

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

DIVISION OF WATER RIGHTS

ORDER WR 2007-0012-DWR

**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**

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 August 23, 2006,

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) and possible use for DWR's 2007 Dry-Year Water Purchase Program. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year. YCWA requests that the period of the proposed transfer is from April 1, 2007 through December 31, 2007.

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 April 1, 2007 through December 31, 2007. 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. Water reaching the Delta would be available for use by DWR to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Tracy Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas. The maximum release rate from Englebright Reservoir for this transfer under most hydrologic conditions is approximately 750 cubic feet per second (cfs), however during dry years the maximum additional release rate may increase to approximately 1,000 cfs.

1.2 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, salinity control and water quality

control would be temporarily added as additional purposes of use under Permit 15026.

1.3 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.

1.4 Flow Schedule YCWA submitted a schedule with the petition which defines the proposed instream flow releases (based on hydrologic conditions) for the 2007 Pilot Program. The schedule is based on the North Yuba Index (an indicator of the amount of water in the North Yuba River available for release from New Bullards Bar Reservoir) and provides for seven different flow schedules based on the value of the North Yuba Index. YCWA will make flow releases based on this schedule.

1.5 Groundwater Substitution YCWA's petition states that up to 30,000 af of the 125,000 af transfer total may consist of surface water made available through an increase in groundwater pumping for use within YCWA's service area (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 a *Groundwater Monitoring and Reporting Program* and a report titled "*Analysis of the Groundwater Substitution Portion of the Yuba County Water Agency-CALFED Environmental Water Account/Department of Water Resources 2007 Transfer*" regarding the potential impacts of this groundwater substitution plan. The report concludes that the groundwater substitution program associated with the proposed temporary change (as specified in the *Groundwater Monitoring and Reporting Program*) will have no significant negative impacts on the groundwater resources of Yuba County or on the residents and groundwater users of Yuba County and the surrounding areas.

1.6 Refill Conditions The petition also states that the other 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 agreement between YCWA and DWR provides for an accounting of refill of New Bullards Bar Reservoir resulting from the proposed transfer during balanced conditions in the Delta. Under the specified accounting procedures, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and USBR during subsequent balanced conditions.

1.7 Hydrologic Analysis YCWA submitted a report titled "*Hydrologic Analysis of the Proposed Yuba County Water Agency One-Year Transfer to the California Department of Water Resources*" which included several analyses comparing the storage in New Bullards Bar Reservoir, releases to the Lower Yuba River, and temperatures at various points in the Lower Yuba River resulting from implementation of the RD-1644 interim and long-term flow requirements and the Yuba Accord flow release schedules. The report also includes a discussion comparing the projected end-of-year storage in New Bullards Bar Reservoir with the proposed temporary change to the projected storage absent the proposed temporary change.

1.8 Environmental Analysis The petitioner submitted a study titled "*Environmental Analysis for the Proposed Yuba County Water Agency One-Year Water Transfer to the California Department of Water Resources and 2007 Pilot Program Lower Yuba River Accord Fisheries Agreement*" (EA) in support of its petition. YCWA concludes in the EA that the proposed transfer is unlikely to have significant unreasonable impacts on instream beneficial uses associated with the proposed transfer. This conclusion is not based on specific mitigation measures; however, the EA includes a "*Fisheries Agreement for 2007 Lower Yuba River Pilot Program*" (2007 Fisheries Agreement) which YCWA contends "fairly, reasonably and appropriately specifies instream flows and temporary amendments to RD-1644 for the period between March 1, 2007 and March 31, 2008". The 2007 Fisheries Agreement includes (but is not limited to) provisions specifying the flow schedule for the transfer period, ramping rates, conditions for temporary alteration of flow schedules, and the establishment of a River Management Team to coordinate operations during the transfer period.

2.0 BACKGROUND

2.1 Substance of YCWA's Permit Permit 15026 authorizes the diversion to 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. 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).

