

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

**DIVISION OF WATER RIGHTS**

**WR ORDER 2005-0025-DWR**

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**IN THE MATTER OF PERMIT 15026 (APPLICATION 5632)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 125,000 ACRE-FEET OF WATER  
FROM THE YUBA COUNTY WATER AGENCY  
TO THE DEPARTMENT OF WATER RESOURCES**

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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 March 7, 2005,

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

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. Yuba County Water Agency's (YCWA) petition requests a temporary change to facilitate the transfer of up to 125,000 acre-feet (af) of water under Permit 15026 (Application 5632) to the Department of Water Resources (DWR) for use by the Environmental Water Account (EWA). The petition also requests that up to 1,200 af of the transfer water be made available for diversion from the San Joaquin River and the Middle River by two private south Delta farming interests. However, by email correspondence of September 15, 2005, YCWA indicated that the two private south Delta farming interests would not be receiving water under this transfer and amended its petition to transfer water only to DWR. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year.

**1.1 Description of the Transfer** YCWA proposes to transfer up to 125,000 af of water under Permit 15026 (Application 5632) to DWR. To facilitate the transfer, YCWA proposes to release up to 125,000 af of water currently stored in the New Bullards Bar Reservoir between July 1 and October 31, 2005 (due to current hydrologic conditions the start date for the proposed transfer has been delayed, see Section 1.5 of this order, below). Water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Power House) to the Yuba River (through Daguerre Point Dam) thence the Feather River thence the Sacramento River to the Delta. The petition states that the maximum additional release rate from Englebright Reservoir for this transfer is 1,500 cubic feet per second (cfs) and that the required minimum instream flows contained in State Water Board Revised Decision 1644 (Revised D-1644), measured at the United States Geological Survey (USGS) Marysville Gage (Station No. 11421000), will not be counted as transferred water. Water reaching the Delta would be available for either use by DWR to provide salinity and water quality control within the Delta or to export from the Delta at either the Clifton

Court Forebay or the Tracy Pumping Plant for use within DWR's State Water Project (SWP) or the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) service areas.

Additionally, the petition requests that up to 1,200 af of the transfer total be available for diversion from the Middle River and the San Joaquin River for use by two private southern Delta farming interests (hereinafter referred to as Conn and Phelps). Conn and Phelps own land on Upper Roberts Island and irrigate these lands under water right License 13315 (Conn) and Licenses 7609, 13274, and 13444 (Phelps). Licenses 13315, 13274, and 13444 include Standard License Term 91 (Term 91), which requires the curtailment of diversions during periods of time when the SWP and CVP are making upstream reservoir releases to meet Delta water quality objectives (typically July, August and September). However, due to current hydrologic conditions, Term 91 curtailments are unlikely to be issued prior to October 1, 2005 (see section 1.5 of this order, below). By email correspondence of September 15, 2005, YCWA indicated that Conn and Phelps would not be receiving water under this transfer. Accordingly, this order does not approve the delivery of water to Conn and Phelps.

**1.2 Groundwater Substitution** YCWA's petition states that up to 85,000 af of the 125,000 af transfer total may consist of surface water made available through an increase in groundwater pumping (groundwater substitution). The YCWA contractors participating in the proposed groundwater substitution plan are Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Dry Creek Mutual Water Company, Hallwood Irrigation Company, Ramirez Water District, and South Yuba Water District. YCWA has submitted to the Division a report titled "*Analysis of the Groundwater Substitution Portion of the Yuba County Water Agency-CALFED Environmental Water Account/ Department of Water Resources and State Water Contractor 2005 Transfer*" regarding the impacts of this groundwater substitution plan.

**1.3 Refill Conditions** The petition also states that the remaining portion of the transfer total consists of water previously stored in New Bullards Bar Reservoir. YCWA's petition includes an agreement with DWR intended to ensure that future refill of the reservoir space that results from 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. The procedures in the agreement 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 DWR and USBR during subsequent balanced conditions.

