

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0030-DWR

**IN THE MATTER OF PERMITS 1267 AND 2492 (APPLICATIONS 1651 AND 2778)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH FEATHER WATER AND POWER AGENCY
TO SEVERAL STATE WATER CONTRACT AGENCIES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
AND PURPOSE OF USE**

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 28, 2008,

South Feather Water and Power Agency
c/o Michael Glaze, General Manager
2310 Oro-Quincy Highway
Oroville, California 95966

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. South Feather Water and Power Agency's (SFWPA) petition requests the transfer of up to 10,000 acre-feet (af) of water to several State Water Contract agencies (hereinafter collectively referred to as the SWC agencies) for use within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SFWPA proposes to transfer up to 10,000 af of water under Permits 1267 and 2492 (Applications 1651 and 2778) to the SWC agencies. The SWC agencies involved in this water transfer are the Dudley Ridge Water District, the Kern County Water Agency, the Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, the San Bernardino Valley Municipal Water District, the Antelope Valley-East Kern Water Agency, the Palmdale Water District, and the Tulare Lake Basin Water Storage District. To facilitate the transfer, SFWPA proposes to release an additional 10,000 af of water currently stored in Little Grass Valley Reservoir and Sly Creek Reservoir and allow it to spill from the Ponderosa Reservoir directly into Oroville Reservoir (during June and July of 2008). The water would remain in storage in Oroville Reservoir for use by the SWC agencies within the SWP service area for up to one year from the date of approval of this transfer. Water would be delivered to these service areas via releases from Oroville Reservoir to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta for rediversion at the Clifton Court Forebay or the Barker Slough Pumping Plant.

In the absence of this transfer, the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future marketing to other buyers or use by SFWPA.

1.2 Proposed Temporary Changes. The proposed transfer would temporarily add the Oroville Dam, the Clifton Court Forebay, and the Barker Slough Pumping Plant as points of rediversion under Permits 1267 and 2492. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) would be temporarily added to the place of use of Permits 1267 and 2492. Industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under Permits 1267 and 2492.

1.3 Availability of Water for Transfer. Operational studies prepared for SFWPA estimate that, absent the proposed transfer, the combined carryover storage in Little Grass Valley Reservoir and Sly Creek Reservoir would be 60,000 af. SFWPA states that the proposed transfer of up to 10,000 af of water will not impact its ability to provide either irrigation or domestic deliveries to its customers. SFWPA and the Department of Water Resources (DWR) have entered into an agreement, titled *Agreement Among the Department of Water Resources, State Of California, Antelope Valley-East Kern Water Agency, et al, and South Feather Water & Power Agency for Storage and Conveyance of 2008 Transfer Water*. This agreement includes conditions intended to ensure that future refill of water transferred from storage in Little Grass Valley Reservoir and Sly Creek Reservoir does not adversely impact the SWP by providing for an accounting of refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from the proposed transfer when Lake Oroville is not in flood control operations. Under the specified accounting procedures, any refill occurring while Lake Oroville is not in flood control operations is subject to repayment to DWR on a schedule agreed to by DWR and SFWPA.

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). Representatives of DFG contacted State Water Board staff and discussed potential impacts of the proposed temporary change. Since the petitioner would be required to meet the ramping and other requirements of its Federal Energy Regulatory Commission (FERC) license, DFG did not note any concerns regarding impacts to fish, wildlife, or other instream beneficial use resulting from the proposed temporary change. DFG did not file comments regarding the petition.

2.0 BACKGROUND

2.1 Substance of SFWPA's Permits. Permit 1267 (Application 1651) authorizes the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River between October 1 and July 1. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) between April 1 and July 1. The point of diversion to storage for Permit 1267 is located at the Little Grass Valley Dam. Points of rediversion include the South Fork Diversion Dam, Sly Creek Dam, Lost Creek Dam, Forbestown Dam, and Ponderosa Dam. The water is used for irrigation and domestic purposes within the authorized place of use, and for recreational purposes within Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir.