On July 16, 2003, the State Water Board adopted Revised Water Right Decision 1644 (RD-1644), to address fishery protection and water right issues involving the diversion and use of water from the Yuba River. The decision established two sets of instream flow requirements for protection of fish in the Lower Yuba River between Englebright Dam and Marysville as conditions of YCWA's consumptive water right permits, including Permit 15026: (1) interim flow requirements that have been in effect since the original adoption of Decision 1644 in 2001 and which were scheduled to remain in effect until April 21, 2006; and (2) long-term flow requirements which were scheduled to come into effect on April 21, 2006. Due to the 2006 Pilot Program, see section 2.2, below, the effective date of the interim flows was extended to March 1, 2007.

2.2 Lower Yuba River Accord and 2006 Pilot Program On April 21, 2005, YCWA, in cooperation with 16 other local, State, federal and environmental organizations, approved agreements for a proposed settlement of instream flow requirements on the Lower Yuba River. The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related proposed agreements: (1) a Fisheries Agreement, (2) a Water Purchase Agreement, and (3) a Conjunctive Use Agreement. Together, the three agreements form a framework that is intended to resolve conflicts over instream flow requirements for the Lower Yuba River. The Yuba Accord was initially intended to cover the years from 2006 through 2016. The Yuba Accord proposes to provide modified instream flows for fish, a portion of which would be transferred to DWR and the U.S. Bureau of Reclamation. Additional information regarding the Yuba Accord is available on YCWA's website at www.ycwa.com.

Prior to the 2006 water year, YCWA indicated that the environmental documentation required for the Yuba Accord was not complete. YCWA proposed to implement a Pilot Transfer Program during the 2006 water year based on the instream flow requirements in the Fisheries Agreement and the transfer accounting rules in the Water Purchase Agreement. As part of the 2006 Pilot Transfer Program, YCWA submitted a petition to change the effective date of the long-term flow requirements to March 1, 2007. After public notice and a hearing, the State Water Board adopted Order WR 2006-0009, which changed the effective date of the long-term flow requirements to March 1, 2007. Additionally, the Chief of the Division of Water Rights approved Order WR 2006-0010, authorizing the temporary change necessary to transfer water pursuant to the 2006 Pilot Program. These orders are available for viewing on the Division's website at www.waterrights.ca.gov, Water Right Orders, 2006 Orders.

2.3 2007 Pilot Program and Concurrent Petition for Change YCWA has stated that the environmental documentation that is being prepared in support of the Yuba Accord will not be completed prior to the 2007 water year. Accordingly, YCWA has proposed to implement a 2007 Pilot Program that would provide for instream flows and water transfers similar to what is proposed in the Yuba River Accord. In addition to the subject petition for temporary change, YCWA filed a separate petition under Water Code section 1700, et seq., to change the effective date of the long-term flow requirements to April 1, 2008. Public notice of that petition was issued on September 22, 2006, and no protests were received. Order WR 2007-0002 approved YCWA's petition to change the effective date of the interim instream flows under Permit 15026 to April 1, 2008.

2.4 Environmental Water Account EWA was established to provide water for protection and recovery of at-risk fish species within the Delta beyond water available through existing regulatory actions related to the operations of the SWP and CVP. In order to accomplish this goal, EWA acquires alternative sources of project water supply (also referred to as EWA assets) that are used to (1) augment stream flows

or Delta outflow; (2) modify export operations; (3) provide fishery benefits; and (4) to replace the regular project water supply interrupted by the changes to project operations for EWA purposes. Water transferred to EWA pursuant to the proposed temporary change is likely to be used to replace project water supplies from spring and early summer Delta export reductions. Water transferred to EWA pursuant to the proposed temporary change will not result in a net increase in the amount of water exported from the Delta. Operational decisions for the EWA are made in coordination with Department of Fish and Game (DFG), the United States Fish and Wildlife Service, and the National Marine Fisheries Service.

2.5 2007 Dry Year Water Purchase Program The Dry Year Water Purchase Program was initiated by DWR to assist municipalities and other water users in securing water from willing sellers during drier hydrologic conditions. Water transferred to the Dry Year Water Program pursuant to the proposed temporary change typically results in a net increase in the amount of water exported from the Delta. The quantity and timing of water diversions for the 2007 Dry Year Water Purchase Program have yet to be determined.

