

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 20749 (Application 20245)

**of Contra Costa Water District**

and

Central Valley Project Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316)

**of United States Bureau of Reclamation**

**AMENDED ORDER APPROVING CHANGES  
IN POINT OF DIVERSION AND REDIVERSION AND PURPOSE OF USE  
AND ISSUING AMENDED PERMIT 20749  
AND  
ORDERS SUPERSEDING AND REPLACING ORDERS DATED  
JULY 18, 1994 AMENDING PERMITS TO CONFORM WITH  
DECISION NO. 1629**

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SOURCE: Victoria Canal tributary to Old River

COUNTIES: Contra Costa and San Joaquin

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**WHEREAS:**

1. The State Water Resources Control Board (State Water Board) adopted Decision 1629 (D1629) on June 2, 1994, which conditionally approved water right Application 20245 of Contra Costa Water District (CCWD). The Division of Water Rights (Division) subsequently issued Permit 20749 to CCWD on July 6, 1994.
2. Permit 20749 authorizes the collection to storage of 95,850 acre-feet (af) in Los Vaqueros Reservoir from November 1 of each year through June 30 of the succeeding year. The maximum rate of diversion to offstream storage in Los Vaqueros Reservoir is 200 cubic feet per second (cfs). The point of diversion is located at CCWD's existing intake facility on Old River and the point of redirection is located at Los Vaqueros Reservoir. Diversion of water is authorized for municipal, industrial, domestic, irrigation, recreation, incidental fish and wildlife preservation and/or enhancement, and water quality purposes.
3. The State Water Board issued Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 to the United States Bureau of Reclamation (collectively "Reclamation permits") pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858A, 15374, 15375, 16767, 17374, 17376, 19304, 22316 and 18115, respectively. These Reclamation permits cover a portion of operations

of the Central Valley Project (CVP) and include points of diversion/redirection at existing intake facilities on Old River and Rock Slough.

4. CCWD also holds License 10514 (Application 5941) and Permit 19856 (Application 27893) for diversion from Mallard Slough. Although License 10514 and Permit 19856 are not part of the present petition, there are combined right limits for all rights combined of CCWD and Reclamation that refer to this license and permit and are included in this order.
5. Reclamation relies on the seventeen Reclamation Permits to serve CVP water to CCWD pursuant to Water Service Contract 175r-3401A-LTR1. CCWD diverts its CVP contract water at the existing intake facilities on Rock Slough and Old River. The Rock Slough facility is owned by Reclamation and operated by CCWD. CCWD owns and operates the Old River and Mallard Slough intake facilities.
6. The maximum combined rate of diversion at Old River under the Reclamation permits and CCWD Permit 20749 is 250 cfs. The maximum combined rate of diversion at Rock Slough under Reclamation Permits 12725, 12726 and 15735 is 350 cfs.
7. On August 9, 2007, CCWD and Reclamation jointly filed petitions to add a new point of diversion at CCWD's "Alternative Intake Project" (AIP) on Victoria Canal to CCWD's Permit 20749 and to add the AIP Victoria Canal diversion as a new point of diversion and/or redirection to the Reclamation permits. The purpose of the AIP is to improve the quality of water available for diversion. The project named in the petitions will include an intake and pump station on Victoria Canal, levee improvements at the pump station site, and a conveyance pipeline across Victoria Island to CCWD's existing conveyance facilities on Byron Tract. The Petitioners seek a maximum rate of diversion from Victoria Canal of 250 cfs. The Petitioners also seek a maximum combined rate of diversion from both the existing Old River diversion facility and the new AIP facility on Victoria Canal of 320 cfs.
8. Public notice of the change petitions was issued by the Division on October 19, 2007. Protests were filed by Department of Fish and Game (DFG), Department of Water Resources (DWR), West Side Irrigation District (WSID), and Stockton East Water District (SEWD). The DWR and WSID protests were resolved on April 25, 2008 and May 28, 2008, respectively, based on agreement by CCWD and Reclamation concerning inclusion of certain terms in any order issued on the petitions. On May 28, 2008, the SEWD protest was resolved based on CCWD and Reclamation's agreement to withdraw the petitions on Permits 16597 and 16600.<sup>1</sup> On September 2, 2009, the DFG protest on the CCWD water right was resolved based on agreement by CCWD for inclusion of certain conditions in any order issued on CCWD Permit 20749. On September 29, 2009, CCWD and WSID entered into a letter agreement for the inclusion of a term in any order issued on the petitions and for dismissal of WSID's protest to the petitions. The protest dismissal terms and conditions are listed in the order section below. The protests are dismissed.
9. The DFG protest dismissal agreement, term 3, proposes to change the requirement to install a fully operational fish screen on Rock Slough by October 1, 1998. (Decision 1629, term 11, pp. 89, 90.) The existing condition requires that after March 1997, water shall be diverted under Permits 12725, 12726, and 15735 (Applications 9266, 9367 and 22316) only at the Old River intake between January 1 and August 31 unless other points of diversion authorized under this permit are approved by DFG and USFWS. The required fish screen has not been built.

In lieu of this condition, DFG proposes a relaxation of the criteria to allow for installation of a fish screen once customer demand reaches 160,000 af per year, or implementation of a subsequent



<sup>1</sup> Although Permits 16597 and 16600 will not be modified because the petitions were withdrawn, the combined water right caps for the Los Vaqueros Reservoir Project include those permits since they were part of the original project.

project that changes Los Vaqueros Project Operations occurs, or the end of 2018, if neither of the other options has occurred. In other words, fish screen installation may be delayed by up to 20 years. The petition did not request to change the date when a fish screen must be installed at Rock Slough. Therefore, the terms will be modified only to add reference to the Victoria Canal diversion.

