

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

DIVISION OF WATER RIGHTS

ORDER WRO 2004-0033-DWR

**IN THE MATTER OF THE LICENSE AND PERMITS
OF THE CENTRAL VALLEY PROJECT AND THE STATE WATER PROJECT
PETITION FOR TEMPORARY URGENCY CHANGE
IN WESTERN DELTA SALINITY OBJECTIVES
IN RESPONSE TO THE DELTA LEVEE FAILURE**

ORDER APPROVING PETITION FOR TEMPORARY URGENCY CHANGE
IN POINT OF DIVERSION/REDIVERSION AND PERMIT CONDITIONS
BY BOARD CHAIR ARTHUR G. BAGGETT, JR.:

1.0 INTRODUCTION

On June 24, 2004, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), hereinafter collectively referred to as the Projects, completed the filing with the State Water Resources Control Board (SWRCB) of a Petition for Temporary Urgency Change pursuant to Water Code section 1435. The petition was filed under DWR's State Water Project (SWP) and USBR's Central Valley Project (CVP) water rights (listed on page 4 of this order) in response to the June 3, 2004, levee failure in the San Francisco Bay/Sacramento-San Joaquin Delta (Delta). The petition requested the temporary relaxation of two Western Delta Water Quality Objectives contained in the SWRCB's Revised Decision 1641 (D-1641) through August 15, 2004, due to increased salinity concentrations resulting from the levee failure.

The petition also requested the temporary addition of the Tracy Pumping Plant as a point of diversion/rediversion under the SWP water rights and the Banks Pumping Plant as a point of diversion/rediversion under the CVP water rights for the purposes of stabilizing water levels in the southern Delta during the levee breach period. However, the levee breach already has been closed, and consequently the urgent need for this portion of the proposed temporary urgency change is no longer present and this request is moot.

I am delegated authority to approve this temporary urgency change, pursuant to Water Code section 1435(d) and SWRCB Resolution No. 2002-0106, section 1.3.

2.0 BACKGROUND

On June 3, 2004, a major levee along the western border of the Upper Jones Tract (located within the southeastern portion of the Delta) failed, inundating the entire island with water. Initial estimates of the volume of water impounded within the Upper Jones Tract ranged between 100,000 and 200,000 af. Operations to repair the levee were initiated immediately, and as of July 7, 2004 the levee failure was closed and the water impounded on the Upper Jones Tract was being pumped back to the Delta. Governor Schwarzenegger declared the levee failure a state of emergency on June 4, 2004.

The Projects took emergency actions to reduce the potential for further levee failure and to attempt to mitigate anticipated saltwater intrusion to the Delta. Exports from the Project's Delta pumping plants

(which were already at zero at the Banks Pumping Plant due to scheduled maintenance) were temporarily decreased to the minimum operating conditions. In consultation with the fisheries agencies (the California Department of Fish and Game (DFG), the National Oceanographic and Atmospheric Administration – Fisheries (NOAA Fisheries), and the United States Fish and Wildlife Service (USFWS)), USBR opened the Delta Cross Channel (DCC) gates to further assist in reducing overall salinity concentrations within the Delta.

3.0 SUBSTANCE OF PETITION

The Projects requested the proposed temporary urgency changes by letter dated June 24, 2004. The Projects request the following changes to the water rights of the SWP and CVP (shown in Figure 1, on page 4 of this order):

Change the value of the Western Delta Water Quality Objectives at the Sacramento River at Emmaton and the San Joaquin River at Jersey Point compliance locations (defined in Table 2 on page 182 of D-1641) such that the Projects are allowed to operate to targets of 1.35 mmhos/cm at Emmaton and 1.0 mmhos/cm at Jersey Point. This change would be effective through August 15, 2004.

Add the Tracy Pumping Plant as a point of diversion/rediversion to the SWP water rights and the Banks Pumping Plant as a point of diversion/rediversion to the CVP water rights to stabilize water levels in the Southern Delta during the levee breach period. The use of these added points of diversion/rediversion would be limited such that it does not increase the amount of water exported from the Delta. This change would be effective through August 15, 2004.

