would be limited to 570 afa. As such, the project is not expected to substantially affect Merced River flows. With respect to items 2 and 4, the temporary permit will contain a term which will require the District to consult with CDFW prior to the initiation of any ground-disturbing or vegetation-clearing activities within the existing flood control basin. With respect to item 3, the permit will contain a standard requirement for the Permittee to ensure that all other agency permits are acquired prior to diversion.

NCSFC Letter: The objection filed by NCSFC raises the following issues:

1) The application lacks information demonstrating the proposed appropriation is for "truly" high flow in excess of existing beneficial uses and instream needs, and the project may cause adverse environmental impacts;
2) The Applicant fails to show that water is available for the proposed diversion in Mustang Creek;
3) The proposed project would extend the period of time Mustang Creek goes dry and dewater Mustang Creek;
4) The project lacks an urgent need;
5) The application is not factual and not complete; and
6) The project may increase flood risk.

Response: The District has modified the project from that described in the original application. The District has agreed to limit diversions to flows in excess of a minimum bypass of at least 207 cfs and this permit limits the total amount authorized for diversion to 570 afa. The proposed diversion will occur only under high flow conditions and will not cause dewatering of Mustang Creek. Normal flood control operations would not be significantly changed as part of the District's project, since the bifurcation structure will not be modified. Therefore, the project is not likely to result in adverse environmental impacts or increased flood risk. The Division finds that the District has adequately demonstrated an urgent need for the project and has provided sufficient information to support issuance of this permit.

California Environmental Quality Act

Ordinarily, the State Water Board must comply with applicable requirements of the California Environmental Quality Act (CEQA) prior to issuance of a temporary permit pursuant to Water Code section 1425 et seq. However, on November 13, 2015, Governor Edmund G. Brown Jr. issued Executive Order B-36-15, which concluded that strict compliance with CEQA would prevent, hinder or delay the mitigation of the effects of the ongoing drought. Item 6 of the Executive Order suspends CEQA for purposes of carrying out the directives in the order, including the issuance of temporary permits to capture high precipitation events for local storage or recharge. Item 2 of the Executive Order requires the State Water Board to prioritize temporary water right permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high precipitation winter and spring events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife. The CEQA suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required. The State Water Board concurs that local action by the District is required to implement the directive.

The District filed a Notice of Exemption (NOE) for this project on May 19, 2016. The District determined that the project is exempt from CEQA based on a categorical exemption of CEQA under California Code of Regulations sections 15282, 15301, and 21080.12 as it involves minor alterations to existing flood control levees, structures, or facilities, maintenance of existing facilities, conversion of facilities, and minor alterations to land and water courses that do not involve the removal of mature scenic trees. The State Water Board has reviewed the information submitted by the District and has made an independent finding that the proposed project is consistent with the suspension of CEQA in Executive Order B-36-15. The State Water Board will issue an NOE for the proposed project within five days of issuance of the temporary permit.

Requirements of Water Code section 1425

Before making the findings required by Water Code section 1425, the State Water Board must: a) review available records, files, and decisions which relate to the availability of water from the source at the proposed point of diversion to serve the proposed temporary diversion and use, and which relate to the rights of

downstream users; and b) consult with representatives of CDFW. (Wat. Code, § 1427.) Division staff has reviewed available records, files and decisions relating to the availability of water for the project and the rights of downstream users, and has consulted with representatives from CDFW.

The State Water Board finds that, subject to the terms and conditions included in this temporary permit: (1) the District has an urgent need for the proposed diversion and use of water; (2) the water may be diverted and used without injury to any lawful user of water; (3) the water may be diverted and used without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and (4) the proposed diversion and use is in the public interest. (Wat. Code, § 1425, subd. (b).) The State Water Board has also complied with its independent obligation to consider the effects 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 [189 Cal.Rptr. 346, 658 P.2d 709].)

This temporary permit does not create a vested right, even of a temporary nature. (Wat. Code, § 1430.) This temporary permit is not precedential to future permitting actions for this or other similar projects.

The District Has an Urgent Need for the Water.

The State Water Board finds that the District has an urgent need to divert and use the water authorized under this temporary permit. Six years of state-wide drought have caused substantial depletion of the state's water reserves in above-ground reservoirs and underground aquifers. The project is located east of the City of Turlock near the center of the Turlock Groundwater Subbasin of the San Joaquin Valley Groundwater Basin. The Turlock Groundwater Subbasin is the primary source of irrigation water for the overlying agricultural lands. Due to the significant number of wells and heavy reliance on groundwater for irrigation, the Department of Water Resources has designated the Turlock Groundwater Subbasin as a high priority basin with groundwater overdraft documented by the local groundwater management plan. Groundwater levels within the District have experienced significant declines over a 50-year period of record from the mid-1960s through 2016. According to information provided by the District, groundwater levels have declined 50 to 70 feet in the western and central portions of the District's service area. Groundwater level declines have been more severe in the eastern portion, with declines of up to 85 feet. USGS groundwater modeling information on groundwater elevations in the year 2000 indicates a substantial groundwater depression exists beneath the District that extends westward to the Turlock Irrigation District.