10. On July 16, 2009 CCWD and Reclamation jointly filed petitions to include incidental power generation as a purpose of use under CCWD Permits 20749 and 20750 (Applications 20245 and 25516A) and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316). The incidental power will be generated at the Los Vaqueros Pipeline Energy Recovery (LVPER) facility, adjacent to the Contra Costa Canal Pumping Plant No. 4. Public notice of these petitions was not issued pursuant to California Code of Regulations, title 23, section 795(a). Addition of incidental hydropower generation using water routed through the existing Los Vaqueros pipeline will not change the timing, location, amount, or rate of diversions under the permits. The proposed project adds incidental power as a use and does not otherwise change the use of the water diverted. CCWD and Reclamation notified DFG of the proposed change and DFG did not object.
11. CCWD and Reclamation served as joint lead agencies for preparation of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the AIP pursuant to the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). On November 15, 2006, CCWD certified the Final EIR/EIS (and approved the project). On May 2, 2008, Reclamation signed the Record of Decision for the project.
12. The State Water Board is a responsible agency for purposes of considering whether to approve the change petitions that will allow CCWD to proceed with the proposed AIP. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the EIR/EIS in deciding whether to approve the petitions for the AIP project.
13. CCWD's environmental review was limited to impacts associated with the proposed change petitions, i.e., the impacts associated with construction and operation of the new diversion facility on Victoria Canal. Consequently, the State Water Board's approval of the change petitions must be similarly limited in scope. Because in-channel construction activities on the AIP are complete (see CCWD January 26, 2010 email) the orders and amended permit approving the AIP will only include mitigation terms from the EIR/EIS covering on-going operation of the AIP. The State Water Board will issue an NOD within five days of the date of this order.
14. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the change petitions with the inclusion of protest dismissal terms and mitigation measures from the EIR/EIS to minimize impacts to biological resources will have any adverse impacts on public trust resources.
15. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition will be placed in the permits making the Permittees aware of possible obligations resulting from these acts.
16. Pursuant to the California Endangered Species Act, DFG issued Incidental Take Permit No. 2081-2009-013-03 which expires on December 31, 2018.

17. Pursuant to the federal Endangered Species Act, the AIP's impacts to fish and wildlife are set forth in the United States Fish and Wildlife Service's Biological Opinion issued on April 27, 2007 and National Marine Fisheries Service's Biological Opinion issued on July 3, 2007.
18. Term 5 on page 94 of State Water Board Decision 1629 (the "special Delta Term") applies fully to all diversions made under Permit 20749.
19. On February 13, 2009, CCWD filed a Notice of Exemption for the proposed LVPER project. The project is considered exempt under CEQA Guidelines Section 15328 which exempts small hydroelectric projects at existing facilities, provided that the capacity of the proposed facility is five megawatts or less, will not be located in an environmentally sensitive area, and will not adversely impact water quality or fish habitat. Further, as defined in 18 CFR 380.4(a)(14), exemptions for small conduit hydroelectric facilities have been determined by the Federal Energy Regulatory Commission (FERC) to not have a significant effect on the human environment, either individually or cumulatively. Therefore, these projects do not require the preparation of an Environmental Assessment or an EIS in compliance with the NEPA. As defined by FERC, consideration of the environmental effects of a small conduit hydroelectric facility is limited to the area contained within the project boundaries. The proposed project meets FERC Conduit Exemption requirements as it does not change the timing, location or amount of water delivered through the existing Los Vaqueros pipeline conveyance system and is entirely located on non-federally owned property with the exception of the buried power line. Reclamation will approve a categorical exclusion for the buried power line and interconnection to Contra Costa Canal Pumping Plant No. 4 that is located on its property. The State Water Board will issue an NOE for the incidental power project.
20. The State Water Board has determined that the addition of the Victoria Canal point of diversion and/or redirection and the addition of incidental power as a purpose of use as requested in the petitions for change does not constitute the initiation of new water rights and does not operate to the injury of any other lawful user of water. Approval of the additional point of diversion and/or redirection does not authorize any additional water diversion. Moreover the projects do not have any adverse impacts on public trust resources.
21. The State Water Board has delegated the authority to act on change petitions to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057. (Resolution No. 2007-0057, section 4.2.9) Resolution No. 2007-0057 authorizes the Deputy Director to redelegate this authority to the Assistant Deputy Director for Water Rights. This authority has been so redelegated.
22. On July 18, 1994, the Division issued individual Orders Amending Permit for each Reclamation permit to conform with Decision No. 1629 for the Reclamation water rights affected by this order. The current petitions modify some, but not all, conditions of those orders. To simplify future reference to the orders, the July 18, 1994 orders shall be superseded and replaced with new orders including the terms listed below.
23. An amended Permit 20749 shall be issued, which incorporates the terms of the order below.

**ORDER**

**THEREFORE, IT IS HEREBY ORDERED THAT CONTRA COSTA WATER DISTRICT'S PERMIT 20749 (APPLICATION 20245) IS AMENDED AS FOLLOWS:**

The following list of acronyms shall be added to Permit 20749:

- Department of Fish and Game - DFG
  - National Marine Fisheries Service – NMFS
  - Alternate Intake Project – AIP
  - U.S. Fish and Wildlife Service – USFWS
  - Department of Water Resources – DWR
  - U.S. Bureau of Reclamation – Reclamation
  - State Water Resources Control Board – State Water Board
  - Division of Water Rights – Division
  - Contra Costa Water District – CCWD
1. The attached Amended Permit 20749 is issued, superseding former Permit 20749 issued on July 6, 1994. The priority of Amended Permit 20749 is June 5, 1961.
  2. The following shall be added as a source in Condition 1 of the permit:  
  
Victoria Canal tributary to Old River thence San Joaquin Delta Channels
  3. The County of San Joaquin shall be added to Condition 1 of the permit.
  4. The following shall be added as a Point of Diversion in Condition 2 of the permit:  
  
Victoria Canal Intake, California Coordinate System of 1983 in Zone 3: North 2,139,610 feet and East 6,259,970 feet, being within NE ¼ of NW ¼ of Section 9, T1S, R4E, MDB&M.
  5. Condition 5 of the permit is amended as follows:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 95,850 acre-feet per annum to be collected from November 1 of each year to June 30 of the succeeding year.

(0000005)

The combined instantaneous maximum rate of diversion to offstream storage from Old River and Victoria Canal shall not exceed 200 cubic feet per second.

(000005J)

6. The condition of the permit related to the purpose of use shall be amended to include incidental hydroelectric power generation at: California Coordinates, NAD 83, Zone 3, North 2,182,439 feet and East 2,201,417 feet, being within the NW ¼ of NW ¼ of Section 34, T2N, R2E, MDB&M.
7. Condition 15 of the permit is updated as follows:

Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

8. Condition 17 of the permit is updated as follows:

In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

(0120050)

9. Condition 18 of the permit is updated as follows:

No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a Lake and Streambed Alteration Agreement between DFG and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a Lake and Streambed Alteration Agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

10. Condition 22 of the permit is amended as follows:

No water shall be diverted under this permit until Permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the flow: (1) directly diverted at Victoria Canal; (2) diverted into Los Vaqueros Reservoir from Old River and Victoria Canal; and (3) releases through or flowing out of the outlet facilities of Los Vaqueros Reservoir. Said measuring devices shall be properly maintained.