**1.4 Environmental Analysis** The petitioner submitted a study titled "*Environmental Analysis for the Proposed Temporary Transfer of Water from the Yuba County Water Agency Yuba River Development Project to the California Department of Water Resources CALFED Environmental Water Account Project/2005 Dry Year Water Purchase Program*" (EA) in support of its petition. YCWA concludes in the EA that the proposed transfer should not result in significant impacts to the environment. This conclusion is based on mitigation measures including appropriate monitoring and coordination of transfer operations with the California Department of Fish and Game (DFG), the National Marine Fisheries Service (NOAA – Fisheries), and the United States Fish and Wildlife Service (USFWS).

**1.5 Current Hydrologic Conditions** Due to the current wet hydrologic conditions, the Delta is currently in excess conditions and is projected to maintain these excess conditions through October 1, 2005. Excess pumping capacity is not available for diverting the transfer water in the Delta, and it is unlikely that excess capacity will be available prior to October 1, 2005 (the proposed transfer concludes on October 31, 2005). Thus, YCWA will only be able to transfer a small portion (if any) of the 125,000 af of water originally intended as the maximum transfer amount. This order approves the transfer of up to 125,000 af of water despite the fact that current hydrologic conditions will significantly limit the actual amount of water transferred.

## **2.0 BACKGROUND**

**2.1 Substance of YCWA's Permit** Permit 15026 authorizes the storage of 490,000 af of water per year from the North Yuba River between October 1 and June 30 of the succeeding year. Permit 15026

also authorizes the direct diversion of up to a total of 1593 cfs from the North Yuba and Yuba Rivers between September 1 and June 30 of the succeeding year. The authorized points of diversion/rediversion under Permit 15026 are located at New Bullards Bar Dam and Daguerre Dam. The authorized purposes of use under Permit 15026 are irrigation, industrial, recreation, fish mitigation and enhancement and domestic purposes within the place of use shown on map EJ-05-08-R3 (on file with the State Water Board under Application 5632).

**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 the State Water Board under Application 5629) and CVP (as shown on map 214-208-12581 on file with the State Water Board under 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 and the Tracy Pumping Plant as points of rediversion under Permit 15026.

### **3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER**

Public notice of the petition for temporary change (dated March 22, 2005) was provided via regular mail to interested parties and by publication in the Marysville Appeal-Democrat on March 25, 2005. Timely comments regarding the proposed temporary change were submitted by DFG, Bob Baiocchi, and the California Sportfishing Protection Alliance (CSPA). USBR submitted late comments. Additionally, YCWA and DWR submitted letters in response to these comments. The comments (including those filed by USBR) are summarized below, followed by the State Water Board's responses (which take into account YCWA's and DWR's response letters). Original copies of all comments and response letters are on file with the State Water Board under Application 5632.

#### **California Department of Fish and Game**

DFG comments that the proposed temporary change may result in unreasonable effects on fish and wildlife unless properly conditioned. DFG notes several areas of disagreement with the EA. These areas include the potential for the inducement of artificial downstream movement of juvenile Chinook salmon, the interpretation of historical population data, the presence of spring-run Chinook salmon in the Yuba River, analytical methods, and issues regarding certain temperature correlations.

DFG also comments that it is not practicable to deliver Yuba River water to the private southern Delta farming interests on Upper Roberts Island (Conn and Phelps). DFG questions what the source of water would be for these diversions. Finally, DFG comments that sufficient information is not available to determine the impacts (if any) of this portion of the transfer.

DFG recommends several conditions to protect anadromous resources, minimize the take of spring-run Chinook salmon and steelhead trout, and to protect fall and late fall run Chinook salmon. These conditions are summarized below:

- a. The minimum instream flow at the Marysville Gage, commencing with the date of this order, shall not be less than the amount of water being transferred, plus the instream flow required under Revised D-1644, plus estimated conveyance losses of transferred water downstream of the Marysville Gage. Changes in flow of transferred water shall not exceed 300 cfs and shall be as close to 100 cfs in any four-hour period as operationally feasible (this value may be increased to 150 cfs provided all reasonable attempts have been made to meet the 100 cfs goal).
- b. Any ramp-down of flow shall be gradual, shall not exceed 400 cfs per day, and shall be as close to 100 cfs in any four-hour period as operationally feasible.

