

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

STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2008-0029-EXEC

**IN THE MATTER OF SPECIFIED PERMITS OF THE
STATE WATER PROJECT AND THE CENTRAL VALLEY PROJECT AND
PERMIT 15026 (APPLICATION 5632) OF THE YUBA COUNTY WATER AGENCY**

**ORDER APPROVING TEMPORARY URGENCY CHANGE IN PERMIT CONDITIONS
REGARDING THE USE OF JOINT POINTS OF DIVERSION AND THE YUBA TRANSFER**

BY BOARD MEMBER ARTHUR G. BAGGETT, JR.

1.0 SUBSTANCE OF PETITION

On June 17, 2008, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), hereinafter collectively referred to as the Projects, filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Urgency Change pursuant to Water Code section 1435, et seq., in response to the Governor's proclamations of June 4 and 12, 2008. In Revised Decision 1641 (D-1641) the State Water Board amended specified permits for the State Water Project (SWP) and the Central Valley Project (CVP) (listed in Table 1 on page 3 of this order), authorizing the Projects to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations.¹ One of the provisions of the Projects' permits is the requirement that the Projects meet certain water quality objectives for agricultural beneficial uses in the southern Delta.

In Corrected Order 2008-0014 the State Water Board added the Clifton Court Forebay and the Jones Pumping Plant as points of rediversion under Yuba County Water Agency's (YCWA) Permit 15026 (Application 5632) to facilitate the long-term transfer of up to 200,000 acre-feet (af) of water per calendar year (hereinafter referred to as the Yuba transfer). The addition of the Clifton Court Forebay and the Jones Pumping Plant as points of rediversion under Permit 15026 is conditioned upon the Project operators' compliance with the water quality objectives set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641.

The subject petition requests a temporary change in these requirements to conditionally allow JPOD operations and the Yuba transfer to occur when certain southern Delta water quality objectives for agricultural beneficial uses are not being met. Temporary urgency changes under Water Code section 1435 may be effective for a period of up to 180 days.

I am delegated authority to approve this temporary urgency change, pursuant to Water Code section 1435, subdivision (d) and State Water Board Resolution No. 2007-0057, section 2.2.

¹ Condition 1.a.(4) on page 150 of D-1641 and Condition 2.a.(4) on page 156 of D-1641 require USBR and DWR, respectively, to meet all other provisions of their water right permits.

1.1 Current Dry Conditions.

On June 4, 2008, citing two straight years of below-average rainfall and significant restrictions on diversions from the Delta due to various factors, including federal court actions to protect fish species, Governor Schwarzenegger declared a statewide drought and issued Executive Order S-06-08 (Executive Order). The Executive Order directs DWR and other entities to take immediate action to address the serious drought conditions and water delivery limitations that currently exist in California. Importantly, it directs DWR to, among other things: 1) facilitate water transfers to respond to potential emergency shortages and water quality degradation; and 2) coordinate and implement SWP operations and water exchanges to alleviate critical impacts to San Joaquin Valley agriculture.

On June 12, 2008, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger issued a proclamation, proclaiming a state of emergency within the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern. The Governor's proclamation directs DWR, in coordination with USBR, to take the necessary steps and make the necessary operational changes that will allow more water to be delivered to the San Joaquin Valley. Relevant to this petition, the Governor's proclamation directs DWR to do the following:

1. along with the State Water Board, expedite the processing of water transfer requests;
2. in cooperation with USBR, make operational changes to SWP facilities, including the San Luis Reservoir and Southern California reservoirs, that will permit additional water deliveries to the San Joaquin Valley; and
3. prepare and file necessary water right urgency change petitions to facilitate surface water transfers and the use of joint point of diversion by the SWP and CVP.

The Governor's Proclamation also directed the State Water Board to expedite the processing and consideration of water rights urgency change petitions filed by DWR and other agencies to facilitate water transfers to the San Joaquin Valley.

In light of the above directives, and the subsequent need for the Projects to immediately find ways to facilitate water transfers and exchanges, there is an urgent need for the requested change to authorize the use of JPOD and the Yuba transfer during the summer and fall. Without the requested change, the Projects may not have the flexibility JPOD provides, and it may not be possible to fully implement the Yuba transfer, because, given the current "critically dry" status, the southern Delta agricultural salinity objectives will likely be exceeded this summer. Thus, the urgency change is needed to avoid curtailing the ability of the Projects to coordinate and implement operations that would assist water suppliers and alleviate the impacts to San Joaquin Valley agriculture.

