

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2003-0008-DWR

**IN THE MATTER OF PERMIT 15026 (APPLICATION 5632)
TEMPORARY CHANGE INVOLVING THE TRANSFER
OF UP TO 200,000 ACRE-FEET OF WATER
FROM THE YUBA COUNTY WATER AGENCY
TO THE DEPARTMENT OF WATER RESOURCES
AND CONTRA COSTA WATER DISTRICT**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND POINT OF REDIVERSION
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On February 20, 2003

Yuba County Water Agency
c/o Curt Aikens
1402 D Street
Marysville, CA 95901

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. Yuba County Water Agency's (YCWA) petition requests the transfer of up to 200,000 acre-feet (af) of water to the Contra Costa Water District (CCWD) and the Department of Water Resources (DWR). If approved, the temporary change may be effective for up to one year from the date of approval.

1.1 Description of the Transfer Of the 200,000 af proposed for the 2003 transfer, 185,000 af is destined for the CALFED Environmental Water Account (EWA) with the 15,000 af balance allocated to CCWD. Additionally, YCWA has requested that the proposed place of use for DWR water include the service areas of the State Water Project (SWP) and Central Valley Project (CVP) and the CCWD service area.

To facilitate the transfer, YCWA proposes to release up to 200,000 af of water currently stored in New Bullards Bar Reservoir between June 1 and October 31, 2003. Water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Powerhouse) thence the Yuba River (through Daguerre Point Dam) to the Feather River thence the Sacramento River to the

Delta. Water reaching the Delta would be available for use by DWR to provide salinity and water quality controls within the Delta or may be exported to users within the SWP or CVP service areas (including CCWD).

YCWA's petition stated that although the entire transfer total may consist of water previously-stored in New Bullards Bar Reservoir, up to 85,000 af may consist of surface water made available through an increase in groundwater pumping (groundwater substitution). YCWA's petition included a report prepared by Stephen Grinnell of MWH which discusses the potential impacts to the Yuba County aquifer from the substitution of up to 85,000 af of groundwater for surface water deliveries during the 2003 transfer.

YCWA's petition also included an agreement titled *New Bullards Bar Reservoir Refilling Conditions And Procedures For Water Transfer From Yuba To The Department* (Refill Agreement). The Refill agreement is intended to ensure that future refill of water transferred from storage (i.e., the transfer total minus the total excess groundwater pumped) in New Bullards Bar Reservoir does not adversely impact the SWP or CVP. These procedures provide for an accounting of refill of New Bullards Bar Reservoir resulting from the proposed transfer during balanced conditions in the Delta. Under these procedures, any refill occurring during balanced conditions in the Delta is subject to repayment to the CVP and SWP during subsequent balanced conditions.

2.0 BACKGROUND

2.1 Substance of YCWA's Permit Permit 15026 (Application 5632) authorizes the diversion to storage of up to 490,000 af of water per annum from the North Fork Yuba River between October 1 and June 30. Permit 15026 also authorizes the direct diversion from the North Fork Yuba and Yuba rivers of up to 1593 cubic feet per second (cfs) between April 1 and July 1. The points of diversion to storage and rediversion for Permit 15026 are located at the New Bullards Bar Dam and the Daguerre Dam. The water is used for irrigation, industrial, recreational, fish mitigation and enhancement, and domestic purposes within the authorized place of use as shown on map EJ-05-08-R3 on file with the SWRCB under Application 5632.

Based on evidentiary hearings held in 1992 and 2000 regarding fishery resources and water right issues of the Lower Yuba River, the SWRCB adopted Decision 1644 (D-1644) which includes instream flow requirements and provisions to reduce water temperature impacts for the protection of fish and other public trust resources. As conditioned by D-1644, Permit 15026 contains flow requirements measured at the Marysville Gage (located about 6 miles upstream of the confluence of the Feather and Yuba rivers) and the Smartville Gage (located just below the Englebright Reservoir).

2.2 Place of Use and Purposes of Use under the Proposed Transfer The service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of Permit 15026. Municipal use and salinity and water quality control would be temporarily added as additional purposes of use under Permit 15026.

