

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS  
ORDER WR 2001-17 -DWR

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TEMPORARY CHANGE INVOLVING THE TRANSFER  
OF UP TO 8,000 ACRE-FEET OF WATER  
TO THE DEPARTMENT OF WATER RESOURCES  
UNDER BROWNS VALLEY IRRIGATION DISTRICT'S  
PERMIT 8649 (APPLICATION 13130) AND APPLICATION 12-1986

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

**1.0 SUBSTANCE OF PETITION**

On June 13, 2001,

Browns Valley Irrigation District  
c/o Walter Cotter  
P.O. Box 6  
Browns Valley, CA 95918

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), for the purpose of salinity control and fish and wildlife enhancement, and the service areas of the State Water Project (SWP) and the Central Valley Project (CVP) would be temporarily added to the authorized place of use under Browns Valley Irrigation District's (BVID) permitted Application 13130 and the Delta, for the purposes of salinity control and fish and wildlife enhancement, would be added to the place of use of pre-1914 water right Application 12-1986 (per Water Code section 1707).

**1.1 Description of the Transfer** BVID proposes to transfer up to 8,000 acre-feet (af) of water to the Department of Water Resources (DWR) for either water quality and salinity control use within the Delta or for delivery to SWP or CVP service areas south of the Delta. The petitioner has indicated that even if some of the transfer water may be exported from the Delta, the total amount of Delta exports shall not be increased above that which would have occurred absent the proposed transfer.

BVID has 4,500 af of the proposed transfer total stored in Collins Lake under the provisions of BVID's Permit 8649 (Application 13130). These flows would be released to Dry Creek thence the Lower Yuba River thence the Feather River thence the Sacramento River to the Delta. Release rates from Collins Lake due to the proposed transfer would be up to 60 cubic feet per second (cfs) during August, 2001 and up to 16 cfs during September, 2001.

The basis of right for the remaining 3,500 af of the proposed transfer total is BVID's Application 12-1986, a pre-1914 water right to the direct diversion of up to 47.2 cfs from the North Yuba River and Yuba River. In anticipation of this transfer, BVID has foregone its typical direct diversion under Application 12-1986 and instead contracted with the Yuba County Water Agency (YCWA) to temporarily store up to 3,500 af in New Bullards Bar Reservoir. This water would then be available for release during the transfer period (August and September, 2001) from New Bullards Bar Reservoir to the Lower Yuba River thence the Feather River and the Sacramento River to the Delta. BVID has initiated a groundwater substitution program to replace the 3,500 af which would have been diverted and used within BVID absent the transfer.

Water Code section 1706 provides that the point(s) of diversion/rediversion, the place of use, and the purpose(s) of use under pre-1914 water rights may be changed without petitioning the SWRCB if others are not injured by such a change. However, since the subject transfer water may be used for water quality control or salinity control within the Delta, BVID elected to include the pre-1914-based portion of the subject transfer water in this temporary change petition, per Water Code section 1707.

## **2.0 BACKGROUND**

**2.1 Substance of BVID's Water Rights** Permit 8649 was issued to BVID on July 20, 1951 and authorizes the storage of up to 20,000 af of water per annum in Collins Lake (aka Virginia Ranch Reservoir). Collins Lake has a maximum capacity of 57,000 af and is located on Dry Creek, within the NW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 21, T17N, R6E, MDB&M in Yuba County.

BVID also holds a pre-1914 water right (listed under Application 12-1986) for the direct diversion of water from the North Yuba and Yuba Rivers. Full beneficial use under Application 12-1986 was acknowledged by letter of the State Water Commission dated April 1, 1929. The maximum average rate of diversion documented in this letter was up to 47.2 cfs between April and October of 1928.

**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 8649. Additionally, for the purposes of water quality control and salinity control (per Water Code section 1707), the Delta would be temporarily added to the place of use under Permit 8649 and Application 12-1986. Municipal, industrial, fish and wildlife enhancement, salinity control, stockwatering, and water quality control would be temporarily added as additional purposes of use under Permit 8649.

**2.3 Points of Rediversion under the Proposed Transfer** The Clifton Court Forebay would be temporarily added as a point of rediversion under Permit 8649.