To illustrate the urgent need for immediate action, the petition provides the following example:

Due to the extremely dry conditions and the impacts of the Delta smelt remedial actions imposed on the Projects' operations by the Wanger Decision, the current allocation to the SWP water users is only 35% of this year's contract amount and the allocation to CVP contractors was initially only 45% of their contract amount. The CVP allocation has now been reduced to 40%. Because of the 45% allocation that Westlands Water District initially received from the CVP, approximately one-third of the District's lands (200,000 acres) were fallowed this year. Even with the fallowing, crops planted this year and permanent crops have created an aggregate demand of approximately 350,000 acre-feet in June, July, and August. However, based on the amount of CVP water presently in storage at San Luis Reservoir and the District's projections of the amount of water the CVP will be able to pump at the Jones Pumping Plant between now and the end of August, the District calculated that the amount of water that it can reasonably expect to receive from the Project prior to the end of the low point period is approximately 240,000 acre-feet. This projection led the Westlands Water District Board of Directors to take action to ration the amount of water available to farmers until the end of the San Luis Reservoir low point period. The ration, apportioned among all irrigable acres in the District, excluding District owned lands, will result in 0.47 acre-feet being available to

each irrigable acre. This is insufficient for permanent crops and has created an emergency situation where immediate action is needed to prevent the irretrievable loss of these crops.

In addition, the petition explains:

a number of other water supply agencies are facing significant shortages in 2008. In an effort to alleviate the water shortages, these agencies have executed water transfer agreements with entities on the Sacramento and Feather Rivers. The water made available for transfer will be released north of the Delta and exported at the SWP and CVP Delta pumping facilities. Due to operational and regulatory constraints intended to protect Delta resources, the opportunities for pumping the transfer water is restricted to a limited period in the summer and fall months, which are outside the period of concern for sensitive species. The transfer of these supplemental supplies is needed to help alleviate serious water supply deficiencies in 2008."

The State Water Board is also currently processing additional petitions for temporary change to facilitate the transfers referenced above. If approved, these pending petitions will be appropriately conditioned to account for the southern Delta salinity issue. The Yuba transfer, however, has already been approved and must be temporarily amended to provide the operational flexibility mentioned above.

In sum, the combination of a critically dry year, a court ruling seriously curtailing the ability of the Projects to export water during the winter and spring, and the Governor's drought proclamation and Executive Order directing DWR to take immediate action has created an urgent need for the requested change.

1.2 Proposed Temporary Changes.

The CVP and SWP permits that are subject to JPOD conditions are listed in Table 1, below. The subject petition requests that the condition in these permits pertaining to the use of JPOD be amended. These conditions are delineated in D-1641 as Condition 1.a.(4) (found on page 150) and Condition 2.a.(4) (found on page 156). The subject petition requests that these conditions be replaced with the following term:

- (4) All other provisions of the above permits are met, provided, however, if the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the use of JPOD will not unreasonably affect salinity in the southern Delta, then JPOD may occur.

Table 1
SWP and CVP Permits Subject to JPOD

SWP Water Rights			
Application No.	Permit No.	License No.	Description
5630	16478	n/a	Oroville Project
14443	16479	n/a	Oroville Project
14445A	16481	n/a	Banks Pumping Plant
17512	16482	n/a	San Luis Reservoir

CVP Water Rights			
Application No.	Permit No.	License No.	
5626	12721	n/a	Shasta Project
5628	11967	n/a	Trinity Project

CVP Water Rights (continued)			
Application No.	Permit No.	License No.	
9363	12722	n/a	Shasta Project
9364	12723	n/a	Shasta Project
9368	12727	n/a	Tracy Pumping Plant
13370	11315	n/a	Folsom Project
13371	11316	n/a	Folsom Project
15374	11968	n/a	Trinity Project
15375	11969	n/a	Trinity Project
15376	11970	n/a	Trinity Project
15764	12860	n/a	San Luis Reservoir
16767	11971	n/a	Trinity Project
16768	11972	n/a	Trinity Project
17374	11973	n/a	Trinity Project
17376	12364	n/a	Whiskeytown Lake

The petition also proposes to temporarily amend YCWA's Permit 15026 by revising Condition 4. on page 60 of Corrected Order 2008-0014 so that it reads as follows:

Rediversion of water at the Clifton Court Forebay and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, and any court orders applicable to these operations. Rediversion of water at the Clifton Court Forebay and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the following exception:

If the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay and the Jones Pumping Plant as points of rediversion to Permit 15026 pursuant to State Water Board Corrected Order 2008-0014 will not unreasonably affect salinity in the southern Delta, then the rediversion of water at those locations under Permit 15026 may occur.