(0060046m)

11. Condition 24 of the permit is amended as follows:

The total quantity of water diverted and/or rediverted from Old River and Victoria Canal under this permit, together with that diverted under Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, 16600, and 15735, issued pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858, 15374, 15375, 16767, 17374, 17376, 18115, 19304 and 22316 shall not exceed 180,675 af per annum from Old River and Victoria Canal combined, and also shall not exceed in any one-year period commencing on March 1, the sum of (i) 177,000 af and (ii) 4,000 af to replace evaporation losses and (iii) the difference between the quantity of water in storage in Los Vaqueros Reservoir at the end of the period and the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period from Old River and Victoria Canal combined. If the quantity of water in storage in Los Vaqueros Reservoir at the end of the period is less than the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period, the change in storage shall be subtracted from the 177,000 af.

Until further order of the State Water Board, the combined maximum annual diversion shall not exceed 222,000 af per annum from Old River, Rock Slough and Victoria Canal. Any such further order of the State Water Board shall be preceded by notice to all interested parties, by opportunity for hearing, and a showing that water can be diverted in excess of 222,000 af per annum, taking into account the needs of public trust uses, senior water right holders, and other beneficial uses. Any petition seeking such a further order of the State Water Board shall be accompanied by any environmental documentation required under California law. This requirement for a further order of the State Water Board shall not preclude the Permittee from filing an appropriate petition or petitions for temporary changes or applications for temporary permits under laws existing at the time of the filing of the petition or application.

Provided, however, that if during the 12 months after the date when water is first diverted to storage in Los Vaqueros Reservoir there is adequate water available under the water rights listed

above, the combined maximum diversion during that initial 12 months shall be 252,000 af from Old River and Rock Slough.

The total quantity of water under the permits on the above water rights distributed within the authorized place of use for use by the Permittee's customers, in any one year period commencing March 1 shall not exceed 177,000 af.

(0000114)

12. Condition 31 of the permit is amended as follows:

- a) Until the Rock Slough diversion is screened, water diversion from Rock Slough will be minimized under Permits 12725, 12726, and 15735 on Applications 9366, 9367, and 22316 of Reclamation from December 1 through June 30. Permittee shall maximize use of its screened intakes, unless monitoring at the intakes indicates, and DFG, USFWS and NMFS agree, that the incidental take of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, or larvae would be less at Rock Slough than another intake, or that these species are not present at Rock Slough. Permittee shall provide to the Division written concurrence, including the calendar dates when use is authorized, from DFG, USFWS and NMFS prior to use of any unscreened facilities.
- b) During the period from March 15 through May 31 of each year, Permittee shall not divert water from the Old River or Victoria Canal points of diversion to offstream storage in Los Vaqueros Reservoir except when the reservoir storage level is less than 70,000 af in a below normal, above normal, or wet water year, or less than 44,000 af in a dry or critical water year ("emergency storage levels"). Water year types will be as defined in the February edition of the California Department of Water Resources Bulletin 120 or the Four Basin Index set forth in the permits and licenses of Reclamation. If reservoir storage is below emergency storage levels, Permittee may fill the reservoir only if: (1) Permittee has provided DFG with notification that reservoir storage is expected to be below emergency storage level and (2) DFG concurs with the proposed diversion and rate of diversion. Permittee shall provide the Deputy Director for Water Rights a minimum 15-day notification after obtaining DFG concurrence with the proposed dates and rate of diversion in advance of any diversion. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modification or proposes an alternative, the Permittee may divert at the identified rate of diversion.
- c) Beginning in the February following the first operation of the Victoria Canal diversion, Permittee shall not divert water from any of its diversions to storage in Los Vaqueros Reservoir for 15 days from February 14 through February 28, provided that reservoir storage is at or above 90,000 af on February 1. If reservoir storage is at or above 80,000 af on February 1 but below 90,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 10 days from February 19 through February 28. If reservoir storage is at or above 70,000 af on February 1, but below 80,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 5 days from February 24 through February 28.
- d) During the period April 1 to April 30, Permittee shall not divert from the Delta for use by CCWD unless Los Vaqueros Reservoir is below emergency storage levels as defined above, and will instead release up to 12,500 af of water from storage in Los Vaqueros Reservoir to meet demand in the CCWD service area. In those instances where diversions are necessary due to the reservoir being at or below emergency storage levels, Permittee may divert from the Delta only for direct use by CCWD within the CCWD service area, and no water may be diverted to storage in Los Vaqueros Reservoir.
- e) The Permittee may submit to DFG, USFWS and NMFS by January 1 of each year, a proposal for modifying the dates of conditions (b), (c), and (d) to better protect threatened or endangered species. DFG may approve modification of the dates for the periods when the

reservoir filling is to be avoided and the periods when no diversion shall occur if DFG determines the proposed modification of dates will be more effective in minimizing take of delta smelt and longfin smelt. If no response from DFG is received, Conditions (b), (c), and (d) shall apply. Condition (c) is a condition of DFG only. In addition, prior to modifying the dates of conditions (b) and (d), the concurrence of USFWS and NMFS is required. Permittee shall by February 15, or immediately if after February 15, notify the Deputy Director for Water Rights of the time period modifications for that year. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modifications or proposes an alternative, the Permittee shall implement the modifications.

13. The following condition shall be added to the permit:

The maximum instantaneous combined rate of diversion for all diversions from Mallard Slough, Rock Slough, Old River and Victoria Canal under CCWD's Permit 20749 and License 10514 (Application 5941), and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 shall not exceed: 540 cfs for the months of June, July, August, September and October; 410 cfs for the months of November, December, January, February and March; and 470 cfs for April and May; the maximum rate of diversion from Victoria Canal shall not exceed 250 cfs; and the maximum combined rate of diversion from Old River and Victoria Canal shall not exceed 320 cfs.

14. The following condition shall be added to the permit:

If DFG, USFWS, or NMFS notifies CCWD that a change in the periods described in condition 12(b) or condition 13 above is desirable, then CCWD will, no later than January 15 of any year, provide the Division with a written request to modify the condition and any change approved by the Division shall be implemented.