The petition also indicated that the Projects intended to request the addition of the Banks Pumping Plant as a point of diversion/rediversion under the CVP water rights for the purpose of exporting 30,000 af of water.

Additionally, the Projects indicated that pursuant to the requirements for Joint Point of Diversion (JPOD) operations contained in D-1641, revised drafts of the Water Level Response Plan, Water Quality Response Plan and Fish and Wildlife Protection Plan would be submitted to the SWRCB under separate cover. The Projects requested that the SWRCB expedite its review of these plans.

A discussion of the proposed changes is provided below.

3.1 Salinity Objectives

The inundation of Upper Jones Tract temporarily increased the inflow of water with a relatively high salinity concentration from the San Francisco Bay into the Delta. This inflow combined with a strong seasonal tide resulted in a significant increase in the salinity concentrations within the western Delta, and to a lesser extent within the entire Delta. Within four days of the levee failure, the daily average electrical conductivity (representative of salinity concentration) at two western Delta monitoring stations (the Sacramento River at Emmaton and the San Joaquin River at Jersey Point) rose from approximately 0.21 - 0.22 mmhos/cm to 1.71 mmhos/cm at Emmaton and 1.04 mmhos/cm at Jersey Point. As a result, the water quality objectives the Projects are required to meet, pursuant to D-1641, for salinity (measured as the 14-day running average of mean daily electrical conductivity in mmhos/cm) at Emmaton and Jersey Point were not met between about June 7 and June 19, 2004. The salinity objectives at Emmaton and Jersey Point returned to compliance on June 20, 2004, and have been met since that date.

Though the salinity objectives within the western Delta have been met since June 20, 2004, water quality conditions in the Delta tend to deteriorate (i.e., salinity concentrations increase) from the period of June through October due to reduced inflows and accretions from the Delta's tributary rivers, and increased upstream agricultural return flows containing relatively high salinity concentrations. The Projects state that the significant increase in salinity caused by the levee failure has essentially changed the observed

Delta conditions from those typical of a below-normal year to those typical of a dry year. The petition includes several figures comparing projected salinity concentrations absent the levee failure and current observed salinity concentrations. The figures project that increased salinity concentrations due to the levee failure will result in an extended period of increased salinity throughout the Delta for the duration of this water year. The Projects conducted an analysis of the impacts of this extended period of increased salinity concentrations and reviewed several potential alternatives to respond to these impacts. Short summaries of these alternatives and the Project's discussion of their relative impacts are provided below:

Alternative #1: Full compliance with the western Delta salinity objectives contained in D-1641.

The Projects stated that it was technically infeasible to release the magnitude of relatively fresh water required to meet the salinity objectives at Emmaton and Jersey Point (which are measured as the 14-day running average of the average daily electrical conductivity) prior to June 20, 2004.

Alternative #2: Compliance with the western Delta salinity objectives contained in D-1641 after June 20, 2004.

This alternative would result in full compliance with the western Delta salinity objectives beginning June 20, 2004. The Projects estimate that the volume of additional releases from upstream storage required to meet the existing objective is approximately 100,000 - 150,000 af more than would be required for Alternative #3. The reduction in upstream storage associated with this alternative could potentially impact project water supplies and the availability of cold-water resources to meet fall water temperature objectives.

Alternative #3: Compliance with the petitioned salinity objectives of 1.35 mmhos/cm in the Sacramento River at Emmaton and 1.0 mmhos/cm in the San Joaquin River at Jersey Point.

This alternative would result in a salinity regime within the western Delta that is about halfway between the salinity levels required in D-1641 for below normal and dry years. The Projects state that maintaining these amended salinity objectives would require more releases from upstream storage than would be required under Alternative #4, but the impacts to upstream storage would be about 100,000 – 150,000 af less than those required under Alternative #2. The Projects state that this is their preferred alternative since it minimizes the impacts to upstream storage (and associated impacts to cold water resources) while maintaining water quality above that which would be present under dry year objectives.