To address the severe declines in the area's groundwater levels, the District proposes to divert water resulting from winter and spring storm flows for underground storage and eventual withdrawal for irrigation use. The project may also provide additional information to assess the feasibility of a permanent project to divert surface flows to underground storage.

In light of the current drought conditions, the District has demonstrated that the proposed temporary diversion and use 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.

The Water May Be Diverted and Used Without Injury to Any Lawful User of Water.

The water may be diverted and used pursuant to the terms of this permit without injury to any lawful user. This temporary permit limits diversions to high flow conditions. The temporary permit contains a minimum bypass flow of 207 cfs at the point of diversion (POD) to ensure protection of downstream users and instream resources including fish and wildlife.

<u>Injury to downstream users on Mustang Creek</u>:

The District proposes to divert high flows from Mustang Creek to underground storage between November 1 and April 30, for withdrawal for irrigation use. Limited information is available regarding historical flows in Mustang

Creek. According to a USGS Study from 2009 (Saleh, D.K. et al, 2009), the average recorded flow in Mustang Creek over the 4-year period from 2002 to 2005 was approximately 16 cfs with a peak flow of 207 cfs in late February 2004 and a peak flow of 139 cfs in December 2002. Pursuant to the District's October 19, 2016 submittal, the peak flow of 207 cfs in February 2004 does not provide sufficient flow to cause diversion into the flood control basin. The District concluded that a bypass flow of at least 207 cfs must be present before any diversion would occur as the facilities are currently constructed. There are no downstream water diverters on record from the POD on Mustang Creek to the confluence with the Highline Canal and the Merced River.

Under this temporary permit, the District may not modify the existing bifurcation structure. As currently constructed and operated, the bifurcation diversion structure only diverts flood flows to the infiltration basin when flows bypass through the structure exceed approximately 207 cfs. According to the anecdotal information provided by the District, the infiltration basin does not receive flows from the bifurcation structure in normal years and only received flows twice in the past 30 years. Since the infiltration basin only receives flood flows in excess of hundred year storm events (167 cfs), the additional appropriation of water from enhanced infiltration due to the project would have a negligible impact to downstream users. Therefore, approval of this project will not cause injury to downstream users on Mustang Creek.

Injury to downstream users on Merced River and San Joaquin River and Sacramento-San Joaquin Delta (Delta):

Mustang Creek is tributary to the Highline Canal thence the Merced River thence the San Joaquin River. Diversions from Mustang Creek could potentially injure downstream water rights users on Merced River, San Joaquin River and the Delta. However, this permit is conditioned to prevent the District from making modifications to the existing condition and operation of the bifurcation structure. By adding a minimum bypass flow of 207 cfs and limiting diversions under this permit to high flows likely to exceed the 100-year flood flow, approval of this project will not cause injury to downstream users on Merced River, San Joaquin River, and the Delta.

In addition, Reclamation requests inclusion of the State Water Board standard permit terms 80, 90, 91, and 93 in the temporary permit issued on Application T032704 to protect the water rights and operations of the CVP when Reclamation is required to release supplemental project water to meet legal requirements for maintaining water quality and protecting fish and wildlife. This permit will include standard permit terms 80, 91, and 93 to protect downstream users on the Merced River, the San Joaquin River, and the Delta. As discussed in the Division's response to Reclamation's objection, a more stringent term 0359999 is included to protect downstream senior right holders and public health and safety and therefore term 90 is not included in this permit.

Based on the above information, the State Water Board has determined that permit conditions will prevent injury to downstream lawful users.

The Water May Be Diverted and Used Without Unreasonable Effects upon Fish, Wildlife, or Other Instream Beneficial Uses.

The District does not propose to modify the existing bifurcation structure which overflows into the infiltration basin. Based on information provided by Merced County staff, the flood basin is maintained by application of herbicides, disking, mowing, and burning. Only the existing basin area would be modified to enhance percolation.