15. The following condition shall be added to the permit:

Permittee shall, during construction of the Victoria Canal Intake facility, implement measures to prevent a measurable increase in turbidity at the Victoria Canal Intake that could result in an exceedance of specified turbidity criteria contained in any permits, license, or court orders for Reclamation's Central Valley Project or DWR's State Water Project.

16. The following condition shall be added to the permit:

Permittee shall comply with the following:

- a) Diversions at Victoria Canal Intake under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 of Reclamation can be made only when no adverse impact in water levels or water quality resulting from said diversions is detected at West Side Irrigation District (WSID) diversion points.
- b) The State Water Board reserves jurisdiction over the permits providing for diversions from the new intake at Victoria Canal for such additional time as necessary to determine if use of said point of diversion adversely impacts the water supply or water quality available to WSID. The State Water Board shall, after giving due notice thereof, make any further orders that it finds to be necessary concerning proper use of the point of diversion, and impose conditions providing for additional measurements or studies as it may deem necessary.
- c) Until further order of the State Water Board, CCWD shall make or cause to be made suitable field investigations, measurements, and studies, and shall install necessary measuring facilities, to determine the impact of diversions from the Victoria Canal Intake under permits

granted or amended by this order on water levels and water quality in the vicinity of WSID's diversion points and as otherwise required to fully comply with the provision of these permits. CCWD shall submit to the State Water Board, at such times as the Board may require, a report of such investigations, measurements, and studies and the results thereof. CCWD shall make its records of such investigations and measurements available for inspection by the State Water Board and shall allow authorized representatives of the State Water Board reasonable access to project works and properties for the purpose of gathering information and data.

17. The following condition shall be added to the permit:

The Victoria Canal Intake Facility screened diversion shall be constructed and shall be continuously functioning prior to and during any diversion operation on the Victoria Canal. Permittee shall construct, operate, and maintain fish screens and fish screen cleaning systems at the Old River and Victoria Canal Intake facilities which conform with the fish screening system design criteria identified by DFG in its Incidental Take Permit. In addition, an average approach velocity of 0.2 feet per second shall be maintained at the screen in accordance with the reasonable and prudent measures in the USFWS delta smelt opinions for the Los Vaqueros Project (USFWS 1993a, as clarified and modified, Reclamation 1993) and the Victoria Canal Intake Facility (USFWS 2007).

18. The following condition shall be added to the permit:

The effectiveness of the no-fill and no-diversion timing and conditions to protect smelt in their various life stages shall be determined by an expanded monitoring program. Permittee shall continue to utilize the DFG approved Rock Slough Expanded Monitoring Program (circa 2003), Revised Biological Monitoring Program for the Old River Fish Screen Facility (circa 2000) and the Proposed Program to Sample the Overflow Structure at the CCWD Mallard Slough Pumping Plant (circa 2000). Permittee will monitor at Victoria Canal in a manner consistent with the methods approved by DFG for the Old River Fish Screen Facility. Additionally, to provide an indication of the possible presence of larval longfin and delta smelt, Permittee will perform additional plankton net sampling at Old River, Rock Slough and Victoria Canal. To provide an indication of the presence of the estuarine food-chain, Permittee will begin a program of zooplankton net sampling at Old River, Rock Slough and Victoria Canal. A summary of the real time monitoring for adults, juveniles, and larvae present near CCWD intakes and water quality data shall be transmitted at the beginning and middle of each month to DFG. The above monitoring data will be used by Permittee to determine diversion of water at the Rock Slough, Old River, Victoria Canal, and Mallard Slough intakes. The monitoring information may be used to recommend changes to permit Conditions 31(b), 31(c), and 31(d) or as a trigger for other measures such as diversion reductions for the protection of the species identified by this permit. An annual summary of all collected information shall be submitted to DFG and the Division by October 31 of each year.

19. The following condition shall be added to the permit:

By August 1, 2010 and every three years subsequently, Permittee shall submit an updated study plan to DFG and the Division for approval to determine the presence of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, and larvae at all CCWD intakes. DFG and the Division shall provide written comments and requests regarding the adequacy of the submitted study plan and its elements by September 1 of each year in which an updated study plan is submitted. Permittee shall resubmit a revised study plan that addresses DFG's and the Division's comments and requests by October 1 of each year in which an updated study plan is submitted. This study plan must be acceptable to and must be approved by DFG and the Division prior to November 1 of each year in which an updated study plan is submitted. If the Division does not respond in writing within 30 days, the study plan shall be considered approved by the Division. This continuous study shall begin by November 1 and shall continue

until June 30 unless an alternative schedule is agreed to by DFG and the Division. A summary of the results of each study shall be transmitted to DFG and the Division in accordance with the schedule contained within the approved study plan. Fish sampling techniques and handling procedures shall be done so that fish mortality is minimized. Permittee shall coordinate with the ongoing Interagency Ecological Studies Program (IEP), and make its monitoring data available upon request by the IEP.

20. The following condition shall be added to the permit:

In-channel maintenance and repair operations on the Old River and Victoria Canal intakes shall take place from September 1 through November 15, except as approved by DFG and the Division. If emergency in-channel maintenance and repairs of the Old River or Victoria Canal intakes are required, DFG and the Division shall be notified within 48 hours.

21. The following condition shall be added to the permit:

Permittee shall relocate one agricultural diversion from the channel to behind the Victoria Canal fish screen, thereby screening the one 16-inch agricultural diversion and reducing overall entrainment potential at the agricultural siphon to help mitigate for the entrainment of delta smelt and longfin smelt. This will reduce overall entrainment potential at the agricultural siphon.

22. The following condition shall be added to the permit:

Delta smelt and longfin smelt habitat impacted by diversion operations during the term of this permit shall be mitigated by the acquisition and enhancement of 36 acres of shallow water tidal habitat approved by DFG that shall be maintained in perpetuity. The habitat shall be acquired or financial assurances provided to DFG prior to operation of the Victoria Canal Intake.

23. The following condition shall be added to the permit:

If DFG, pursuant to Fish and Game Code section 2081, amends the Incidental Take Permit or issues a new Incidental Take Permit with modified terms, Permittee shall petition the Division to amend the permit, as needed to conform to the new Incidental Take Permit.