Alternative #4: Compliance with the western Delta salinity objectives contained in D-1641 for dry year conditions. These objectives are 1.67 mmhos/cm in the Sacramento River at Emmaton and 1.35 mmhos/cm in the San Joaquin River at Jersey Point.

This alternative would result in a salinity regime within the western Delta that is similar to the regime required in D-1641 during dry years. The Projects estimate that the amount of water required to meet the dry year salinity objectives is approximately 100,000 - 150,000 af less than would be required under Alternative #3. The Projects indicated that a dry year salinity regime within the western Delta could have potential impacts to other users of the water that would not occur under the salinity objectives proposed under Alternative #3.

3.2 Water Level Concerns

The Projects state, based on their modeling and analyses that the levee breach had the potential to alter the hydrodynamics within the Delta and its waterways, limiting their ability to manage upstream releases and exports efficiently while maintaining water quality objectives and water levels within the southern Delta. Accordingly, the Projects stated that the use of each other's pumping facilities in the Delta would allow the operational flexibility to better manage their exports, southern Delta water levels, and water quality. The Projects stated that the use of each other's Delta pumping facilities would be limited to

managing water levels and would not allow an increase of total exports from the Delta above that which would have been present absent the change.

The levee breach was closed and pumping of the water impounded on the Upper Jones Tract to the Delta commenced on July 7, 2004. Thus, the impacts to Delta hydrodynamics due to the levee failure are no longer present, and the urgent need for this portion of the proposed temporary change is no longer present. Accordingly, this order does not approve the requested temporary change in points of diversion.

**Figure 1
Description of the SWP and CVP Water Rights**

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
17514A	16483	n/a	North Bay Aquaduct
CVP Water Rights			
Application No.	Permit No.	License No.	
23	273	1986	Friant Project
234	11885	n/a	Friant Project
1465	11886	n/a	Friant Project
5626	12721	n/a	Shasta Project
5628	11967	n/a	Trinity Project
5638	11887	n/a	Friant Project
9363	12722	n/a	Shasta Project
9364	12723	n/a	Shasta Project
9366	12725	n/a	Contra Costa Canal
9367	12726	n/a	Contra Costa Canal
9368	12727	n/a	Tracy Pumping Plant
13370	11315	n/a	Folsom Project
13371	11316	n/a	Folsom Project
14858A	16597	n/a	New Melones Project
14858B	20245	n/a	New Melones 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
19304	16600	n/a	New Melones Project
22316	15735	n/a	Contra Costa Canal

4.0 COMMENTS REGARDING THE PETITION

In addition to its submittal to the SWRCB, the Projects provided copies of the June 24, 2004 letter to several potentially interested parties. The SWRCB requested that the Projects obtain comments on the petition from the fishery agencies to assist its review. Prior to issuance of this order, Contra Costa Water District (CCWD), the Central Delta Water Agency (CDWA), DFG, and NOAA Fisheries submitted comments to the SWRCB regarding the proposed change. (The Projects also solicited comments from the USFWS, but the SWRCB did not receive the USFWS comments prior to the issuance of this order. NOAA Fisheries stated that USFWS agrees with its comments.). These comments are summarized below.

Contra Costa Water District

CCWD states that increased salinity concentrations within the Delta due to the levee failure forced it to shut down its Delta intake facilities resulting in a loss of approximately 6,000 af of water which could have been diverted to Los Vaqueros Reservoir absent the levee failure. Additionally, CCWD indicates that the increased salinity conditions projected to occur throughout the Delta this summer (assuming that the petitioned change in salinity objectives is implemented) will result in an additional reduction of between 15,000 and 20,000 af of storage in Los Vaqueros Reservoir due to increased blending demands. CCWD also notes that since the water impounded on Upper Jones Tract may contain significant concentrations of organic carbons, it may cause additional water quality impacts and increased blending demands when it is pumped back to the Delta. CCWD states that the loss of storage in Los Vaqueros Reservoir due to the levee failure may have significant impacts on its ability to make releases for fisheries and meet its drinking water standards and customer demands during the 2005 water year (October 2004 through September 2005) and beyond. Accordingly, CCWD indicated that it would like to work with the SWRCB, DWR, USBR and the fishery agencies to determine whether future temporary modifications to the operating requirements for Los Vaqueros Reservoir are appropriate.

