

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 15026,)
15027, and 15030 on)
Applications 5632, 15204, and)
15574 of) ORDER: WR 89-17
YUBA COUNTY WATER AGENCY,)
Petitioner,) SOURCES: North Yuba, Yuba,
Middle Yuba, and
Oregon Creek
CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE, UNITED)
ANGLERS OF CALIFORNIA,) COUNTIES: Yuba, Nevada,
U. S. FISH AND WILDLIFE) Butte, and Sutter
SERVICE, BAY INSTITUTE OF)
SAN FRANCISCO, and the)
CALIFORNIA DEPARTMENT OF FISH)
AND GAME,)
Interested Parties.)

ORDER APPROVING
PETITION FOR TEMPORARY CHANGES IN
POINT OF DIVERSION, PURPOSE OF USE, AND PLACE OF USE
INVOLVING TEMPORARY TRANSFER

BY THE BOARD:

1.0 INTRODUCTION

Yuba County Water Agency (YCWA) having filed a petition on March 28, 1989 under Water Code Section 1725 for a temporary transfer of water involving a temporary change in point of diversion, purpose of use and place of use; the petitions having been amended on April 11, 1989; objections to the proposed transfer having been received; a hearing having been held on June 13, 1989; the petition having been amended on June 14, 1989 and

on July 12, 1989; additional comments having been received into the record; and the State Water Resources Control Board (Board) having duly considered all evidence in the record; the Board finds as follows:

2.0 SUBSTANCE OF PETITION AND PROPOSED USES FOR TRANSFERRED WATER

YCWA has petitioned for a temporary transfer of 200,000 acre-feet (af) of water from storage or water which would have been collected to storage in New Bullards Bar Reservoir (Bullards Bar) during 1989 under Permits 15026, 15027 and 15030 of YCWA. The water would be transferred to the Department of Water Resources (DWR) to supply the Santa Clara Valley Water District (Santa Clara) and the Tulare Lake Basin Water Storage District and Empire West Side Irrigation District (collectively referred to as Tulare). During the hearing, YCWA and DWR proposed transfer of 200,000 af of water to DWR at the Marysville Gage on the Yuba River. Of that amount, 90,000 af (minus Delta carriage water losses of up to 30 percent when the Delta is under control) is specified for delivery to Santa Clara for municipal use and 110,000 af (minus carriage water) is specified for delivery to State Water Project (SWP) contractors in the Tulare Lake Basin Area for irrigation use.

ACTION BY BOARD CHAIRMAN MAUGHAN:

4. On August 23, 1989, Board Chairman Maughan in accordance with Water Code Section 1435(d) and Board Resolution No. 84-2, issued a conditional temporary urgency change order approving the petition subject to several specified conditions. The Board concurs in and incorporates herein by reference the findings set forth in that order.

NOTICE OF THE PETITION:

5. On August 28, 1989, notice of the petition for the temporary urgency change was mailed to interested parties. In accordance with Water Code Section 1438(b)(1), the notice also was published in the September 1, 1989 edition of the Contra Costa Times newspaper, since the temporary point of redirection is located within Contra Costa County. The final date for submitting objections to the petition was September 14, 1989.

OBJECTIONS TO PETITION:

6. The California Sportfishing Protection (CSPA) submitted letters dated August 15, 1989 and September 6, 1989 setting forth written objections to the changes proposed in the petition. The objections set forth in the August 15 letter include: (1) the allegation that the purchase of water by DFG from "third party abusers of the public trust" is an improper way to protect public trust resources since DFG is the trustee

for fish and wildlife and has a legal obligation to protect those resources; (2) the contention that CEQA requires preparation of an environmental impact report before approval of the transfer; (3) the contention that there is a potential for adverse effects on the Delta fishery and water quality due to increased pumping; (4) the contention that there is a potential for adverse effects on the quality and quantity of water in the Grassland Water District and surrounding area; (5) an objection to the absence of a "coordinated plan" for the eventual release of water from Grassland Water District to benefit salmon in the San Joaquin River; and (6) the contention that there is a potential for cumulative adverse effects of the proposed changes in combination with other transfers of water from New Bullards Bar Reservoir.

7. The September 6 letter elaborates on the objections raised in the August 15 letter and emphasizes CSPA's additional allegations or concerns that: (1) no mitigation has been provided for adverse effects on young migratory fish in the Yuba River in the spring of 1990; (2) the petition was approved by Chairman Maughan prior to public notice of the petition being given; (3) the transfer may potentially affect fall-run Chinook salmon spawning in the Yuba and Feather Rivers; and (4) the cumulative impacts of this and other water transfers approved by the Board have not been assessed as required by Section 15065 of Title 14 of the California Code of Regulations.

RESPONSE TO OBJECTIONS:

8. The Board's findings with respect to the objections raised by CSPA are set forth below. Due to the overlap of issues raised in CSPA's two letters, some of the following findings apply to two or more of the objections presented by CSPA:

- (1) The fact that the water proposed for use in Grassland Water District is subject to the public trust and that DFG has certain responsibilities with respect to protecting fish and wildlife does not lead to the conclusion that it is improper for DFG to purchase water for the protection or enhancement of fish and wildlife. In certain circumstances, purchasing water may be the most effective means for DFG to protect the public trust resources with which CSPA is concerned.