Permit 2492 (Application 2778) authorizes the diversion to storage of up to 25,000 af of water per annum from Lost Creek between October 1 and June 1. Permit 2492 also authorizes the direct diversion from Lost Creek of up to 50 cfs between April 1 and June 1. The point of diversion for Permit 2492 is located at the Sly Creek Dam and the point of rediversion is located at the Lost Creek Dam. The water is used for irrigation and domestic purposes within the authorized place of use, and for recreational purposes within Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir.

2.2 Southern Delta Salinity. In Revised Decision 1641 (D-1641) the State Water Board added water quality objectives for the protection of agricultural beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and the Central Valley Project (CVP) water rights. These objectives are contained in Table 2, located on page 182 of D-1641. Additionally, in D-1641 the State Water Board authorized DWR and the United States Bureau of Reclamation (USBR) 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. DWR and USBR anticipate that salinity at the southern Delta salinity compliance locations will exceed the current objectives this summer (and possibly fall). Order WR 2008-0029-EXEC allows JPOD operations to occur based on the following condition:

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.

Petitions for temporary change (such as the subject petition) which add either the Clifton Court Forebay or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP are not considered JPOD operations. However, the impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Clifton Court Forebay or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations. For the period of SFPWA's proposed temporary change, it is likely that the southern Delta salinity objectives will be exceeded. Accordingly, this Order includes the following condition to allow this transfer to occur if it will not unreasonably affect salinity in the southern Delta during the period of the proposed temporary change.

Rediversion of water at the Clifton Court Forebay 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 during the period of this temporary change in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay as a point of diversion to Permits 1267 and 2492 pursuant to this Order will not unreasonably affect salinity in the southern Delta, then the rediversion of water at the Clifton Court Forebay under Permits 1267 and 2492 may occur.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated April 21, 2008) was provided via regular mail to interested parties and by publication in the Oroville Mercury-Register on April 24, 2008. Timely comments regarding the proposed temporary change were submitted by the California Salmon and Steelhead Association (CSSA) and jointly submitted by the Butte Environmental Council and the California Sportfishing Protection Alliance (BEC/CSPA). These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Salmon and Steelhead Association (CSSA). CSSA opposes the proposed temporary change based on the following assertions:

1. CSSA requests that its comments be treated as a formal protest based on unreasonable effects on fish and wildlife. CSSA states that its comments are based on the federal Endangered Species Act, Public Trust Doctrine, Clean Water Act, California Water Code, Federal Power Act, California Environmental Quality Act and its Guidelines, other applicable federal and state statutes, and case law.

2. CSSA asserts that the petition notice is in error and that a staff notation on the copy of the petition posted online indicates that the transfer total is 5,000 af.
3. CSSA asserts that the proposed temporary change will adversely affect striped bass, Delta smelt, longfin smelt, spring and winter-run chinook salmon, and steelhead trout due to entrainment at the Clifton Court Forebay. CSSA states that significant losses of striped bass yearlings, salmon smolts, and steelhead yearlings have occurred due to export pumping in the Delta (including the Clifton Court Forebay) since 1984.
4. CSSA states that the environmental analysis prepared by the petitioner is insufficient. CSSA asserts that the State Water Board must require the petitioner to prepare an environmental document pursuant to the California Environmental Quality Act (CEQA) to address the impacts of the proposed temporary change list in item 3., above. CSSA states that review of the environmental documentation is necessary for it to submit dismissal terms or request a hearing.
5. CSSA asserts that SFWPA's existing facilities under current (absent the proposed temporary change) operations adversely impacts spring-run chinook salmon and its habitat. CSSA will request that the petitioner mitigate for these losses under a separate filing with the State Water Board.
6. CSSA notes that since SFWPA also operates a hydroelectric facility, it must file an amendment to its FERC license.
7. CSSA asserts that the petitioner must show a reduction in use equivalent to the proposed transfer total. CSSA asserts that any water not put to beneficial use by the petitioner "must revert back to the people".