- c. Monitoring studies (including temperature monitoring) are continued using the same methodology as used in 2004. Any changes to the monitoring plan shall be approved by DFG, USFWS, and NOAA - Fisheries prior to initiation of the transfer.
- d. The Marysville Flow from September 1 through October 14 shall not be lower than the minimum instream flow on October 15 as required by Revised D-1644.
- e. Discussions regarding water transfers that are outside the scope of this temporary change should include USFWS, and NOAA - Fisheries
- f. The portion of the transfer to Upper Roberts Island (Conn and Phelps) is not approved.

### **State Water Board Response**

In its response letter, YCWA agreed to the terms proposed by DFG, with the exception of term f., above (the exclusion of delivery of water to Conn and Phelps). Since YCWA has withdrawn that portion of the transfer, no water will be delivered to Conn and Phelps pursuant to this order. Terms a. through d., above, involve flow and ramping requirements which are similar to terms proposed by DFG for the 2004 YCWA transfer. Versions of these terms (modified for clarity and enforceability) are included in this order. Term e. is beyond the scope of this temporary transfer, and is not included in this order.

### **California Sportfishing Protection Alliance**

CSPA objects to the proposed transfer on the basis that it will have unreasonable adverse impacts to fish in the Sacramento-San Joaquin Delta and the Yuba River and that the delivery of water to Conn and Phelps is inconsistent with provisions of state law. These specific allegations are summarized below.

- a. The diversion facilities used by Conn and Phelps do not meet fish screening requirements and may result in a take of listed species including delta smelt, spring-run chinook salmon and winter-run chinook salmon.
- b. The delivery of water to Conn and Phelps during the month of September will have adverse impacts to spring-run chinook salmon spawning and could cause redd dewatering.
- c. Flow fluctuations in the Yuba River resulting from the proposed transfer may cause abnormal downstream movement and out-migration of juvenile steelhead.
- d. The State Water Board has not set temperature requirements for the Yuba River below Daguerre Dam. These temperature requirements are required as part of the Sacramento Basin Plan. The refill conditions associated with the proposed transfer may result in a reduction of the cold water pool within New Bullards Bar Reservoir and further temperature impacts during the fall months to spring- and fall-run Chinook salmon (especially below Daguerre Dam).
- e. Increased out-of season flows in the Yuba River may result in genetic degradation of native spring-run salmon stocks in the Yuba River via attraction of hatchery fish from the Feather River.
- f. Conn and Phelps are located on the Middle River and San Joaquin River and are part of the San Joaquin River watershed (as opposed to the Sacramento River watershed). Water from the Yuba River would only reach these locations if reverse flows are present in the southern Delta. CSPA asserts that this portion of the proposed transfer is not consistent with state law.

Finally, CSPA notes that this is the fifth consecutive year that a transfer proposal with YCWA and EWA as parties has occurred. CSPA asserts that this repetition is inconsistent with the intent of the temporary transfer provision of the Water Code.

## **State Water Board Response**

a., b., and e. Since YCWA has withdrawn the portion of the transfer involving Conn and Phelps, no water will be delivered to these parties pursuant to this order.

c. In Revised D-1644 the State Water Board addresses the issue of establishing temperature requirements for the Lower Yuba River, noting that it was not feasible to provide suitable year-round temperature protection for Chinook salmon and steelhead in the Lower Yuba River prior to construction of additional temperature control facilities. Absent these facilities, the State Water Board established a temperature advisory committee to make operational recommendations to provide suitable habitat for anadromous fish, required monitoring of temperatures at various locations on the Lower Yuba River, and required the preparation of an operational plan for water temperature control.

d. This order is conditioned to require YCWA to conduct monitoring to determine the impacts, if any, to listed species from the proposed transfer, including the potential for genetic degradation of native spring-run salmon stocks in the Yuba River via attraction of hatchery fish from the Feather River. Previous monitoring regarding this issue has been inconclusive. Additionally, due to the reduction in the amount of water that will likely be transferred due to current hydrologic conditions, the proposed transfer should not have an unreasonable adverse impact to fish due to genetic degradation.

Finally, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes.