- (2) Simply alleging that the requested temporary changes will have adverse effects on the Delta fishery, Delta water quality, or water quality in Grassland Water District does not establish that such adverse effects will occur. The Delta water quality and pumping restrictions imposed by Decision 1485 will remain in effect with or without the transfer, no information was submitted showing how the transfer will adversely affect water quality in the Grassland Water District area, and DFG has concluded that the net effect of the temporary changes will benefit fishery resources.

(3) Contrary to CSPA's objection, there is no requirement that the petitioner or DFG submit a formal "coordinated plan" for eventual release of the water to benefit salmon in the San Joaquin River. DFG has stated that the water will be released at the time that it concludes additional outflow will be most advantageous to salmon in the San Joaquin River. In view of the fact that flow and fish migration conditions cannot be determined accurately months in advance, and in recognition of the limited time available to DFG in seeking this temporary change, the Board concludes that it would be unrealistic to require a formal "coordinated plan" for release of the water into the San Joaquin River.

(4) With respect to CSPA's objection that the petition was approved by Chairman Maughan before it was formally noticed, the Board notes that, in the case of temporary urgency changes, Water Code Section 1438(a) expressly authorizes approval of a change petition "in advance of the notice required by this section." Water Code Section 1435(b) specifies certain findings which must be made prior to authorizing a temporary urgency change, but the issue of when and whether to hold a hearing is left to the discretion of the Board.

- (5) With respect to the potential effects of the change on fish in the Yuba River, Feather River, and Sacramento-San Joaquin Delta, the Board notes again that DFG has concluded that the changes will have a beneficial net effect on fishery resources. In addition, Chairman Maughan's order approving the changes includes specific minimum flow requirements and other requirements for the protection of fish.
- (6) The other objections raised in CSPA's letters of August 15 and September 8 relate to the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.). CSPA alleges that the temporary changes proposed in the petition could have significant adverse environmental effects on various species of fish and that, therefore, an environmental impact report (EIR) should have been required prior to approval of the transfer.

In determining that an EIR was not necessary, Division staff cited Section 15307 of the State CEQA Guidelines (Section 15307, Title 14, California Code of Regulations). Section 15307 provides a categorical exemption from the CEQA process for actions taken by regulatory agencies for the

maintenance, restoration or enhancement of a natural resource. The section specifically cites "wildlife preservation activities of the State Department of Fish and Game" as an example of the type of activity which falls under the exemption. Based on the information provided by DFG, Division staff concluded that the proposed temporary changes were categorically exempt from CEQA under Section 15307 of the CEQA Guidelines and filed a Notice of Exemption which so stated.

CSPA argues that, notwithstanding the categorical exemption of Section 15307, an EIR is required pursuant to Section 15065(c) of the CEQA Guidelines. Section 15065(c) requires that a project be found to have a significant effect on the environment and that an EIR be prepared in instances in which a project has possible environmental effects which are individually limited but "cumulatively considerable" when viewed in connection with the effects of past projects, other current projects, and probable future projects.

In this instance, information provided by DFG led Division staff to conclude that the project would not have a significant adverse environmental effect and

that the project was categorically exempt from CEQA under Section 15307 of the Guidelines. Based on the information before the Board, we find no reason to change that determination with respect to this particular project. The Board notes, however, that this project and similar water transfers involving increased exports of water from the Delta appear to be increasing. Thus, while this individual project may not have significant environmental effects, at some point we believe that water transfers resulting in increased Delta exports could have significant adverse environmental effects. Therefore, in the future, the Board will not approve projects which involve increased Delta exports in the absence of an adequate environmental assessment which addresses potential fishery impacts and other environmental effects of the proposed project. In the case of temporary urgency changes or temporary permits, the required environmental assessment must comply with CEQA.²

² In the case of temporary transfers or exchanges of water or water rights pursuant to Water Code Section 1725 et seq., the Legislature has determined that the formal requirements of CEQA are inapplicable (Water Code Section 1729). Nevertheless, in view of the potential for cumulative impacts in the future, the Board concludes that an assessment of the environmental effects of future proposed temporary transfers of water through the Delta should be provided in order that the Board can make the evaluation and findings with respect to fish and wildlife which are required by Water Code Section 1727.

CONCLUSION:

9. Based on the findings set forth above, the Board concludes that the conditional temporary urgency change order issued by Chairman Maughan on August 23, 1989 should be validated.

ORDER

IT IS HEREBY ORDERED THAT:

The issuance of the August 23, 1989 conditional temporary urgency change order by Board Chairman Maughan temporarily authorizing:
(1) the exchange at Lake Oroville; (2) an additional point of

rediversion; (3) a change in the place of use; and (4) an additional purpose of use under Permits 15026, 15027 and 15030, is hereby validated subject to the terms and conditions specified in that order.

CERTIFICATION

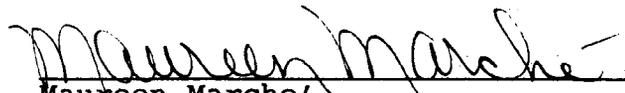
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 21, 1989.

AYE: W. Don Maughan
 Darlene E. Ruiz
 Edwin H. Finster
 Eliseo M. Samaniego
 Danny Walsh

NO: None

ABSENT: None

ABSTAIN: None



Maureen Marche
Administrative Assistant to the Board