State Water Board Responses

1. Water Code section 1726(f) provides that water users who may be affected by the temporary change or any interested party may file a comment regarding a petition with the State Water Board within 30 days of the publication of the notice for that petition. The State Water Board shall evaluate and take into consideration all comments that are filed in a timely manner. Accordingly, the State Water Board will not consider CSSA's comments to be a formal protest.
2. The staff notation on the copy of the petition posted online was a nominal change made for fee purposes only, splitting the 10,000 af transfer total into two 5,000 af transfers, one for each water right. The transfer total for the proposed temporary change is 10,000 af.
3. Water Code section 1727(d) requires the State Water Board to not deny or place conditions on a temporary change to mitigate impacts that are not caused by the temporary change. Thus, the loss of fish at the pumps since 1984 is not relevant to the approval of this petition. Regarding the potential for unreasonable impact to fish, wildlife, and other instream beneficial uses due to entrainment at the Clifton Court Forebay, redirection of water at the Clifton Court Forebay pursuant to this Order is subject to compliance by the operators with the objectives 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 (with the exception of the southern Delta salinity requirements, as stated above in Section 2.2 of this Order). Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations. Finally the release of water from both Little Grass Valley Reservoir and Sly Creek Reservoir, as well as releases of water from Oroville Reservoir resulting from the proposed temporary change are subject to applicable FERC requirements, as recommended by DFG.

4. Water Code section 1729 states that a proposed temporary change is exempt from the requirements of CEQA. Thus, the State Water Board will not require the petitioner to prepare a CEQA document for this petition.
5. Water Code section 1727(d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Thus, the State Water Board will not amend SFWPA's permits through a petition for temporary change to mitigate for adverse impacts resulting from operations pursuant to the underlying water right.
6. This Order includes a term requiring SFWPA to meet all terms and conditions imposed by other regulatory agencies, including FERC.
7. Water Code sections 1726 (e) and 1727 (c) delineate the requirements which must be met for the State Water Board to approve a petition for temporary change. These requirements are (1) the water proposed for transfer would have been consumptively used or stored in the absence of the transfer, (2) the transfer would not injure any legal user of water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, timing of diversion or use, consumptive use of water, or reduction in return flows, and (3) the transfer would not unreasonably affect fish, wildlife, or other instream beneficial uses. These conditions do not require the petitioner to maintain a constant level of consumptive use if the petitioner provides evidence which supports the necessary findings.

3.2 Comments of the Butte Environmental Council and the California Sportfishing Protection Alliance (BEC/CSPA). BEC/CSPA generally opposes the proposed temporary change based on the following assertions:

1. BEC/CSPA assert that the proposed temporary change should not be exempt from environmental review pursuant to the California Environmental Quality Act (CEQA). BEC/CSPA assert that either the petitioner or DWR must prepare an Environmental Impact Report (EIR) for both this specific temporary change and for several other proposed transfers likely to occur this year. BEC/CSPA recommend that the EIR include the following topics:
 - a. A discussion of how the petitioner is able to make water available for transfer. Will the petitioner fallow land to make water available for transfer? How many total acres of land are being fallowed in Butte and Glenn County?
 - b. A multi-season biological survey for the aquatic and terrestrial species within SFWPA's jurisdiction, including the Swainson's hawk, giant garter snake, bank swallow, greater sandhill crane, salmon, and bald eagle. Additionally, since this portion of the county is part of a Habitat Conservation Plan/Natural Community Conservation Plan, surveys must be completed for all the species that will be in the HCP/NCCP before the petitioner considers adopting any project approvals.
 - c. A multi-season biological survey or umbrella environmental review for the Sacramento River and the Bay Delta including, but not limited to, Swainson's hawk, giant garter snake, bank swallow, greater sandhill crane, bald eagle, salmon, Sacramento splittail, delta smelt, and green sturgeon. Additionally, since the Feather River flows into the Sacramento River and the federal CVP, SFWPA should complete a National Environmental Policy Act (NEPA) review of the proposed project.
 - d. SFWPA, under its former name, Oroville-Wyandotte Irrigation District, has closely collaborated with the DWR in the development of the Sacramento Valley Integrated Regional Water Management Plan (SVIRWMP). SFWPA should provide full disclosure under CEQA and

NEPA and the opportunity to comment on the impacts of both the SVIRWMP and the proposed temporary change.