2.6 Current Hydrologic Conditions The current (March 1) hydrologic forecast for the Sacramento Valley water year index is below normal. Additionally, based on the accumulated inflow into New Bullards Bar Reservoir, the water year type as calculated pursuant to RD-1644 is below normal.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated September 22, 2006) was provided via regular mail to interested parties and by publication in the Marysville Appeal-Democrat on September 23, 2006. Timely comments regarding the proposed temporary change were submitted by the South Delta Water Agency (SDWA) and are summarized below, followed by the State Water Board's responses. Original copies of SDWA's comments are on file with the State Water Board under Application 5632.

3.1 Comments of the South Delta Water Agency

SDWA opposed the proposed temporary change based on the following assertions:

1. YCWA has received approval for previous similar petitions for temporary change involving the transfer of water to EWA and the Dry Year Program. The State Water Board should ensure that repeated transfers do not escape the necessary environmental review.
2. Water Code section 1725 should be interpreted to mean that no net increase in consumptive use or increase in the use of the source water should be allowed to occur as a result of a temporary change.
- 3., 4. SDWA notes that the refill agreement between YCWA and DWR/USBR addresses the impacts of the proposed temporary change on the SWP and CVP during periods of balanced conditions in the Delta. However, SDWA asserts that the refill agreement does not protect other water right users from the impacts of the proposed temporary change. SDWA asserts that refill of water transferred pursuant to this petition may occur at a time when San Joaquin River flows are not sufficient to meet the needs of riparian and senior appropriative water right holders within the Delta. Accordingly, SDWA requests that the State Water Board set reasonable limitations on the proposed temporary change to protect downstream riparian and senior water right holders.
5. The addition of the Tracy Pumping Plant and the Clifton Court Forebay as points of redirection may adversely impact local water levels and injure local riparian water users. SDWA asserts that the efforts to ensure that Joint Points of Diversion (JPOD) operations do not impact local water levels have been sporadic and do not address non-JPOD impacts to water levels. SDWA asserts that there is no justification to allow JPOD, transfer, or normal export operations to adversely affect local water levels.

State Water Board Responses:

1. 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. This petition for temporary change includes a detailed environmental analysis of the proposed transfer, including the results of monitoring of several past similar transfers. This information is sufficient to make the required finding that the proposed temporary change will not have unreasonable impacts on fish and wildlife.

2. Section 1725 limits the amount of water that can be transferred to the amount that otherwise would have been consumptively used or stored; in other words, the amount of water authorized to be appropriated under the water right permit that actually would have been removed from use in the downstream water supply. In this case, the water to be transferred consists of water that would have been stored by YCWA in the absence of this transfer. Further, the petitioner is not precluded from substituting a different source of water for the transferred water. For example, Water Code section 1732 allows a petitioner to initiate or increase the use of groundwater to replace surface water made available for temporary transfer, if said increase is performed in compliance with Water Code sections 1745.10 and 1745.11. Accordingly, SDWA is incorrect in asserting that Water Code section 1725 should be interpreted to mean that no net increase in consumptive use or increase in the use of the source water should be allowed to occur as a result of a temporary change.

3., 4. SWRCB Order 89-8 found that riparian water right holders within the southern Delta do not hold rights to Sacramento River water. Any legal user of water within the Delta that notes injury attributable to the refill of storage transferred pursuant to this order is advised to file a complaint (including specific facts supporting the allegation) with the Division of Water Rights.

5. Water level problems in the southern Delta are caused by a combination of 1) adverse tidal conditions, 2) siltation of channels, 3) local diversions, and 4) project operations. Therefore, it cannot be concluded that cross-Delta transfers (such as the proposed temporary change) are solely responsible for lowering of water levels in southern Delta channels and associated injury to legal users of water. However, in order to ensure that no legal user of water is injured by potential lowering of water levels in southern Delta channels due to this proposed temporary change, redirection of water at the Tracy Pumping Plant and Clifton Court Forebay authorized by this order is subject to the current Water Level Response Plan. Any legal user of water within the Delta that sustains injury attributable to the redirection of water transferred pursuant to this order is advised to file a complaint (including specific facts supporting the allegation) with the Division of Water Rights.

4.0 REQUIRED FINDINGS OF FACT

Availability of Water for Transfer

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. The hydrologic analysis submitted by YCWA indicates that 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 will not cause a state of overdraft in the Yuba groundwater basin.