## **Bob Baiocchi**

Mr. Baiocchi submitted the following comments regarding the proposed transfer.

a. The State Water Board should consult with NOAA - Fisheries to obtain terms and conditions to protect listed anadromous fish species and their habitat in the Yuba River, Feather River, Delta, and at the SWP and CVP pumping facilities.

b. YCWA must obtain approval from the Federal Energy Regulatory Commission (FERC) to divert water stored at New Bullards Bar Reservoir. The State Water Board must consult with FERC prior to approval of the proposed transfer.

c. YCWA must obtain water quality certification from the State Water Board pursuant to section 100 of the federal Clean Water Act. Flow fluctuations resulting from the proposed transfer have the potential to impact macroinvertebrate and fish species in the Yuba River.

d. Though the proposed water transfer is exempt from the California Environmental Quality Act, it is not exempt from statutes such as the National Environmental Policy Act, the federal Endangered Species Act, or the Clean Water Act.

e. A detailed environmental analysis is required to support the conclusion that the proposed transfer will not unreasonably impact anadromous fish species and their environment.

f. The description of the proposed project contained in the public notice does not include information such as the party and/or account that is paying for the proposed transfer and the cost per acre-foot of the water. This information must be disclosed to the public.

g. The Yuba River is not within the same watershed as the San Joaquin River and Middle River (the locations of the proposed diversion by Conn and Phelps). Additionally, NOAA – Fisheries must be consulted prior to approval of the proposed transfer to determine if any terms and conditions are required to protect anadromous species within the San Joaquin River and the Middle River.

## **State Water Board Response**

a., b. NOAA – Fisheries and FERC were mailed copies of the public notice for this petition and did not provide comment on the proposed temporary change. Nothing in this order authorizes YCWA to violate any requirements of these agencies. Further, these agencies do not regulate the actions of the State Water Board.

c., d. It is not clear what statutory provision Mr. Baiocchi is referencing in comment c. The federal Clean Water Act does not have a section 100, as it commences with section 101. Further, the water right actions of the State Water Board are not subject either to the federal Clean Water Act cited in comment c or to the other federal statutes cited by Mr. Baiocchi in comment d. To the extent that compliance with these federal statutes is required of YCWA before it can carry out the transfer, such compliance is a matter to be determined by YCWA and the federal agencies.

e. This petition for temporary change includes a detailed environmental analysis of the proposed transfer, including the results of monitoring of several past similar transfers. DFG has recommended several conditions for the protection of fish and wildlife within the Yuba River that are included in this order. This information is sufficient to make the required finding that the proposed temporary change will not have unreasonable impacts on fish and wildlife.

f. Water Code section 1726 (b) (2) lists the requirements for information to be provided with a petition for temporary change. These requirements include a written description of the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, and water quality of instream flows. Issues such as the price of the water or the specific funding source for the transfer are beyond the scope of the petition requirements. Additionally, these issues are also beyond the scope of the State Water Board's required findings for approving a petition for temporary change.

g. Since YCWA has withdrawn the portion of the transfer involving Conn and Phelps, no water will be delivered to these parties pursuant to this order.

## **United States Bureau of Reclamation**

USBR stated that the refill agreement between DWR and YCWA and the Groundwater Substitution Program included with the petition should prevent the proposed temporary change from adversely impacting the CVP. However, USBR stated that the refill agreement did not specifically indicate if it was intended to apply to water transferred to Conn and Phelps. Accordingly, USBR requested that the State Water Board condition the proposed temporary change with several terms intended to protect the CVP from adverse impacts due to the transfer of water to Conn and Phelps.

## **State Water Board Response**

Since YCWA has withdrawn the portion of the transfer involving Conn and Phelps, no water will be delivered to these parties pursuant to this order.

## **4.0 REQUIRED FINDINGS OF FACT**

### **A Water Supply is Available**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) Some or all of the water proposed for transfer was stored under provisions of Permit 15026. In the absence of this transfer, up to 125,000 af of water would remain in storage within the New Bullards Bar Reservoir. Additionally, YCWA has submitted a report indicating that its proposed Groundwater Substitution Program (which may increase groundwater

pumping by up to 85,000 af) will not cause a state of overdraft in the Yuba groundwater basin.

#### **No Injury to Other Legal Users of the Water**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) 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 will not injure any legal user of the water.