24. The following condition shall be added to the permit:

To compensate for the loss of 0.7 acres of shallow water habitat, CCWD shall acquire, conserve, fund, and manage at least 2.1 acres of shallow water habitat at a mitigation bank or other location approved by USFWS, DFG, and NMFS. If 2.1 acres cannot be acquired prior to project impacts, CCWD shall provide DFG the following prior to construction: (1) an irrevocable letter of credit or other form of security approved by USFWS, DFG, and NMFS in the amount of \$73,500 to cover the costs of land acquisition, land conservation, and land management planning and (2) payment in the amount of \$10,500 for use as principal for a permanent capital endowment.

25. The following condition shall be added to the permit:

To prevent temporary degradation of surface water quality as a result of contaminant releases and runoff during construction, construction activities must comply with the Stormwater Pollution Prevention Plan prepared in July, 2008.

26. The following condition shall be added to the permit:

To mitigate for the loss of 0.8 acres of seasonal wetland, CCWD shall construct 1.6 acres of seasonal wetland at the Holland Tract Preserve.

27. The following condition shall be added to the permit:

Nothing in this permit shall alter the relative priority of diversions under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 of Reclamation from that contained in State Water Board Decision 1629.

28. The following condition shall be added to the permit:

This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that 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 water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

29. All other conditions of Permit 20749 not specifically modified or added by this Order are still applicable.
30. An amended Permit 20749 shall be issued. The term numbers in the amended permit reflect changes in the Division's standard format and do not match the numbers in the original permit.

**IT IS FURTHER ORDERED THAT:**

The July 18, 1994 Orders Amending U.S. Bureau of Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316) to Conform with Decision No. 1629 are hereby superseded by the attached Orders Amending Permits to Conform with Decision No. 1629 and the August 9, 2007 and July 16, 2009 Petitions to Change.

STATE WATER RESOURCES CONTROL BOARD

*for James W. Kassel*  
*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: JUL - 8 2010

Attachment

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

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**AMENDED PERMIT 20749**

Application 20245 of

Contra Costa Water District  
P.O. Box H2O  
Concord, CA 94524

filed on **June 5, 1961**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

Tributary to:

(1) Old River
(2) Victoria Canal

San Joaquin Delta Channels
Old River thence
San Joaquin Delta Channels

within the Counties of **Contra Costa** and **San Joaquin**.

2. Location of points of diversion and rediversion

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Projected Section	Township	Range	Base and Meridian
(1) <u>Old River Intake</u> North 2,147,455 feet and East 6,250,918 feet	NW ¼ of SE ¼	31	1N	4E	MD
(2) <u>Victoria Canal Intake</u> North 2,139,610 feet and East 6,259,970 feet	NE ¼ of NW ¼	9	1S	4E	MD
<u>Point of Rediversion</u> <u>Los Vaqueros Dam</u> North 2,129,559 feet and East 6,207,039 feet	NW ¼ of NW ¼	23	1S	2E	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres	
<b>Incidental Fish and Wildlife Preservation and/or Enhancement</b>							
<b>Water Quality</b>							
<b>Recreation</b>							
<b>Domestic</b>							
<b>Municipal</b>							
<b>Industrial</b>							
<b>Irrigation</b>	<b>Contra Costa Water District, Pittsburg, Antioch, Brentwood, Oakley, Los Vaqueros recreation area, and rural county subarea</b>			<b>2S 1S 1N 2N 3N</b>	<b>3W 2W 1W 1E 2E 3E 4E</b>	<b>MD</b>	<b>931</b>
<b>Incidental Hydroelectric Power Generation</b>	<b>Los Vaqueros Pipeline Energy Recovery facility within NW ¼ of NW ¼ of</b>	<b>34</b>	<b>2N</b>	<b>2E</b>	<b>MD</b>		

The place of use is shown on maps filed with the State Water Board.

The following list of acronyms shall be added to Permit 20749:

- Department of Fish and Game - DFG
  - National Marine Fisheries Service – NMFS
  - Alternate Intake Project – AIP
  - U.S. Fish and Wildlife Service – USFWS
  - Department of Water Resources – DWR
  - U.S. Bureau of Reclamation – Reclamation
  - State Water Resources Control Board – State Water Board
  - Division of Water Rights – Division
  - Contra Costa Water District – CCWD
5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **95,850** acre-feet per annum to be collected from **November 1** of each year to **June 30** of the succeeding year.

(0000005C)

The combined instantaneous maximum rate of diversion to offstream storage from Old River and Victoria Canal shall not exceed **200 cubic feet per second**.

(0000005J)

6. The maximum instantaneous combined rate of diversion for all diversions from Mallard Slough, Rock Slough, Old River and Victoria Canal under CCWD's Permit 20749 and License 10514 (Application 5941), and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 shall not exceed: **540 cubic feet per second** for the months of June, July, August, September and October; **410 cubic feet per second** for the months of November, December, January, February and March; and **470 cubic feet per second** for April and May; the maximum rate of diversion from Victoria Canal shall not exceed **250 cubic feet per second**; and the maximum combined rate of diversion from Old River and Victoria Canal shall not exceed **320 cubic feet per second**.

(0000006)

7. Construction work shall be completed by December 31, 1999.

(0000008)

8. Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2025.

(0000009)

9. Permittee shall consult with the Division and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.

All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.

(0000029A)

10. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

11. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until DWR has approved the plans and specifications for the dam.

(0360048)

12. In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

(0120050)

13. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.

(0000080)

14. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento - San Joaquin Delta are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

15. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, or by the State Water Board.

(0000100)

16. No water shall be diverted under this permit until Permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the flow: (1) directly diverted at Victoria Canal; (2) diverted into Los Vaqueros Reservoir from Old River and Victoria Canal; and (3) releases through or flowing out of the outlet facilities of Los Vaqueros Reservoir. Said measuring devices shall be properly maintained.

(0060046m)

17. Permittee shall maintain a daily record of direct diversion and collection to storage under this permit and submit such record to the Division on an annual basis, on or before March 1. The record of water use under this permit may not be combined with diversion or storage records for water use under other rights maintained by the Permittee.