Excavation of the basin area may impact special status species. The District has not provided copies of any biological surveys conducted at the basin location. Division staff conducted a 5-mile radius search of the California Natural Diversity Database of the proposed POD at the bifurcation structure. The 5-mile query indicated that vernal pool habitat (northern hardpan vernal pool community) was documented just north of the basin area and possibly including the northern part of the basin area. CDFW staff indicated it is not likely that vernal pool habitat occurs within the flood basin. There appears to be no trees within the infiltration basin that could be used as nest trees for returning Swainson's hawk.

This temporary permit requires the District to consult with CDFW prior to initiation of land or vegetation disturbance within the infiltration basin to ensure that the disturbance will not impact sensitive species. With inclusion of this permit term, the diversion and use of water under this temporary permit will not have unreasonable effects upon fish, wildlife, or other instream beneficial uses within the watershed.

The Proposed Diversion and Use Is in the Public Interest.

The proposed diversion, storage, and use of water are in the public interest. The proposed diversion is a pilot project to demonstrate the feasibility of a project on Mustang Creek or another similar source within the groundwater subbasin that uses available water from winter precipitation events to recharge local groundwater. Capture and storage of high flows that would otherwise be unused may mitigate effects of the current drought on water supplies for agriculture and recharge depleted groundwater basins. Augmentation of groundwater supplies will enhance local drought resiliency, particularly after several years of severe drought. The California Natural Resource Agency's California Water Action Plan, originally released in 2014 and updated in 2016, calls for increased regional self-reliance and integrated water management, including conjunctive use of groundwater and surface water supplies.

Permittee is hereby granted a right to divert and use water as follows:

1. Source of water: **Mustang Creek**

   tributary to: **Highline Canal thence Merced River thence San Joaquin River**

   within the County of **Merced**.

2. Location of point of diversion to offstream underground storage and infiltration basin

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 1,996,394 feet and East 6,505,440 feet	SW¼ of SE¼	19	5S	12E	MD
Infiltration Basin	74 acres to the Northwest of the Point of Diversion within SW¼ of Section 19, 5S, 12E, MDB&M				

3. Purpose of use	4. Place of use
Irrigation	Up to 62,000 irrigated acres within the Eastside Water District service area boundary as shown on map filed with the State Water Board

The place of use is shown on map filed on October 27, 2016 with the State Water Board.

5. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 570 acre-feet by diversion to underground storage to be collected from November 1 to April 30 of the following year. The maximum rate of diversion from Mustang Creek to underground storage shall not exceed 210 cubic feet per second. This permit expires 180 days from the date of issuance, but may be renewed by the State Water Board.

(0000005C, 0000005J, 0510700)

6. No water shall be diverted under this temporary permit, unless the flow in Mustang Creek is at or above 207 cubic feet per second as instantaneous flow at the bifurcation structure.

(0000204)

7. This temporary permit does not authorize the Permittee to make any modification to the existing operation of the bifurcation structure, or the existing operation of the upstream flood control detention basin on Mustang Creek, for the benefit of capturing additional flood flows in the infiltration basin.

(0569999)

8. Prior to diversion of water under this temporary permit, Permittee shall submit for approval by the Deputy Director for Water Rights a plan for measurement and accounting of water diverted to underground storage and extracted for beneficial use. If water diverted to underground storage will be extracted by persons other than the Permittee, the plan shall set forth how the Permittee will quantify extraction and use, and determine that the extractions are from water stored by the Permittee and not based on other claims of right. The plan shall be implemented as approved by the Deputy Director.

   Within 180 days of issuance of this temporary permit, the Permittee shall submit a document showing that individual well owners have entered into an agreement with the District to ensure the first volume of groundwater withdrawn from wells for agricultural irrigation use within the District is equal to the volume of water placed into underground storage pursuant to this Permit.

(0089999)

9. No water shall be diverted under this temporary permit unless the Permittee monitors and records the rate of diversion and quantity of water diverted to underground storage under this temporary permit. Permittee shall use a measuring device or other method satisfactory to the Deputy Director for Water Rights. The device or method shall be capable of quantifying the daily rate and volume of diversion at the bifurcation structure, daily rate and volume of diversion to groundwater storage, daily rate and volume of water leaving the infiltration basin, and shall be properly maintained.

   Permittee shall provide the Division of Water Rights with current photographs of the device(s) installed and method(s) used with certification that device(s) is/are properly installed, calibrated and operating as designed. The photographs and certification shall be filed with the summary report required by Term 0100500.

   Permittee shall maintain a daily record of the volume of water diverted, and the maximum daily rate of water diverted. A copy of the daily records shall be submitted with the report required by Term 0100500 or whenever requested by the Division of Water Rights.