## **3.0 AVAILABILITY OF WATER FOR TRANSFER**

The 8,000 af of water proposed for transfer consists of 4,500 af currently stored in Collins Lake under the provisions of Permit 8649 and 3,500 af currently stored in New Bullards Bar Reservoir pursuant to BVID's Application 12-1986. BVID has stated that after the release of 4,500 af from Collins Lake due to this transfer, enough carryover storage would remain to meet BVID's water

demand for the remainder of 2001 and through 2002. Additionally, BVID submitted with the petition an agreement between itself and DWR intended to ensure that the SWP and CVP are not injured during future refill of Collins Lake resulting from the transfer. In the absence of the proposed transfer, the 4,500 af of water stored in Collins Lake under Permit 8649 would remain in storage for future marketing or use by BVID.

In order to meet its water users needs while foregoing the 3,500 af of pre-1914 water intended for transfer, BVID initiated a groundwater substitution program. According to an analysis (prepared by Bookman-Edmonston) of all the regional groundwater substitution programs planned to support this year's scheduled water transfers (including the 3,500 af BVID program and additional groundwater substitution programs initiated by nearby YCWA), the studied groundwater substitution programs should not have an adverse impact on the groundwater aquifer north of the Yuba River (and thus not injure any legal users of groundwater). In the absence of the proposed transfer, the 3,500 af of water currently stored in New Bullards Bar Reservoir under BVID's pre-1914 Application 12-1986 in anticipation of this transfer would have been diverted by BVID for use within its service area.

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 transfer involves only an 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 (CEQA) (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).

The water available for the transfer is currently stored either in Collins Lake or New Bullards Bar Reservoir and is scheduled for release upon approval of the petition through September 30, 2001. The portion of the proposed transfer water stored in New Bullards Bar Reservoir will be released to the Lower Yuba River thence the Feather River thence the Sacramento River thence the Delta. The portion of the transfer water stored in Collins Lake will be released to Dry Creek thence the Lower Yuba River thence the Sacramento River to the Delta.

During the period of the proposed BVID transfer, YCWA will also be transferring water via the Lower Yuba River. Based on information contained in Section 1.1 of SWRCB WR ORDER 2001-03-DWR (dated March 9, 2001), flows in the Lower Yuba River (measured at the Marysville Gage) are projected to be between 820 cfs and 1,340 cfs during the month of August, 2001. Additionally, SWRCB WR ORDER 2001-16-DWR (dated July 17, 2001) requires YCWA to maintain a minimum flow of 500 cfs in the Lower Yuba River (measured at the Marysville Gage). Since the quantity of flow to be released by BVID under this transfer (up to 60 cfs in August and 16 cfs in September) represents only about 8% of the anticipated existing flow in the Lower Yuba River in August and only about 4% of the anticipated existing flow in September, the addition of the flows to the Lower Yuba River resulting from the proposed temporary change in water rights should not result in significant adverse effects to fish wildlife and other instream beneficial uses within the Lower Yuba River.

However, flows in Dry Creek are typically nonexistent during the summer and early fall, thus the introduction of significant flows in Dry Creek from the portion of the transfer water stored in Collins Lake could attract both juvenile and adult salmonids into Dry Creek during the initial period of the transfer. The subsequent reduction and eventual elimination of flows (upon completion of the transfer) could then result in the stranding of adult and juvenile chinook salmon and steelhead trout as well as the dewatering of redds and loss of incubating eggs. Additionally, adult and juvenile salmonids attracted into Dry Creek could be exposed to adverse water conditions. These concerns were contained in comments submitted by the California State Department of Fish and Game (DFG) and other interested parties (see Section 5.0, below). Prior to submittal of their comments, DFG met with BVID and both parties have agreed on mitigation measures intended to protect anadromous species including spring-run chinook salmon and trout from potential adverse impacts associated with the proposed transfer. The attached order requires BVID to adhere to the mitigation measures contained in DFG's comments.

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

## **5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE**

Timely comments on the proposed temporary change were received from the California Sportfishing Protection Alliance (CSPA), The United States Bureau of Reclamation (USBR), the California State Department of Fish and Game (DFG), and Northern California Council Federation of Fly Fishers (NCCFFF). These comments and the SWRCB responses are summarized below.

