

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WRO 2002 - 0015**

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**IN THE MATTER OF STATEMENT OF WATER DIVERSION AND USE S015151  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 1,015 ACRE-FEET OF WATER  
TO INSTREAM USE WITHIN THE NORTH FORK TULE RIVER  
UNDER PRE-1914 APPROPRIATIVE WATER RIGHT CLAIM**

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SOURCE: North Fork Tule River

COUNTY: Tulare

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**ORDER GRANTING RECONSIDERATION OF  
WR ORDER 2002-0010-DWR AND SETING DATE FOR FINAL ACTION**

**1.0 INTRODUCTION**

This order grants the petition for reconsideration filed by the petitioner for change, Dagny Grant, without affirming or amending the order that is the subject of the petition, and without making any judgment of the merits of the order or the petition for reconsideration.

On September 20, 2002, in WR Order 2002-0010-DWR, the Chief of the Division of Water Rights (Division) denied Ms. Grant's petition for temporary change involving a transfer of up to 1,015 acre-feet of water to instream use in the North Fork Tule River. Ms. Grant filed the petition for temporary change on June 25, 2001. Ms. Grant claims a pre-1914 water right to water from the North Fork Tule River in Tulare County, and seeks to temporarily transfer it to fishery use in a two-mile reach of the river under Water Code sections 1725, et seq., and 1707. This order requires the State Water Resources Control Board (SWRCB) to complete its reconsideration of WR Order 2002-0010-DWR by no later than February 28, 2003.

## **2.0 BACKGROUND**

Ms. Grant claims a right to 100 miners inches of water (2.0 cubic feet per second [cfs], based on the southern California standard for miner's inches). Based on her Statement of Water Diversion and Use No. S015151, filed on June 25, 2001, Ms. Grant claims that owners of the Battle Mountain Ranch (Ranch), which she now owns, have diverted this water from the North Fork Tule River under a claimed pre-1914 right since 1880 to irrigate 90 acres of pasture and for stock watering. Ms. Grant seeks to transfer 1.5 cfs of the water, which is approximately 1,015 acre-feet (af), to instream use. The proposed temporary place of use of the transferred water would be a two-mile reach of the river adjacent to the Ranch.

The Division Chief denied the petition for change on two grounds. On each ground, the Division Chief made a finding that he was unable to make a finding that is a prerequisite for approving a temporary change due to a transfer under Water Code section 1725. One of the findings required under section 1725 that was not made is that the transfer involves only the amount of water that would have been consumptively used or stored by the water right holder in the absence of the temporary change. The other finding required under section 1725 is that the change would not injure any other legal user of the water.

## **3.0 SCHEDULE FOR RECONSIDERATION**

Ms. Grant has not requested an evidentiary hearing in this matter. She seeks reconsideration on the bases that the Division Chief has made errors in law and in the evaluation of the evidence. In the absence of a request for a hearing, the SWRCB will reconsider this matter based on the evidence in the file. The SWRCB makes no judgment at this time on the merits of the petition

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for reconsideration. The SWRCB intends promptly to consider an order upon reconsideration, and will schedule such an order for consideration at a Board meeting in January or February 2003, but no later than February 28, 2003.

**ORDER**

IT IS HEREBY ORDERED that the SWRCB will reconsider WR Order 2002-0010-DWR and will issue an order on reconsideration, affirming or amending or taking other appropriate action on WR Order 2002-0010-DWR, by no later than February 28, 2003.

**CERTIFICATION**

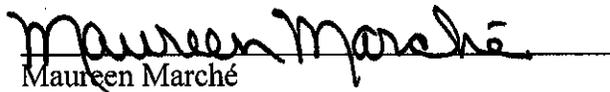
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 2, 2002.

AYE: Arthur G. Baggett, Jr.  
Peter S. Silva  
Gary M. Carlson

NO: None

ABSENT: Richard Katz

ABSTAIN: None

  
Maureen Marché  
Clerk to the Board