To demonstrate that JPOD and the Yuba transfer will not adversely impact the otherwise existing environment, DWR used modeling results from the Delta Simulation Model 2 (DSM2) to evaluate the water quality conditions with and without JPOD and transfer operations. The base run includes the upstream releases and Delta exports anticipated, without any water transfers during the months of June through August. The alternative run incorporates the increased release and export levels to support a combined water transfer amount of 1,300 cfs, which approximates the anticipated magnitude of the Yuba transfer and the additional transfers mentioned at the end of Section 1.1 of this order during the months of July and August.

The model results indicate that the objectives will be met at the three southern Delta compliance locations (San Joaquin River at Brandt Bridge, Old River near Middle River, and Old River near Tracy Road Bridge). DSM2, however, tends to underestimate the salinity discharges from local agricultural and municipal drainages in the southern Delta channels. Actual salinity levels are therefore expected to be greater than depicted in the model output and southern Delta salinity objectives will likely be exceeded. Model results do not indicate, however, that there will be a significant increase in salinity due to the

proposed JPOD and transfers operations (which include the Yuba transfer). In fact, model results indicate a slight improvement in water quality at two of the southern Delta salinity compliance locations.

1.3 Department of Fish and Game Consultation.

Prior to submitting the subject petition, the Projects consulted with the Department of Fish and Game (DFG) regarding the proposed temporary urgency change. DFG responded by stating it has no objection to the proposed temporary urgency change, based on the modeling results indicating southern Delta water quality will not be made worse by use of JPOD and transfer operations. DFG stated that if water quality is not impacted by the proposed temporary urgency change, then fish will not be adversely affected.

1.4 Operations Information.

The Projects submitted historical information regarding the total volume of water exported from the Delta and the volume of water exported pursuant to JPOD operations and water transfers requiring State Water Board approval (including transfers from YCWA) for the period from 2000 through 2007, and projected total exports and JPOD operations/transfers for 2008, assuming this petition is approved. The average volume of water exported annually at both the Banks and Jones Pumping Plants for the period from 2000 through 2007 is approximately 5.8 million acre-feet (maf). The projected total volume of water to be exported at both the Banks and the Jones Pumping Plants for all of 2008 is 3.4 maf. The projected total pumping for 2008 is approximately 60% of the average total pumping for the years 2000 through 2007. The average annual volume of water exported pursuant to JPOD operations and water transfers requiring State Water Board approval for the period from 2000 through 2007 is approximately 178,430 af. The projected volume of water to be exported pursuant to JPOD/transfer operations for all of 2008 is approximately 151,000 af, or 85% of the annual average for 2000 through 2007.

2.0 COMMENTS REGARDING THE PETITION

In addition to its submittal to the State Water Board, the Projects provided copies of the petition to several potentially interested parties. South Delta Water Agency (SDWA) provided comments on the Project's petition in a June 20, 2008 letter to the State Water Board. In general, SDWA does not support or agree to the petition for a number of reasons outlined in their letter. However, SDWA states that it is willing to cooperate during times of drought to facilitate additional pumping this summer pursuant to JPOD if the projects can make a showing of an urgent need and any approval of the petitions is conditioned with the following measures:

- a. DWR and USBR provide recirculation of Delta Mendota Canal water in order to maintain a flow of at least 1,000 cubic feet per second at Vernalis. Slightly lower rates may be possible at different times if testing or modeling indicates the efficiency of the tidal barriers is maintained under different tide conditions.
- b. JPOD shall not result in any additional decrease in water levels upstream of the tidal barriers or decrease in water captured by the barriers.
- c. JPOD will not result in creation or exacerbation of stagnant zones upstream of the barriers.
- d. All diversions upstream of the barriers, including on Tom Paine Slough, have sufficient depth for normal diversion use.
- e. The concerns described in b, c, and d above may be addressed by the installation and operation of temporary pumps at one or more of the barriers.
- f. Once the necessary information is provided and mitigation measures begin, SDWA and other parties should be included in a review process which will determine if the measures are effective, if other measures are necessary, and what are the appropriate limitations on any permits or water quality violations. This process would also look at such things as duration and magnitude of exceedances.