(0090900)

18. The total quantity of water diverted and/or rediverted from Old River and Victoria Canal under this permit, together with that diverted under Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, 16600, and 15735, issued pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858, 15374, 15375, 16767, 17374, 17376, 18115, 19304 and 22316 shall not exceed 180,675 acre-feet per annum from Old River and Victoria Canal combined, and also shall not exceed in any one-year period commencing on March 1, the sum of: (i) 177,000 acre-feet; (ii) 4,000 acre-feet to replace evaporation losses; and (iii) the difference between the quantity of water in storage in Los Vaqueros Reservoir at the end of the period and the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period from Old River and Victoria Canal combined. If the quantity of water in storage in Los Vaqueros Reservoir at the end of the period is less than the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period, the change in storage shall be subtracted from the 177,000 acre-feet.

Until further order of the State Water Board, the combined maximum annual diversion shall not exceed 222,000 acre-feet per annum from Old River, Rock Slough and Victoria Canal. Any such further order of the State Water Board shall be preceded by notice to all interested parties, by opportunity for hearing, and a showing that water can be diverted in excess of 222,000 acre-feet per annum, taking into account the needs of public trust uses, senior water right holders, and other beneficial uses. Any petition seeking such a further order of the State Water Board shall be accompanied by any environmental documentation required under California law. This requirement for a further order of the State Water Board shall not preclude Permittee from filing an appropriate petition or petitions for temporary changes or application(s) for temporary permits under laws existing at the time of the filing of the petition or application.

Provided, however, that if during the 12 months after the date when water is first diverted to storage in Los Vaqueros Reservoir there is adequate water available under the water rights listed above, the combined maximum diversion during that initial 12 months shall be 252,000 acre-feet from Old River and Rock Slough.

The total quantity of water under the permits on the above water rights distributed within the authorized place of use for use by Permittee's customers, in any one year period commencing March 1 shall not exceed 177,000 acre-feet.

(0000114m)

19. Permittee shall comply with all legally binding requirements of DFG, USFWS, and NMFS imposed under either the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544) or the California Endangered Species Act (Fish and Game Code Sections 2050 to 2098), with respect to the Los Vaqueros Project.

(0600500)

20. Permittee shall comply with the "Programmatic Agreement Among the U.S. Bureau of Reclamation, Contra Costa Water District, the California State Historic Preservation Office and the Advisory Council on Historic Preservation Regarding the Implementation of the Los Vaqueros Project", executed on February 3, 1993, and shall comply with it as it may be amended in the future. Permittee also shall comply with all historic property treatment plans prepared under the Programmatic Agreement.

Permittee shall continue to consult with Reclamation, U.S. Army Corps of Engineers, the Deputy Director for Water Rights, the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding cultural resources until all stipulations of the Programmatic Agreement have been completed to the satisfaction of the agencies. Permittee also shall comply with the "Procedure for the Protection of Historic and Cultural Properties" (36 CFR 60) and the implementing regulations of the Advisory Council on Historic Preservation, 36 CFR 800.

Permittee shall comply with the Memorandum of Understanding executed July 21, 1993 between CCWD and seven of the Native Americans Most Likely Descendants regarding treatment of Native American human remains and the selection of Native American monitors.

(0430300)

21. Permittee shall comply with mitigation measures 7-1 through 7-19 and 8-1 through 8-12 set forth at pages 19-5 through 19-8 of the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) dated September 27, 1993. Permittee also shall comply with mitigation measures 1 through 13 under "Additional Environment Commitments Related to the Fish and Wildlife Coordination Act Report" set forth at pages 19-13 through 19-14 of the Final EIR/EIS. The Deputy Director for Water Rights may grant a variance from any of these mitigation measures after making a finding that the variance will have no significant adverse effect on the environment. Any request for a variance shall include the reasons for the variance, environmental information necessary to demonstrate that it will not adversely affect the environment, and proof that Permittee has notified all interested parties of the request.

(0400500)

22. Permittee shall in cooperation with Reclamation implement the mitigation monitoring and reporting measures for Bay-Delta fishery resources, Bay-Delta water quality, vegetation resources, wildlife resources, cultural resources, and to comply with the Fish and Wildlife Coordination Act (16 U.S.C. Section 661 et seq.), which are set forth in the Environmental Commitments and Mitigation Monitoring Reporting Plan for the Los Vaqueros Project Stage 2 Environmental Impact Report/Environmental Impact Statement, dated October 27, 1993. Permittee in cooperation with Reclamation shall provide a report to the Deputy Director for Water Rights by April 1 of each year detailing the results of the previous year's monitoring, plans for the current year's monitoring, and the status of implementation of each mitigation measure required by this decision.

(0400500)

23. No diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An adverse effect shall be deemed to result from Permittee's diversion at any time Reclamation and DWR have declared the Delta to be in balanced water conditions under the Coordinated Operation

Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or rediversion of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law.

(0350900)

24. Permittee shall minimize increased levels of suspended sediments discharged to Old River during construction, maintenance and repair of the Old River Intake Facility and minimize loss of fish and riparian wildlife at the Old River intake facility construction site by: (1) installing floating silt curtains, silt fences, stormwater detention facilities, and other appropriate sediment control facilities; (2) mapping existing riparian/aquatic fish habitat prior to construction and taking steps to avoid losses to existing habitat during facility construction as much as possible; and (3) reestablishing suitable new habitat on newly constructed or existing levees to compensate for unavoidable losses. Further, Permittee shall perform all construction, maintenance and repair operations on the Old River intake facility only during the period from September 1 through December 30 of each year, unless USFWS and DFG authorized these activities during other periods. Best management practices shall be used to minimize direct and indirect impacts to fish and wildlife.