No Injury to Other Legal Users of 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 contains several conditions intended to prevent unreasonable impacts from the proposed temporary change on fish, wildlife, and other instream beneficial uses in the Lower Yuba River. Between March 1, 2007 and March 31, 2008, YCWA is required to maintain flows in the Yuba River as specified by the flow schedule submitted with the petition. YCWA is also required to adhere to ramping rates specified in the 2007 Fisheries Agreement. Additionally, YCWA is required to maintain the instream flow requirements and provisions to reduce water temperature impacts required by RD-1644 and State Water Board Order WR 2007-0002. The required instream flows must be maintained in addition to flows released for this transfer.

This order also contains several conditions intended to prevent unreasonable impacts from the proposed temporary change on fish, wildlife, and other beneficial uses within the Delta. The majority of water approved for transfer pursuant to this order will be delivered for use by the EWA. Operational decisions for the EWA are made in coordination with DFG, the United States Fish and Wildlife Service, and the National Marine Fisheries Service. 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 DWR and USBR 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 DWR and USBR. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions.

Additionally, at least 30 days prior to initiating transfer of water for use by the 2007 Dry Year Water Purchase Program, YCWA must submit to the Chief of the Division of Water Rights a schedule showing the timing and quantity of water intended for delivery to the 2007 Dry Year Water Purchase Program. Since this order is subject to the continuing jurisdiction of the Chief of the Division of Water Rights, any modifications necessary for the protection of fish and wildlife may be ordered at that point.

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. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to the delegation of authority in Resolution 2002-0106.

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 subject to the provisions of this order.

All existing terms and conditions of Permit 15026 as modified by State Water Board Revised Decision 1644 (RD-1644) and State Water Board Order WR-2007-0002 remain in effect, except as temporarily amended by the following provisions:

1. The delivery of water for use by the Environmental Water Account is approved. At least 30 days prior to commencing delivery of water for the 2007 Dry Year Water Purchase Program, YCWA shall submit to the Chief of the Division of Water Rights a schedule for the rediversion of water at the Tracy Pumping Plant or the Clifton Court Forebay. This schedule should show the dates of pumping, the maximum rate of pumping, and the daily and monthly (if applicable) quantities of water intended for delivery to the 2007 Dry Year Water Purchase Program.
2. The transfer/exchange of water is limited to the period from April 1, 2007 through December 31, 2007.
3. 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 the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).
4. 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 (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), 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. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions.
5. Municipal, salinity control, and water quality control are temporarily added as purposes of use under Permit 15026.
6. YCWA shall release water to the Lower Yuba River for the transfer in accordance with the flow schedule contained in the *Fisheries Agreement for 2007 Lower Yuba River Pilot Program* (2007 Fisheries Agreement), on file with the State Water Board under Application 5632. Changes in flows due to the transfer shall be undertaken in a gradual manner in accordance with the provisions contained in section 5.1.7 of the 2007 Fisheries Agreement. 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 in accordance with the provisions contained in section 5.1.4 of the 2007 Fisheries Agreement.
7. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by RD-1644:
 - a. Maintain minimum instream flows at the United States Geological Survey gaging installations at Marysville and Smartville as specified in State Water Board Order WR 2007-0002. The required instream flows must be maintained in addition to flows provided for transfer pursuant to this order.

- b. Minimize water temperature impacts on anadromous fish and other public trust resources as specified for YCWA in Revised D-1644, Term 2.
8. 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 future refill of the reservoir space that results from water transferred from storage pursuant to this Order occurs.
 9. If YCWA increases the amount of 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 groundwater (groundwater substitution), YCWA shall be required to perform the following actions:
 - a. Implement the *Groundwater Monitoring and Reporting Program* submitted with the petition;
 - b. 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;
 - c. Provide to the Chief of the Division of Water Rights a map of the recent (circa spring 2007) groundwater levels in the North and South Yuba Groundwater Basins; and
 - d. Develop and submit to the Chief of the Division of Water Rights, by June 1 of each year following the transfer, a map 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.
 10. By June 1, 2008, 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.

11. 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.

12. 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.
13. 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: March 30, 2007