- e. A discussion of how increased flows in the 'main stem rivers' impact species, habitat, and existing conditions during the months transfers are allowed through the delta.
 - f. A discussion of third-party impacts of the proposed transfer within SFWPA's service area and within the service areas of the SWC agencies.
 - g. A discussion of any growth-inducing impacts associated with the proposed temporary change. BEC/CSPA assert that the proposed temporary change will not encourage areas receiving SWP water to practice holistic management of the resources found in their region.
2. BEC/CSPA inquire as to how ramping of releases associated with the proposed temporary change will be monitored.
 3. BEC/CSPA inquire whether impacts to the following species and their habitats have been evaluated:
 - a. Impacts to terrestrial species (such as the giant garter snake) from changes in SFWPA's operations resulting from the proposed temporary change. A discussion of how increased flows in the 'main stem rivers' impact species, habitat, and existing conditions during the months transfers are allowed through the Delta.
 - b. Impacts to avian species (such as the bank swallow and the greater sandhill crane) resulting from changes in SFWPA's operations due to the proposed temporary change.
 - c. Impacts to aquatic species (such as Delta smelt, splittail, and longfin smelt) resulting from rediversion of water at the Clifton Court Forebay associated with the proposed temporary change. BEC/CSPA noted that winter- and spring-run Chinook salmon, as well as steelhead, are listed as threatened or endangered by the State and federal government. BEC/CSPA also noted that recent court-ordered reductions in pumping generally occur during the December through June time period. Since the proposed temporary change will result in increased rediversion of water at the Clifton Court Forebay between July and October, BEC/CSPA inquire whether impacts during these months have been considered.
 - d. BEC/CSPA assert that a management plan must be prepared for special status species prior to commencement of the proposed temporary change.
 4. BEC/CSPA note that a total of 168,447 af of water (made available through following of approximately 47,450 acres) is being transferred from agricultural water users in Butte and Glenn counties during 2008. BEC/CSPA recommend that a programmatic EIR/EIS be prepared to analyze the cumulative impacts of these transfers.

State Water Board Responses

1. Water Code section 1729 states that a proposed temporary change is exempt from the requirements of CEQA. Thus, the State Water Board will not require the petitioner to prepare a CEQA document for this petition. Additionally, no acreage will be fallowed as a result of the proposed temporary change.
2. This order requires the petitioner to submit a report of the transfer by September 1, 2009. Information required by this report includes daily average release rates from Little Grass Valley Reservoir and Sly Creek Reservoir. Additionally, this order includes a term requiring SFWPA to

meet all terms and conditions imposed by other regulatory agencies, including FERC, which has ramping requirements for SFWPA's releases.

3. This Order includes several conditions intended to prevent unreasonable impacts to fish, wildlife, and other instream beneficial uses. Rediversion of water at the Clifton Court Forebay pursuant to this Order is subject to compliance by the operators with the objectives set forth in Tables 1, 2, and 3 on pages 181 to 187 of 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 (with the exception of the southern Delta salinity requirements, as stated above in Section 2.2 of this Order). Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations. Finally the release of water from both Little Grass Valley Reservoir and Sly Creek Reservoir, as well as releases of water from Oroville Reservoir resulting from the proposed temporary change, are subject to applicable FERC requirements, as recommended by DFG.
4. Water Code section 1727(d) requires the State Water Board to not deny or place conditions on a temporary change to mitigate impacts that are not caused by the temporary change. Thus, cumulative impacts from other transfers or actions are not relevant to the approval of this petition. The State Water Board has recently released a *Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Workplan). The Workplan includes a section on Water Right Compliance, Enforcement, and Other Activities to Ensure Adequate Flows to Meet Water Quality Objectives. The Workplan will be considered for adoption by the State Water Board on July 16, 2008. Written comments on the Workplan must be submitted by 12 noon on July 9, 2008, to be considered by the State Water Board. Recommendations for compliance or enforcement action regarding through-Delta transfers as it relates to this workplan should be submitted to commentletters@waterboards.ca.gov with a subject of "Bay-Delta Strategic Workplan Comments."

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 or conserved pursuant to Section 1011. (Wat. Code, § 1725 and § 1726.) The water proposed for transfer was stored by SFWPA under provisions of Permits 1267 and 2492. The operational study submitted by SFWPA indicates that, in the absence of the transfer, the water proposed for transfer would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future use by SFWPA.