(0400500)

25. (a) Until the Rock Slough diversion is screened, water diversion from Rock Slough will be minimized under Permits 12725, 12726, and 15735 on Applications 9366, 9367, and 22316 of Reclamation from December 1 through June 30. Permittee shall maximize use of its screened intakes, unless monitoring at the intakes indicates, and DFG, USFWS and NMFS agree, that the incidental take of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, or larvae would be less at Rock Slough than another intake, or that these species are not present at Rock Slough. Permittee shall provide to the Division written concurrence, including the calendar dates when use is authorized, from DFG, USFWS and NMFS prior to use of any unscreened facilities.
- (b) During the period from March 15 through May 31 of each year, Permittee shall not divert water from the Old River or Victoria Canal points of diversion to offstream storage in Los Vaqueros Reservoir except when the reservoir storage level is less than 70,000 acre-feet in a below normal, above normal, or wet water-year, or less than 44,000 acre-feet in a dry or critical water-year ("emergency storage levels"). Water-year types will be as defined in the February edition of DWR Bulletin 120 or the Four Basin Index set forth in the permits and licenses of Reclamation. If reservoir storage is below emergency storage levels, Permittee may fill the reservoir only if: 1) Permittee has provided DFG with notification that reservoir storage is expected to be below emergency storage level and 2) DFG concurs with the proposed diversion and rate of diversion. Permittee shall provide the Deputy Director for Water Rights a minimum 15-day notification after obtaining DFG concurrence with the proposed dates and rate of diversion in advance of any diversion. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modification or proposes an alternative, the Permittee may divert at the identified rate of diversion.
- (c) Beginning in the February following the first operation of the Victoria Canal diversion, Permittee shall not divert water from any of its diversions to storage in Los Vaqueros Reservoir for 15 days from February 14 through February 28, provided that reservoir storage is at or above 90,000 acre-feet on February 1. If reservoir storage is at or above 80,000 acre-feet on February 1 but below 90,000 acre-feet, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 10 days from February 19 through February 28. If reservoir storage is at or above 70,000 acre-feet on February 1, but below 80,000 acre-feet, Permittee shall not divert water to storage in Los Vaqueros Reservoir for five days from February 24 through February 28.
- (d) During the period April 1 to April 30, Permittee shall not divert from the Delta for use by CCWD unless Los Vaqueros Reservoir is below emergency storage levels as defined above, and will instead release up to 12,500 acre-feet of water from storage in Los Vaqueros Reservoir to meet

demand in the CCWD service area. In those instances where diversions are necessary due to the reservoir being at or below emergency storage levels, Permittee may divert from the Delta only for direct use by CCWD within the CCWD service area, and no water may be diverted to storage in Los Vaqueros Reservoir.

- (e) Permittee may submit to DFG, USFWS and NMFS by January 1 of each year, a proposal for modifying the dates of conditions (b), (c), and (d) to better protect threatened or endangered species. DFG may approve modification of the dates for the periods when the reservoir filling is to be avoided and the periods when no diversion shall occur if DFG determines the proposed modification of dates will be more effective in minimizing take of delta smelt and longfin smelt. If no response from DFG is received, Conditions (b), (c), and (d) shall apply. Condition (c) is a condition of DFG only. In addition, prior to modifying the dates of conditions (b) and (d), the concurrence of USFWS and NMFS is required. Permittee shall by February 15, or immediately if after February 15, notify the Deputy Director for Water Rights of the time period modifications for that year. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modifications or proposes an alternative, Permittee shall implement the modifications.

(0400500)

26. If DFG, USFWS, or NMFS notifies CCWD that the periods described in permit terms 6 or 25(b) is desirable, then CCWD will, no later than January 15 of any year, provide the Division with a written request to modify the condition and any change approved by the Division shall be implemented.

(0400500)

27. Permittee shall construct, operate and maintain a fish screen and fish screen cleaning system at the Old River Intake Facility, satisfactory to DFG, USFWS and NMFS. The fish screen facility shall be constructed and made fully operational prior to operation of the Old River Intake Facility and by not later than January 1, 1997. In addition, the screen facility shall be designed and operated to achieve an average water approach velocity no greater than 0.2 feet per second for a 3/32" vertical slotted screen opening, and be operated to effectively screen fish greater than 21 millimeters long.

(0400500)

28. To avoid construction impacts to Swainson's hawks, surveys shall be conducted weekly beginning the first week of April through May 15 by a biologist acceptable to DFG to determine if any nesting is occurring within ½ mile of the Old River diversion point, and to determine whether there is any suitable nesting habitat within ½ mile. If nesting is occurring within ½ mile, construction may not be initiated or continued until August 15 without additional consultation with DFG. This term shall expire upon completion of construction.

(0400500)

29. Permittee shall, during construction of the Victoria Canal Intake Facility, implement measures to prevent a measurable increase in turbidity at the Victoria Canal Intake that could result in an exceedance of specified turbidity criteria contained in any permits, license, or court orders for Reclamation's Central Valley Project or DWR's State Water Project.

(0300800)

30. Permittee shall comply with the following:

- a) Diversions at Victoria Canal Intake under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 of Reclamation can be made only when no adverse impact in water levels or water quality resulting from said diversions is detected at West Side Irrigation District (WSID) diversion points.

- b) The State Water Board reserves jurisdiction over the permits providing for diversions from the new intake at Victoria Canal for such additional time as necessary to determine if use of said point of diversion adversely impacts the water supply or water quality available to WSID. The State Water Board shall, after giving due notice thereof, make any further orders that it finds to be necessary concerning proper use of the point of diversion, and impose conditions providing for additional measurements or studies as it may deem necessary.
- c) Until further order of the State Water Board, CCWD shall make or cause to be made suitable field investigations, measurements, and studies, and shall install necessary measuring facilities, to determine the impact of diversions from the Victoria Canal Intake under permits granted or amended by this order on water levels and water quality in the vicinity of WSID diversion points and as otherwise required to fully comply with the provision of these permits. CCWD shall submit to the State Water Board, at such times as the Board may require, a report of such investigations, measurements, and studies and the results thereof. CCWD shall make its records of such investigations and measurements available for inspection by the State Water Board and shall allow authorized representatives of the State Water Board reasonable access to project works and properties for the purpose of gathering information and data.

(0300800)

31. The Victoria Canal Intake Facility screened diversion shall be constructed and shall be continuously functioning prior to and during any diversion operation on the Victoria Canal. Permittee shall construct, operate, and maintain fish screens and fish screen cleaning systems at the Old River and Victoria Canal facilities which conform with the fish screening system design criteria identified by DFG in its Incidental Take Permit. In addition, an average approach velocity of 0.2 feet per second shall be maintained at the screen in accordance with the reasonable and prudent measures in the USFWS delta smelt opinions for the Los Vaqueros Project (USFWS 1993a, as clarified and modified, Reclamation 1993) and the Victoria Canal Intake Facility (USFWS 2007).