(0109999)

10. Permittee shall submit a report to the State Water Board within 60 days after the expiration of this permit. The report shall include the total quantity of water diverted under this temporary permit during the reporting period, the quantity of water applied to beneficial use. The report shall also include records of the daily quantity and the maximum rate of diversion at the bifurcation structure and the daily rate and volume of diversion to underground storage.

(0100500)

11. The issuance of this water right does not affect the applicability of requirements under chapter 2.8 of division 3 of title 23 of the California Code of Regulations. If there is any conflict or inconsistency between conditions in this right for measurement, monitoring, and reporting of water use, and applicable regulations, the more stringent requirement or requirements shall control in each instance.

(0100999)

12. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

13. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project (CVP) or the State Water Project (SWP).

    a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

    b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

    The State Water Board shall notify Permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise Permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

14. No diversion is authorized by this permit under the following conditions: (1) when in order to maintain water quality in the San Joaquin River at Vernalis at a level of 500 parts per million (ppm) Total Dissolved Solids (TDS), the Bureau of Reclamation is releasing stored water from New Melones Reservoir or is curtailing the collection of water to storage, or (2) during any time of low flows when TDS levels at Vernalis exceed 500 ppm. These restrictions shall not apply when, in the judgment of the State Water Board, curtailment of diversion under this permit will not be effective in lowering the TDS at Vernalis, or when in the absence of Permittee's diversion, hydraulic continuity would not exist between Permittee's point of diversion and Vernalis. The Board shall notify Permittee at any time curtailment of diversion is required under this term.

(0000093)

15. The Permittee must cease diversions at the direction of the Deputy Director for Water Rights. The Deputy Director will direct the Permittee to cease diversions upon a finding that the diversion threatens to injure downstream senior right holders; or the diversion creates a threat to human health or safety. This term will not affect normal flood control operations of this facility.

(0359999)

16. The State Water Board may supervise diversion and use of water under this temporary permit for the protection of lawful users of water and instream beneficial uses and for compliance with permit conditions. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this temporary permit.

(0480600)

17. This temporary permit is issued and Permittee takes it subject to California Water Code, Division 2, Chapter 6.5, section 1425 et seq. Any temporary permit issued under this chapter 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 at the discretion of the State Water Board.

(0510800)

18. Issuance of this temporary permit shall not be construed as indicating State Water Board approval of water right permits requested under other applications.

(0510999)

19. Permittee shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and documentation of compliance with the terms and conditions of this temporary permit.

(0000010)

20. No water shall be diverted or used under this temporary permit unless Permittee has obtained and is in compliance with all necessary permits or other approvals required by other agencies.

(0000203)

21. Permittee shall grant, or secure authorization through Permittee's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:

    a) Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

    b) Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;

    c) Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,

    d) Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

22. This right shall not be construed as conferring right of access to any lands or facilities not owned by Permittee.

(0000022)

23. It is the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act. State agencies should not approve projects which would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

Prior to the initiation of any ground-disturbing or vegetation-clearing activities within the existing flood control basin, Permittee shall consult with CDFW whether or not a pre-construction survey shall be conducted for California tiger salamander (*Ambystoma californiense* or CTS). Prior to conducting the survey, the biologist shall consult with CDFW, as relevant, in developing the survey design and course of action if CTS or ground squirrel burrows (CTS habitat) are located at the site. The course of action must be acceptable to CDFW. Within 14 days of the survey, Permittee shall submit survey results to the Deputy Director for Water Rights. If CDFW determines that a pre-construction survey is not necessary, the District shall submit such agency determination to the Deputy Director for Water Rights prior to commencing with ground-disturbing or vegetation-clearing activities.

(0400500, 0600500)

24. This temporary permit does not authorize any act which results in the taking of a candidate, 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this temporary permit, Permittee shall obtain any required authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this temporary permit.

(0000014)

25. If Permittee intends to store water diverted under this temporary permit for more than 180 days, Permittee must submit a plan to the Deputy Director prior to the expiration of this permit detailing how Permittee will calculate the expected losses of the stored amount over time, including timelines for any field or modeling investigations that will be conducted.

(0490800)

26. This temporary permit allows diversion at an existing flood control bifurcation structure into an existing flood control basin. If Permittee does not maintain a permit for this project, Permittee shall ensure all infiltration enhancement features and modifications to the flood control basin have returned to pre-project conditions. This work shall be completed within 60 days of cessation of the temporary permit. Upon request of Permittee, the Deputy Director for Water Rights may extend the completion date for good cause not within Permittee's control.

(0350800)

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Leslie F. Grober, Deputy Director
Division of Water Rights

Dated: NOV 08 2016