In light of the above, I find in accordance with Water Code section 1726(e) that the water proposed for transfer pursuant to this order would have been stored by the permittee in the absence of the proposed temporary change.

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 potential water level or water quality impacts associated with the addition of the Clifton Court Forebay as a point of redirection to Permits 1267 and 2492 and the future refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this temporary change. Since the State Water Board issued Order WR 2008-0029-EXEC, compliance by DWR and USBR with the southern Delta salinity requirements is conditioned to allow this transfer to occur if there are no additional reasonable control measures DWR and USBR could take this summer and fall and if the redirection of water at Clifton Court Forebay resulting from this order will not unreasonably affect salinity in the southern Delta.

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).)

DFG was contacted regarding the proposed temporary change and, since the petitioner would be required to meet the ramping and other requirements of its FERC license, did not note any concerns regarding impacts to fish, wildlife, or other instream beneficial uses. This Order requires SFWPA to comply with applicable FERC requirements during the period of the proposed temporary change, as recommended by DFG. Rediversion of water at the Clifton Court Forebay 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 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 (with the exception for southern Delta salinity noted above). Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727(b)(2) that the proposed transfer will have no unreasonable effect on fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, 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 holds a hearing. 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 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

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, stored, or conserved pursuant to Water Code section 1011, in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and points of diversion under South Feather Water and Power Agency's (SFWPA) Permits 1267 and 2492 (Applications 1651 and 2778) to facilitate the transfer of up to 10,000 af of water is approved.

All existing terms and conditions of Permits 1267 and 2492 remain in effect, except as temporarily amended by the following conditions:

1. The transfer/exchange of water is limited to the period from the date of this Order through June 30, 2009.
2. The place of use of Permits 1267 and 2492 is temporarily changed as follows:

The authorized place of use is expanded to include the service area of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629).

3. The Oroville Dam, the Clifton Court Forebay, and the Barker Slough Pumping Plant are temporarily added as points of diversion under Permits 1267 and 2492. Diversion of water at the Clifton Court Forebay and the Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations.

Diversion of water at the Clifton Court Forebay 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 during the period of this temporary change in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay as a point of diversion to Permits 1267 and 2492 pursuant to this Order will not unreasonably affect salinity in the southern Delta, then the diversion of water at the Clifton Court Forebay under Permits 1267 and 2492 may occur.

4. Salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under Permits 1267 and 2492.
5. During the period of the transfer, permittee shall comply with applicable terms and conditions imposed by other regulatory agencies, including the Federal Energy Regulatory Commission. This Order shall not be construed as authorizing the violation of any agreement entered into by the petitioner.
6. The criteria delineated in the *Agreement Among the Department of Water Resources, State of California, Antelope Valley-East Kern Water Agency, et al, and South Feather Water & Power Agency for Storage and Conveyance of 2008 Transfer Water* shall govern the conditions under which the excess storage capacity in Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this transfer is refilled.

7. By September 1, 2009, SFWPA shall provide to the Chief of the Division of Water Rights a report describing the transfer of water approved by this order. This report shall include the following information:
- a. The daily average release rates and corresponding volumes of the transferred water from Little Grass Valley Reservoir, Sly Creek Reservoir, Ponderosa Reservoir, and Oroville Reservoir, reported on a daily basis;
 - b. The daily average pumping rate and corresponding volume of water pumped at the Clifton Court Forebay and the Barker Slough Pumping Plant; and
 - c. The value of the Transfer Account Balance as defined in the Refill Agreement (reported on a daily basis).

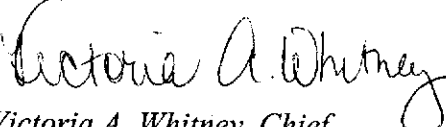
Should the value of the Transfer Account Balance exceed zero at the time of this report, SFWPA shall submit subsequent reports by August 1 of each year until the Transfer Account Balance equals zero. These reports shall include the daily values of the Transfer Account Balance.

8. 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.

9. 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.
10. 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


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JUL - 3 2008**