2.3 Points of Rediversion under the Proposed Transfer The proposed temporary change would add the Clifton Court Forebay, Tracy Pumping Plant, the Contra Costa Canal Intake at Rock Slough, the Contra Costa Water District Los Vaqueros Project Intake at Old River, and the Contra Costa Water District Mallard Slough Intake as points of rediversion under Permit 15026.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer was stored under provisions of Permit 15026. In the absence of this transfer, up to 200,000 af of the subject water would remain in storage within the New Bullards Bar Reservoir. To the extent that groundwater pumping is increased to make available surface water for transfer, up to 85,000 af of groundwater water would remain in the Yuba groundwater basin (with a corresponding increase in remaining surface water storage). The maximum amount of water authorized for transfer under this order is 200,000 af. This order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential lowering of water levels in southern Delta Channels associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion to Permit 15026;
- b. Future refill of New Bullards Bar Reservoir resulting from this temporary change, and
- c. Impacts resulting from increased groundwater pumping resulting from this temporary change.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed temporary change of water rights involves only the amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (Public Resources Code section 21000, et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

This order requires YCWA to maintain the instream flow requirements and provisions to reduce water temperature impacts required by D-1644 to ensure that there are no unreasonable effects on fish, wildlife or other instream beneficial uses within the Lower Yuba River. The required instream flows must be maintained in addition to flows released for this transfer. In addition to D-1644 requirements, DFG has requested that maintenance of the minimum pre-transfer instream flow of 900 cfs, agreed to in last year's transfer be continued for the 2003 transfer along with a maximum incremental daily change in flow not to exceed 100 cfs. DFG also requested that the 2002 monitoring studies continue into the 2003 transfer period and that YCWA consult with DFG regarding the impacts of groundwater on the surface and subterranean stream flows.

YCWA has responded to DFG's transfer comment letter and requested that the instantaneous incremental ramping rate be increased to not exceed 125 cfs, to allow YCWA the operational flexibility of achieving an average daily flow increase of equal to but not exceeding 100 cfs. After consultation with both Mr. John Nelson of DFG and Curt Aikens of YCWA, it was determined that DFG's concern related more to the rate vs time period over which the flows are to be raised. Therefore, it was agreed by both parties that the ramping rate should not exceed 50 cfs in any four-hour period, should not exceed an instantaneous rate of 125 cfs, and should not exceed an average daily incremental change in excess of 100 cfs. YCWA has agreed to continue a groundwater monitoring and reporting plan, which was included as an attachment to the petition. This plan, in cooperation with DWR, identifies selected wells within the affected areas and requires measurements to be taken of the groundwater level both prior to and after pumping has begun. Measurements will continue to be taken on a monthly basis until the groundwater level has returned to its pre-pumping depth. To ensure salt intrusion is minimized, Electrical Conductivity measurements will also be taken before and after pumping has begun, along with an intermediate measurement at two months into the transfer.

This order also requires YCWA to comply with SWRCB Decision 1641 (D-1641), Tables 1, 2, and 3, to ensure that no unreasonable effects on fish wildlife or other instream beneficial uses are caused by the addition of the Clifton Court Forebay and the Tracy Pumping plant as points of rediversion.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

5.0 COMMENTS RECEIVED ON THE PROPOSED TEMPORARY CHANGE

The SWRCB received timely comments regarding the proposed temporary change from the DFG, The County of Yolo, the United States Bureau of Reclamation (USBR), the South Delta Water Agency (SDWA), Contra Costa Water District (CCWD) and the California Sportfishing Protection Alliance (CSPA). Additionally, the SWRCB received written response to the comments from YCWA (dated April 21, 2003). The comments and the SWRCB's responses are summarized below:

California Department of Fish and Game

Comment: DFG asserted that the proposed temporary change may have adverse impacts to juvenile steelhead and chinook salmon due to increased instream flows (resulting from transfer water releases) which diverge from the natural hydrograph (i.e., high flows during summer months). DFG also asserted that the proposed increase is attracting non-native Salmon into the Yuba River and reducing the genetic variability of wild Chinook Salmon stocks. DFG indicated that the inclusion of the following terms in any order approving this petition would alleviate their concerns:

1. The minimum instream flow at the Marysville gauge shall not be less than 900 cfs during the pre-transfer period along with a daily flow increment not to exceed 100 cfs.

2. Monitoring studies of juvenile salmonid outmigration and water temperature shall continue into the 2003 transfer period.
3. YCWA shall initiate discussions with DFG and other parties regarding groundwater pumping in the Yuba subbasin and its impact of surface and subterranean stream flows.

SWRCB Response: In its response letter, YCWA agreed to the inclusion of all of DFG's Terms as stated above with the following exceptions:

YCWA requested an increase in the the maximum instantaneous rate of change to 125 cfs to allow YCWA the operational flexibility in achieving an average daily flow increase of not to exceed 100 cfs. After discussions with DFG and YCWA an agreeable solution, as discussed above, was reached.