Additionally, CCWD made the following comments regarding the proposed temporary urgency change:

The proposed modifications to the water quality objective for salinity in the Sacramento River at Emmaton and the San Joaquin River at Jersey Point should be enforceable objectives as opposed to operational targets.

CCWD does not oppose the proposed addition of the Tracy Pumping Plant as a point of diversion/rediversion to the SWP water rights and the Banks Pumping Plant as a point of diversion/rediversion to the CVP water rights for the purpose of stabilizing southern Delta water levels as long as it does not increase the total amount of water exported from the Delta.

CCWD stated that it would not oppose the use of the proposed addition of the Banks Pumping Plant as a point of diversion/rediversion to the CVP water rights to increase exports by 30,000 af of water to make up for reduced diversions and deliveries of water to CVP contractors, if the change is approved only as part of an overall plan to assist all parties impacted by the levee failure.

Water pumped from the Upper Jones Tract to the Delta should be accounted for in the Projects' water supply calculations and made available for use by all affected parties.

The proposed temporary urgency changes should be conditioned such that their approval is contingent upon the agreement to a plan to assist all Delta water users affected by the levee failure.

Central Delta Water Agency

CDWA indicated that it did not support the Projects intended request to add the Banks Pumping Plant as a point of diversion/rediversion under the CVP water rights for the purpose of exporting 30,000 af of water lost to the CVP as a result of the Project's response to the levee failure. CDWA also noted that the levee breach has been closed and that the water impounded on the Upper Jones tract is in the process of being

returned to the Delta. Finally, CDWA stated that the SWRCB should require an evaluation of the potential for the increased salinity concentrations associated with the proposed temporary change in water quality objectives to result in additional salt build-up in the soils prior to approving any modifications to the Delta standards.

Department of Fish and Game

DFG stated that it had reviewed the petition for temporary urgency change and it does not anticipate any unreasonable adverse impacts to fish in the Delta as a result of the proposed changes in water quality objectives. DFG stated that the operations associated with the proposed temporary change may be the alternative most beneficial to anadromous and resident fish at this time.

National Oceanographic and Atmospheric Administration - Fisheries

NOAA Fisheries stated that it had worked closely with USBR, DWR, DFG and the USFWS evaluating potential impacts to fishery resources of concern following the levee failure. Consequently, NOAA Fisheries supports the changes proposed in the petition for temporary urgency change. NOAA Fisheries stated that the operations undertaken by the Projects to date have not adversely affected listed salmonids and it concurred with DFG's conclusion that the operations associated with the proposed temporary change may be the alternative most beneficial to anadromous and resident fish at this time.

5.0 PUBLIC NOTICE OF THE PETITION

Pursuant to Water Code section 1438 (a), the SWRCB is issuing this order concurrently with issuing public notice of the temporary urgency change. In accordance with Water Code section 1438(b)(1), the Projects shall mail public notice of this proposed temporary urgency change to interested parties and publish it in the Stockton Record as soon as is practicable, but not later than five days from the date of this order. The SWRCB retains jurisdiction to modify this order based on any comments or objections that it may receive in response to the public notice.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

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 SWRCB's regulation, at California Code of Regulations, title 23, section 791(e), provides that the SWRCB 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 SWRCB must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee or licensee 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.