- g. DWR and USBR work with SDWA on all of the above, including modeling, analysis of modeling results, and proposed operational changes to facilities.

3.0 PUBLIC NOTICE

The State Water Board may issue a temporary change order in advance of public notice. (Wat. Code, § 1438.) The State Water Board will comply with the noticing requirements as soon as practicable and retains jurisdiction to modify this order based on any comments or objections that it may receive in response to the public notice.

4.0 REQUIRED FINDINGS OF FACT

Chapter 6.6 of part 2, division 2, of the Water Code, commencing at section 1435, provides that any permittee (or licensee) who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulation, at California Code of Regulations, title 23, section 791, subdivision (e), provides that the State Water Board shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The State Water Board must make the findings specified in section 1435, subdivision (b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee has an urgent need to make the proposed change.
2. The proposed change may be made without injury to any other lawful user of water.
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

4.1 The Permittee Has an Urgent Need to Make the Proposed Change.

Pursuant to Water Code section 1435, subdivision (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary urgency change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented.

Current dry conditions, in combination with court-ordered pumping reductions, have significantly reduced SWP and CVP contract supplies. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists. The proposed change will allow the Projects to maximize deliveries to the San Joaquin Valley without unreasonably affecting water quality.

Based on these factors, I find that the proposed temporary urgency change is necessary to put the water resources of the State to beneficial use to the fullest extent of which they are capable and prevent the waste of water.

4.2 No Injury to Other Lawful Users of Water.

Computer modeling of the proposed temporary urgency change during the months of June, July and August does not indicate a significant decrease in water quality due to the proposed JPOD operations and Yuba transfer (in combination with other transfers likely to occur), and in some cases indicates a slight improvement in water quality at two of the southern Delta salinity compliance locations. In addition, JPOD operations and the Yuba transfer would not be authorized when the southern Delta water quality

objectives are exceeded unless the State Water Board's Executive Director finds: (1) that no additional reasonable control measures exist that the Projects could take this summer or fall in order to meet the objectives; and (2) the use of JPOD or the Yuba transfer will not unreasonably affect salinity in the southern Delta. This Order requires the Projects to fully implement the Water Quality Response Plan and Water Level Response Plans (as required in D-1641), except for those provisions which require the southern Delta salinity objectives to be met. Finally, this Order requires the Projects to work with SDWA to mitigate for impacts to water levels and water quality resulting from JPOD operations and the Yuba transfer pursuant to this order.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(2) that the proposed temporary urgency change will not injure other lawful users of water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses.

In accordance with Water Code section 1435, the State Water Board must consider potential impacts on fish, wildlife, and other instream beneficial uses. DFG has stated that the proposed temporary urgency change is not likely to have an adverse impact on fish. The petition states that all water exported at the SWP and CVP pumping plants, including any JPOD or transfer water (including the Yuba transfer), is and will be pumped in conformance with the criteria contained in D-1641 (with the exception of the southern Delta salinity objectives) and mandated under the biological opinions for protection of Sacramento River winter-run chinook salmon, Delta smelt, spring-run chinook salmon and steelhead. The additional restrictions imposed on the operations of the Projects by federal court actions to protect fish species, which limit the export of water from the Delta late December through June, must also be met. If the current consultation on the Long-Term CVP and SWP Operations Criteria and Plan with the United States Fish and Wildlife Service and National Oceanic and Atmospheric Agency Fisheries Service is completed during 2008, resulting in new Biological Opinions for Delta smelt, salmon, and green sturgeon, DWR and USBR will modify export operations to comply with any applicable new regulations.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(3) that the proposed temporary urgency change will have no unreasonable effects on fish, wildlife or other instream beneficial uses.

4.4 The Proposed Change is in the Public Interest

Based on the discussion contained in Sections 4.1, 4.2, and 4.3, above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed temporary urgency change is in the public interest.