With regard to DFG's second condition, YCWA commented that they agree with the continuation of the fishery monitoring program and are diligently pursuing the necessary permits to conduct the monitoring program. Due to delays in obtaining the necessary permits, YCWA would like the following excerpt included within the order,

"YCWA will diligently pursue obtaining the necessary permits in order to initiate the monitoring studies by May 15, 2003, and YCWA will initiate the monitoring studies upon receipt of the necessary permits."

California Sportfishing Protection Alliance

Comment: CSPA recommended that the SWRCB deny the petition for temporary change based on the following assertions:

1. The proposed temporary change will result in increased flows and decreased temperatures in the Yuba, Feather, and Sacramento Rivers during summer months when flows are typically lower and temperatures higher. Upon completion of the proposed transfer, flows and temperatures will return to seasonal norms resulting in adverse impacts to juvenile steelhead, chinook salmon, and their food sources.
2. The proposed groundwater substitution plan will result in a lowering of groundwater levels within surrounding areas. The exact amount of groundwater level reduction has not been defined and therefore the SWRCB does not have the required information to make the findings required by Water Code section 1745.10 (a) & (b).
3. This proposed transfer of water from YCWA to EWA is the third such transfer by the same parties. CSPA asserted that this is a misuse of the temporary transfer provisions of the Water Code to avoid compliance with the California Environmental Quality Act (CEQA).

YCWA has replied to CSPA's letter with the following comment,

"In response to the comment letter from CSPA, the letter does not provide for specific conditions that CSPA would request as part of the order approving the petition. Furthermore, CSPA has provided no evidence that any unreasonable effects on fish, wildlife or other instream beneficial

uses would occur due to the transfer. In the response to conditions proposed by DFG in their letter, YCWA is agreeing to ramping criteria to mitigate flow fluctuation impact concerns that are generally cited in the CSPA letter.”

SWRCB Response: CSPA raised the same issues last year. The SWRCB response is summarized in Order WR 2002-0005 DWR.

United States Bureau of Reclamation

Comment: USBR stated that the Monitoring Plan and Refill Agreement between DWR and YCWA will ensure that the portion of the proposed transfer intended for DWR will not adversely affect the water rights or operations of the CVP. However, USBR asserted that the Refill Agreement did not include the water intended for CCWD. USBR requested that the SWRCB include the following four conditions in any order approving this temporary change:

1. Release of water for transfer [to CCWD] only during balanced conditions in the Delta.
2. Release of stored water transferred [to CCWD] does not adversely impact the CVP.
3. Implementation of procedures to account for refill from the proposed transfer [to CCWD] during balanced conditions in the Delta and that such refill be subject to repayment to the CVP during subsequent periods of balanced conditions.
4. Implementation of procedures to assure that any groundwater pumped and accounted as being transferred in lieu of surface water deliveries and delivered to CCWD was in fact pumped and transferred in lieu of surface water deliveries.

SWRCB Response: YCWA’s April 21, 2003 response indicated that the water intended for transfer to CCWD would be released only during balanced conditions in the Delta. Additionally, YCWA’s response stated that the water intended for transfer to CCWD would be subject to the same refill criteria as the water intended for DWR delivery. Accordingly, this order requires YCWA to account for the refill of water intended for transfer to CCWD in accordance with the Refill Agreement. Lastly, should any of the transferred water destined for CCWD delivery come from groundwater substitution, YCWA agrees that the groundwater monitoring and reporting plan in place for DWR water also be implemented for CCWD.

County of Yolo

Comment: The County of Yolo has indicated that groundwater substitution for surface water supplies, as it relates to water transfers, could be inconsistent with Sections 1745.10 and 1745.11 of the State Water Code.

SWRCB Response: With regard to the concern over groundwater, Water Code sections 1745.10 and 1745.11 require the water supplier from whose service area the water is to be transferred (if a groundwater management plan has not been adopted pursuant to state law) to determine that groundwater use (in lieu of surface water) will not create or contribute to long-term overdraft in the affected groundwater basin. YCWA has submitted a hydrogeologic analysis of the groundwater substitution portion of the proposed temporary change, titled *Analysis of the*

Groundwater Substitution Portion of the Yuba County Water Agency – CALFED Environmental Water Account/ Department of Water Resources Transfer. This analysis concludes that the proposed groundwater substitution plan “will not have any significant negative unmitigated impacts on the groundwater resources of Yuba County or on the residents and groundwater users of Yuba County or surrounding areas.” Additionally, this order requires YCWA to adhere to the Groundwater Monitoring Plan submitted with this petition.