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

DFG asserted that the introduction of significant flows in Dry Creek from the portion of the transfer water stored in Collins Lake could attract both juvenile and adult salmonids into Dry Creek during the initial period of the transfer. The subsequent reduction and eventual elimination of flows (upon completion of the transfer) could then result in the stranding of adult and juvenile chinook salmon and steelhead trout as well as the dewatering of redds and loss of incubating eggs. Additionally, DFG indicated that adult and juvenile salmonids attracted into Dry Creek could be exposed to adverse water conditions. Prior to submittal of their comments, DFG met with BVID and both parties have agreed on mitigation measures intended to protect anadromous species including spring-run chinook salmon and trout from potential adverse impacts associated with the proposed transfer.

**SWRCB Response:** The SWRCB appreciates the efforts of both BVID and DFG to resolve DFG's concerns with the preparation of the above-mentioned mitigation measures. This order includes a term requiring BVID to adhere to the mitigation measures contained in DFG's comments.

### **United States Bureau of Reclamation**

USBR indicated that it had reviewed a copy of the refill agreement between BVID and DWR submitted with the subject petition. USBR stated that the procedures contained in the refill agreement will ensure that the temporary water transfer and associated reservoir refill does not

adversely affect the CVP. USBR requested that the order approving the subject petition note that BVID and DWR have entered into a refill agreement.

**SWRCB Response:** This order shall include a term indicating that the refill agreement between BVID and DWR submitted with the subject petition shall govern refill of storage in Collins Lake resulting from the temporary transfer.

### **The California Sportfishing Protection Alliance**

CSPA's comments contained three main points, which are separately summarized and responded to below.

CSPA asserted that evidence submitted to the SWRCB and contained in SWRCB Decision 1644 (regarding fishery resources and water right issues in the Lower Yuba River) indicated that pumping in excess of about 32,000 af per annum of groundwater from the regional groundwater basin may have "adverse impacts." CSPA indicated that "The current proposal to substitute 3,500 af (of groundwater) by BVID in addition to the previously requested 61,140 acre feet by YCWA is contrary to the substantial evidence before the SWRCB."

**SWRCB Response:** BVID has submitted an analysis to the SWRCB (performed by Bookman-Edmonston) of the groundwater substitution programs ongoing in the region (including BVID's 3,500 af program and additional groundwater substitution programs initiated by the YCWA). This analysis indicated that the studied groundwater substitution programs for water transfers scheduled to occur this year would not have an adverse impact on the groundwater aquifer north of the Yuba River.

CSPA asserted that the SWRCB has no evidence to support the necessary determination that the proposed transfer could not injure any legal user of water during any potential hydrological cycle.

**SWRCB Response:** The public notice describing the petition for temporary change was mailed by the petitioner to a list of water right holders of record who may have been affected by the transfer, as required by Water Code section 1726(d). The only legal user of water to file comments regarding this petition was the USBR, which indicated that the refill agreement between BVID and DWR would ensure that the CVP would not be adversely impacted by the proposed temporary transfer. Additionally, as stated above, BVID has presented evidence that the proposed temporary transfer would not have an adverse impact on the regional groundwater aquifer and thus not injure any legal user of groundwater.

CSPA indicated that previous similar transfers have resulted in unreasonable impacts on fall run Chinook salmon through stranding of adult fish in Dry Creek and stranding of redds. This comment is materially similar to concerns raised by DFG.

**SWRCB Response:** As stated in Section 4.0, above, the SWRCB recognizes the potential for unreasonable impacts to anadromous species within Dry Creek as a result of this transfer. However, since DFG and BVID have agreed on mitigation measures intended to protect anadromous species including spring-run chinook salmon and trout from potential adverse impacts associated with the proposed transfer and this order includes a term requiring BVID to adhere to

these mitigation measures, the proposed transfer should not unreasonably effect fish, wildlife, or other instream beneficial uses.

### **Northern California Council Federation of Fly Fishers**

The NCCFFF submitted numerous comments, several of which are materially similar to those submitted by DFG and CSPA (see above for a summary of these concerns and the SWRCB responses). Additional points raised by NCCFFF and the SWRCB responses are summarized below.