6.1 Urgency of the Proposed Change

Under Water Code section 1435 (c), an urgent need to make a proposed change exists when the SWRCB concludes that the proposed temporary 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. Additionally, the SWRCB shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code. In this case, an urgent need exists for the proposed change because without this change the Projects would need to release additional stored water, resulting in lower carryover of water supply for the following years and a reduction in cold water resources to meet water temperature objectives for anadromous fish during this fall.

6.2 No Injury to Any Other Lawful User of Water

The proposed increased salinity levels will result in an increase in salinity concentrations within the western Delta and, to a lesser extent, within the entire Delta. Increased salinity, if excessive, has the potential to injure agricultural and municipal users of water within the Delta. The increased salinity involved in the proposed change, however, will remain within the range that is considered protective of agricultural and municipal uses, and will be better than the salinity levels required during dry years.

Based on this discussion, I find that the proposed change will not cause injury to any lawful user of water.

6.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

The proposed increased salinity objectives will result in an increase in salinity concentrations within the western Delta and, to a lesser extent, the entire Delta. Increased salinity concentrations, if excessive, have the potential to adversely impact fish, wildlife, or other instream beneficial uses in these areas. However, DWR, USBR, DFG, and NOAA - Fisheries have all reviewed the proposed temporary changes and concluded that the potential impacts to fish and wildlife due to increased salinity conditions pose less of a threat to the fish and wildlife than the potential impacts of meeting the salinity objectives and consequently reducing the available cold water resources during the fall.

Based on this discussion, I find that the proposed change will not have an unreasonable effect on fish, wildlife and other instream beneficial uses of water.

6.4 The Proposed Change is in the Public Interest

The proposed change will help conserve cold water in upstream storage for anadromous fisheries during the fall and will help mitigate and recoup the loss of water supplies to the Projects and their water supply contractors due to the levee break. It is in the public interest to preserve water supplies for these beneficial uses when unusual circumstances such as the levee break would otherwise cause the significant loss of these water supplies.

7.0 ENVIRONMENTAL COMPLIANCE

Under the provisions of the California Environmental Quality Act (CEQA), DWR is the lead agency for this project. DWR has prepared a Notice of Exemption (dated July 6, 2004) stating that the project is exempt from CEQA since it is the result of a declared emergency. The SWRCB has reviewed DWR's Notice of Exemption, information contained in the petition, comments from DFG, and NOAA - Fisheries, and information contained in its files; and finds that the proposed temporary urgency change is statutorily exempt from CEQA. Accordingly, the SWRCB has prepared a Notice of Exemption (dated July 9, 2004) in support of this finding.

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) and License 1986 (Application 23) and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 16600, and 20245 (Applications 13370, 13371, 234, 1465, 5638, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 19304, and 14858B, respectively) of the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) is approved, in part, subject to the following terms and conditions. All other terms and conditions of the subject license and permits and State Water Resources Control Board Revised Decision 1641 (D-1641) shall remain in effect.

1. The value of the Water Quality Objectives for Agricultural Beneficial Uses for the Sacramento River at Emmaton and for the San Joaquin River at Jersey Point, contained on Table 2 on page 182 of D-1641, shall be temporarily changed to a value of 1.35 mmhos/cm at Emmaton and 1.0 mmhos/cm at Jersey Point. This change shall be effective from the date of this order through August 15, 2004.
2. No later than September 30, 2004, representatives of DWR and USBR shall jointly appear before the SWRCB at a scheduled meeting and shall summarize the actions taken pursuant to this petition for temporary change and describe any benefits or adverse impacts of the change on other legal users of water and fish, wildlife and other instream beneficial uses.
3. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change order 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.
4. This temporary change 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 order, the petitioners shall obtain authorization for an incidental take prior to construction or operation of the project. The petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.
5. I reserve jurisdiction to supervise the use of water under this temporary change order and to coordinate or modify its terms and conditions as warranted by future public comment on the petition or for the protection of vested rights; fish, and wildlife, instream beneficial uses; and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board

Dated: July 12, 2004