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

Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Public Resources Code section 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

This order requires YCWA to maintain the instream flow requirements and provisions to reduce water temperature impacts required by Revised 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 Revised D-1644 requirements, this order further limits the change in instream flow rates due to the transfer as follows: the ramping rate shall not exceed 150 cfs in any four-hour period, provided that reasonable efforts are taken to maintain a maximum ramping rate of 100 cfs in any four-hour period, and shall not exceed 400 cfs in any one day.

In order to further minimize impacts to fish and wildlife due to the transfer, this order requires YCWA to maintain instream flows in the Yuba River (measured at the Marysville Gage) from the date of approval of this order at or above the maximum flows intended during the transfer period. Additionally, YCWA shall be required to implement its *2005 Yuba River Water Transfers Monitoring and Evaluation Program* (dated April 2005) to further evaluate impacts of the transfer on fish and wildlife. This order also requires that the rediversion of the water under this Order at the Clifton Court Forebay and at the Tracy Pumping Station is subject to compliance with the objectives in State Water Board Revised Decision 1641, Tables 1, 2, and 3, that currently also must be met by the DWR and the USBR, 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 in accordance with Water Code section 1727(b)(2) that the proposed transfer will have no unreasonable effects on fish, wildlife or other instream beneficial uses.

## **5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY**

On May 16, 2002, the State Water Board 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 State Water Board conducts a hearing to accept additional evidence.





## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change in the place of use, purpose of use, and points of rediversion under Yuba County Water Agency's (YCWA) Permit 15026 (Application 5632) to facilitate the transfer of up to 125,000 af of water is approved.

All existing terms and conditions of Permit 15026 as modified by State Water Board Revised Decision 1644 (Revised D-1644) remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period from the date of this order through October 31, 2005.
2. The place of use of Permit 15026 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and Central Valley Project (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 rediversion under Permit 15026. 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 objectives currently required of the Department of Water Resources and the Bureau of Reclamation set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by the Department of Water Resources and the Bureau of Reclamation.
4. Municipal, salinity control, and water quality are temporarily added as purposes of use under Permit 15026.
5. From the date of this order through the commencement of the transfer, the minimum instream flow, measured at the Marysville Gage, shall not be less than the intended maximum instream flow during the transfer period (the transfer flow plus the instream flow required by Revised D-1644). During an emergency or other significant event, or for study purposes, YCWA may, with my approval, meet an alternate flow or ramping rate at the Marysville Gage, provided that the California Department of Fish and Game, the United States Fish and Wildlife Service, and the National Marine Fisheries Service concur with the proposed alternate flow or ramping rate requirement, and provided that the applicable Revised D-1644 requirements are maintained.
6. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by Revised D-1644:
  - a. Maintain minimum instream flows at the United States Geological Service gaging installations at Marysville and Smartville as specified in Revised 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 for YCWA in Revised D-1644, Term 2.
7. Permittee shall implement the *2005 Yuba River Water Transfers Monitoring and Evaluation Program* during the transfer period. This plan may be modified by YCWA only with the prior consent of DFG. YCWA shall immediately report to the Chief of the Division of Water Rights and to DFG any noncompliance or variation from the monitoring program.
8. Any change in flows due to the transfer shall be undertaken in a gradual manner and shall not exceed 150 cfs in any four-hour period, provided that reasonable efforts are undertaken by YCWA to maintain a maximum ramping rate of 100 cfs in any four-hour period and shall not exceed 400 cfs in any one day.

9. The criteria delineated in *New Bullards Bar Reservoir Refilling Conditions And Procedures For Water Transfer From Yuba To The Department* (Refill Agreement) that were submitted with the petition shall govern the conditions under which refill occurs for the transferred storage allowed in this order.
10. Permittee shall implement the *Groundwater Monitoring and Reporting Program* (Groundwater Monitoring Plan) submitted with the petition and 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 provide to the Chief of the Division of Water Rights a map of the recent (circa spring 2005) 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 pre-transfer groundwater levels.
11. By June 1, 2006, YCWA shall provide to 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 Revised 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, YCWA shall submit subsequent annual reports until the Transfer Amount Account reaches zero. These reports shall contain the daily values of the Transfer Amount Account.

12. 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 State Water Board 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 State Water Board 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.

13. 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. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

14. 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.

STATE WATER RESOURCES CONTROL BOARD

*ORIGINAL SIGNED BY*

*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated: September 22, 2005