5.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

Because of the drought conditions and water supply shortages this year, approval of the proposed change will not result in a change in Project operations relative to Project operations during the last seven years. Based on information submitted by the Projects, projected total exports for all of 2008 (assuming approval of this petition) will be approximately 60% of the average total annual volume of water exported for the period from 2000 though 2007. The projected volume of water exported pursuant to JPOD operations and water transfers requiring State Water Board approval for all of 2008 will be approximately 85% of the annual average for 2000 through 2007. In addition, model results indicate that there will not be a significant increase in salinity at the compliance locations for southern Delta salinity objectives due to the proposed JPOD and transfer operations (which include the Yuba transfer), and in some cases indicate a slight improvement in water quality. Accordingly, approval of the proposed change is exempt from the California Environmental Quality Act (CEQA) pursuant California Code of Regulations, title 14, section 15301. In addition, approval of the proposed change is exempt from CEQA pursuant to Public Resources Code sections 21080, subdivision (b)(3) and 21172 because the change is necessary to minimize damage to crops in the San Joaquin Valley.

6.0 STATE WATER BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Board Members individually the authority to act on petitions for temporary urgency. This order is adopted pursuant to the delegation of authority in section 2.2 of Resolution 2007-0057.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435; and therefore I find as follows:

1. The permittees have an urgent need to make the proposed temporary change.
 2. The proposed temporary change will not operate to the injury of any other lawful user of water.
 3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
 4. The petitioned changes are in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary urgency change under Permits 16478, 16479, 16481, 16482, and 16483 (Applications 5630, 14443, 14445A, 17512, and 17514A, respectively) of the Department of Water Resources' (DWR) State Water Project (SWP); Permits 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12727, and 12860 (Applications 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9368, and 15764, respectively) of the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP); and Permit 15026 (Application 5632) of the Yuba County Water Agency (YCWA) is approved subject to the following terms and conditions. All other terms and conditions of the subject permits, including those added by the State Water Resources Control Board (State Water Board) in Revised Decision 1641 (D-1641) and those added in Corrected Order WR 2008-0014, shall remain in effect. The temporary changes identified below are effective from the date of this order through December 12, 2008.

1. Condition 1.a.(4), found on page 150 of D-1641 and Condition 2.a.(4), found on page 156 of D-1641 are temporarily amended to read as follows:
 - (4) All other provisions of the above permits are met, provided, however, if the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the use of JPOD will not unreasonably affect salinity in the southern Delta, then JPOD may occur.
2. Condition 4., found on page 60 of Corrected Order WR 2008-0014, is temporarily amended to read as follows:
 4. Rediversion of water at the Clifton Court Forebay and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, and any court orders applicable to these operations. Rediversion of water at the Clifton Court Forebay and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the following exception:

If the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay and the Jones Pumping Plant as points of rediversion to Permit 15026 pursuant to State Water Board Corrected Order 2008-0014 will not unreasonably affect salinity in the southern Delta, then the rediversion of water at those locations under Permit 15026 may occur.
3. DWR and USBR shall comply with any request by the State Water Board for information or analysis regarding both short and long term causes of salinity in the southern Delta. Failure by DWR or USBR to meet any deadlines set by these information/analysis requests shall be considered by the State Water Board's Executive Director when making the findings set forth in paragraphs 1. and 2., above.
4. DWR and USBR shall comply with all provisions of the Water Level Response Plan, the Water Quality Response Plan, and the Fish Protection Plan, except those which require meeting the southern Delta salinity objectives, if the conditions described in paragraphs 1. and 2., above are met.

5. DWR and USBR shall work with the South Delta Water Agency (SDWA) to mitigate for impacts to water levels and water quality resulting from the authorizations in paragraphs 1. and 2., above. Failure by DWR or USBR to comply with this term shall be considered by the State Water Board's Executive Director when making any finding related to paragraphs 1. and 2., above.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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 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 the Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
7. 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 urgency change, the Permittees shall obtain authorization for any incidental take prior to commencing transfer of water. Permittees shall be responsible for meeting all requirements of the applicable Endangered Species Act for any actions taken pursuant to the temporary urgency change authorized under this Order.
8. I reserve jurisdiction to supervise the temporary urgency change authorized by this Order and to coordinate or modify its 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

Arthur G. Baggett, Jr.
Board Member

Dated: JUL - 1 2008