Contra Costa Water District

Comment: Contra Costa Water District supports the proposed transfer.

SWRCB Response: Comment noted.

South Delta Water Agency

Comment: SDWA opposed the proposed temporary change based on general comments on water transfers with no reference to the specifics of the YCWA 2003 transfer petition.

SWRCB Response: SDWA has raised these arguments regarding previous petitions for temporary change. The SWRCB responses are summarized in Orders WR 2000-16 DWR and WR 2002-0005 DWR.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and points of diversion under Yuba County Water Agency's permitted Application 5632 for the transfer of up to 200,000 af of water is approved.

All existing terms and conditions of the subject permit including those ordered by SWRCB Decision 1644 (or as may be subsequently amended by further order of the SWRCB) remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continues through October 31, 2003.
2. The place of use of YCWA's Permitted Application 5632 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626).

3. The Clifton Court Forebay and the Tracy Pumping Plant are temporarily added as points of diversion to the above referenced permit. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators with the standards set forth in Tables 1, 2, and 3 on pages 181 to 187 of Water Right Decision 1641 and the current Water Level Response Plan as modified by SWRCB Order WR 2002-0003 or any subsequent Water Level Response Plan which provides the same or better protection for South Delta diverters, as determined by the Chief of the Division of Water Rights.
4. Municipal, salinity control, and water quality are temporarily added as purposes of use under YCWA's Permitted Application 5632.
5. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by D-1644 (or as may be subsequently amended by further order of the SWRCB):
 - a. Maintain minimum instream flows at the USGS gaging installations at Marysville and Smartville as specified in D-1644, Term 1 for YCWA. The required instream flows must be maintained in addition to flows released for this transfer.
 - b. Minimize water temperature impacts on anadromous fish and other public trust resources as specified in D-1644, Term 2 for YCWA.

6. Permittee shall continue to implement the *Monitoring and Evaluation of Yuba River Water Transfers* plan (dated June 3, 2002) submitted by DFG with its comments. This plan may be modified by YCWA only with the prior consent of DFG. Additionally, following adoption of this order, the minimum instream flow (measured at the Marysville Gage) prior to the commencement of the proposed transfer shall be maintained at 900 cfs. Any change in flows due to the transfer shall be in a gradual manner, and shall not exceed 50 cfs in any four-hour period, shall not exceed a maximum instantaneous rate of 125 cfs, and shall not exceed an average daily incremental change in excess of 100 cfs.
7. The refill criteria delineated in *New Bullards Bar Reservoir Refilling Conditions And Procedures For Water Transfer From Yuba To The Department* (Refill Agreement) shall govern the conditions under which refill occurs for the transferred storage allowed in this order. These criteria shall specifically apply to the 15,000 af of water to be transferred to the Contra Costa Water District.
8. Permittee shall prepare a monthly accounting of the actual groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer. Permittee shall continue to implement the *Groundwater Monitoring and Reporting Program* (Groundwater Monitoring Plan) submitted with the 2002 year petition. Permittee shall provide to the Chief of the Division of Water Rights, a map of the recent (circa spring 2003) groundwater levels in the North and South Yuba Groundwater Basins. An additional map shall be developed and submitted by June 1 of each year following the transfer defining the spring groundwater levels in the North and South Yuba Groundwater Basins until such time as groundwater levels correspond to the pre-transfer groundwater levels.
9. By June 1, 2004, petitioner shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order and refill of storage resulting from this Order. The report shall include the following information:
 - a. General locations where the transferred water was used or stored;
 - b. The daily release rates of the transferred water from New Bullards Bar Reservoir;
 - c. The average daily streamflow measured at the USGS gaging stations located on the Yuba River at Marysville and Smartville;
 - d. The hourly temperature readings at the Smartville Gage, Daguerre Point Dam, and the Marysville Gage as required of YCWA in Term 2(d) of D-1644;
 - e. The daily values of the Transfer Amount Account, as defined in the Refill Agreement; and
 - f. The monthly amounts of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.

Should the amount of the Transfer Amount Account exceed zero at the time of this report, the permittee shall submit subsequent annual reports until the Transfer Amount Account reaches zero. These reports shall contain the daily values of the Transfer Amount Account.

10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

11. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a “take” will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take prior to commencing transfer of water or water rights. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
12. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

*ORIGINAL SIGNED BY
STEVEN HERRERA FOR
VICKY WHITNEY FOR*

Edward C. Anton, Chief
Division of Water Rights

Dated: May 5, 2003