- 1) The petition did not disclose the proposed place of use;
- 2) The petition did not include a description of BVID's pre-1914 Application 12-1986;
- 3) The petition did not indicate whether BVID consulted with the National Marine Fisheries Service (NMFS) regarding the proposed transfer or whether NMFS made any recommendations regarding the proposed transfer; and,
- 4) The petition did not include recommendations by DFG regarding the proposed transfer.

### **SWRCB Responses:**

- 1) See Section 2.2 for a specific description of the proposed place of use;
- 2) See Section 2.1 for a specific description of Application 12-1986;
- 3) NMFS was mailed a copy of the public notice and did not file any comments regarding the proposed transfer. Additionally, the mitigation measures agreed to by BVID and DFG regarding the proposed transfer include consultation with NMFS; and,
- 4) DFG and BVID have entered into an agreement intended to protect anadromous species from adverse impacts resulting from the proposed water transfer.

## **6.0 SWRCB'S DELEGATION OF AUTHORITY**

On April 29, 1999, the SWRCB adopted Resolution 99-031, continuing the delegation of authority to approve petitions for temporary change to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

## **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 point of redirection, purpose of use, and place of use to facilitate the transfer of up to 4,500 af of water under Browns Valley Irrigation District's Permit 8649 (Application 13130) and 3,500 af of water under Application 12-1986 is approved.

All existing terms and conditions of Permit 8649 (Application 13130) and Application 12-1986 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 through September 30, 2001.
2. The place of use under Permit 8649 (Application 13130) 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) and the San Francisco Bay/Sacramento-San Joaquin Delta (for the purposes of salinity control and water quality control, per Water Code section 1707).
3. The place of use under Application 12-1986 is temporarily changed as follows:  
  
The authorized place of use is expanded to include the San Francisco Bay/Sacramento-San Joaquin Delta for the purposes of salinity control and water quality control, per Water Code section 1707.
4. The Clifton Court Forebay is temporarily added as a point of redirection to Permit 8649 (Application 13130) for the purposes of transferring up to 4,500 af of water. Water redirected at the Clifton Court Forebay pursuant to with this order shall comply with the standards set forth in Table 1, 2, and 3 of Water Right Decision 1641. Additionally, redirection of water pursuant to this order shall comply with the current Water Level Response Plan submitted by DWR and USBR and approved by the Executive Director of the SWRCB. Since the current Water Level Response Plan expires on October 6, 2001, no redirection of water pursuant to this order shall be allowed after October 6, 2001 unless a subsequent Water Level Response Plan has been approved by the Executive Director of the SWRCB.
5. Municipal, industrial, fish and wildlife enhancement, salinity control, stockwatering, and water quality control are temporarily added as purposes of use under Permit 8649 (Application 13130).
6. Salinity control and water quality control (within the San Francisco Bay/Sacramento-San Joaquin Delta) are temporarily added as purposes of use under Application 12-1986, per Water Code section 1707.
7. BVID shall adhere to the dismissal terms mutually agreed to by BVID and DFG and contained in DFG's comments dated July 19, 2001.

8. The refill agreement submitted to the SWRCB with the petition and titled "*Collins Lake Refill Prodedures for Water Transfer from Browns Valley Irrigation District to the Department*" dated May 5, 2001, shall govern the conditions under which refill occurs for the transferred storage allowed in this order.
9. Within 60 days of the completion of the transfer/exchange, but no later than June 1, 2002, the permittee 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 and or stored;
- b) The daily release rates of the transferred water from both Collins Lake and New Bullards Bar Reservoir;
- c) The average daily streamflow measured at the USGS gaging stations located at Marysville and Smartville and BVID's Dry Creek gage;
- d) Temperature readings taken by BVID in accordance with the DFG dissmisal terms referenced in Term 7 of this order;
- e) The daily values of the Transfer Amount Account, as defined in the "*Collins Lake Refill Prodedures for Water Transfer from Browns Valley Irrigation District to the Department*" dated May 5, 2001; and,
- f) The monthly amounts of groundwater pumped pursuant to the BVID's 3,500 af groundwater substitution plan to meet the needs of users within the BVID 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 containing the daily values of the Transfer Amount Account until it reaches zero.

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.

*for* David R. Bevinger  
Harry M. Schueller, Chief  
Division of Water Rights

Dated: August 2, 2001