(0400500)

32. The effectiveness of the no-fill and no-diversion timing and conditions to protect smelt in their various life stages shall be determined by an expanded monitoring program. Permittee shall continue to utilize the DFG approved Rock Slough Expanded Monitoring Program (circa 2003), Revised Biological Monitoring Program for the Old River Fish Screen Facility (circa 2000) and the Proposed Program to Sample the Overflow Structure at the CCWD Mallard Slough Pumping Plant (circa 2000). Permittee will monitor at Victoria Canal in a manner consistent with the methods approved by DFG for the Old River Fish Screen Facility. Additionally, to provide an indication of the possible presence of larval longfin and delta smelt, Permittee will perform additional plankton net sampling at Old River, Rock Slough and Victoria Canal. To provide an indication of the presence of the estuarine food-chain, Permittee will begin a program of zooplankton net sampling at Old River, Rock Slough and Victoria Canal. A summary of the real time monitoring for adults, juveniles, and larvae present near CCWD intakes and water quality data shall be transmitted at the beginning and middle of each month to DFG. The above-monitoring data will be used by Permittee to determine diversion of water at the Rock Slough, Old River, Victoria Canal, and Mallard Slough intakes. The monitoring information may be used to recommend changes to permit Conditions 26(b), 26(c), and 26(d) or as a trigger for other measures such as diversion reductions for the protection of the species identified by this permit. An annual summary of all collected information shall be submitted to DFG and the Division by October 31 of each year.

(0400500)

33. By August 1, 2010 and every three years subsequently, Permittee shall submit an updated study plan to DFG and the Division for approval to determine the presence of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, and larvae at all CCWD intakes. DFG and the Division shall provide written comments and requests regarding the adequacy of the submitted study plan and its elements by September 1 of each year in which an updated study plan is submitted. Permittee shall resubmit a revised study plan that addresses DFG's and the Division's comments and requests by October 1 of each year in which an updated study plan is

submitted. This study plan must be acceptable to and must be approved by DFG and the Division prior to November 1 of each year in which an updated study plan is submitted. If the Division does not respond in writing within 30 days, the study plan shall be considered approved by the Division. This continuous study shall begin by November 1 and shall continue until June 30 unless an alternative schedule is agreed to by DFG and the Division. A summary of the results of each study shall be transmitted to DFG and the Division in accordance with the schedule contained within the approved study plan. Fish sampling techniques and handling procedures shall be done so that fish mortality is minimized. Permittee shall coordinate with the ongoing Interagency Ecological Studies Program (IEP), and make its monitoring data available upon request by the IEP.

34. In-channel maintenance and repair operations on the Old River and Victoria Canal intakes shall take place from September 1 through November 15, except as approved by DFG and the Division. If emergency in-channel maintenance and repairs of the Old River or Victoria Canal intakes are required, DFG and the Division shall be notified within 48 hours.
35. Permittee shall relocate one agricultural diversion from the channel to behind the Victoria Canal fish screen, thereby screening the one 16-inch agricultural diversion and reducing overall entrainment potential at the agricultural siphon to help mitigate for the entrainment of delta smelt and longfin smelt. This will reduce overall entrainment potential at the agricultural siphon.

(0390500)

36. Delta smelt and longfin smelt habitat impacted by diversion operations during the term of this permit shall be mitigated by the acquisition and enhancement of 36 acres of shallow water tidal habitat approved by DFG that shall be maintained in perpetuity. The habitat shall be acquired or financial assurances provided to DFG prior to operation of the Victoria Canal Intake.

(0400500)

37. If DFG, pursuant to Fish and Game Code section 2081, amends the Incidental Take Permit or issues a new Incidental Take Permit with modified terms, Permittee shall petition the Division to amend the permit, as needed to conform to the new Incidental Take Permit.

(0400500)

38. To compensate for the loss of 0.7 acres of shallow water habitat, CCWD shall acquire, conserve, fund, and manage at least 2.1 acres of shallow water habitat at a mitigation bank or other location approved by USFWS, DFG, and NMFS. If 2.1 acres cannot be acquired prior to project impacts, CCWD shall provide DFG the following prior to construction: (1) an irrevocable letter of credit or other form of security approved by USFWS, DFG, and NMFS in the amount of \$73,500 to cover the costs of land acquisition, land conservation, and land management planning and (2) payment in the amount of \$10,500 for use as principal for a permanent capital endowment.

(0400500)

39. To prevent temporary degradation of surface water quality as a result of contaminant releases and runoff during construction, construction activities must comply with the Stormwater Pollution Prevention Plan prepared in July, 2008.

(0300800)

40. To mitigate for the loss of 0.8 acres of seasonal wetland, CCWD shall construct 1.6 acres of seasonal wetland at the Holland Tract Preserve.

(0400500)

41. Nothing in this permit shall alter the relative priority of diversions under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 of Reclamation from that contained in State Water Board Decision 1629.

(0900999)

**ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.  
(0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.  
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.  
(0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between DFG and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every Permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any Permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any Permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
*for Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: JUL - 8 2010

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

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

**AMENDED PERMIT 20749**

Application 20245 of

Contra Costa Water District  
P.O. Box H2O  
Concord, CA 94524

filed on **June 5, 1961**, has been approved by the State Water Resources Control Board (State Water Board or Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1. Source of water

Source:

Tributary to:

(1) Old River  
(2) Victoria Canal

San Joaquin Delta Channels  
Old River thence  
San Joaquin Delta Channels

within the Counties of **Contra Costa** and **San Joaquin**.

2. Location of points of diversion and redirection

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Projected Section	Township	Range	Base and Meridian
(1) <u>Old River Intake</u> North 2,147,455 feet and East 6,250,918 feet	NW ¼ of SE ¼	31	1N	4E	MD
(2) <u>Victoria Canal Intake</u> North 2,139,610 feet and East 6,259,970 feet	NE ¼ of NW ¼	9	1S	4E	MD
<u>Point of Redirection</u> <u>Los Vaqueros Dam</u> North 2,129,559 feet and East 6,207,039 feet	NW ¼ of NW ¼	23	1S	2E	MD

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
<b>Incidental Fish and Wildlife Preservation and/or Enhancement</b>						
<b>Water Quality</b>						
<b>Recreation</b>						
<b>Domestic</b>						
<b>Municipal</b>						
<b>Industrial</b>						
<b>Irrigation</b>	<b>Contra Costa Water District, Pittsburg, Antioch, Brentwood, Oakley, Los Vaqueros recreation area, and rural county subarea</b>		<b>2S</b> <b>1S</b> <b>1N</b> <b>2N</b> <b>3N</b>	<b>3W</b> <b>2W</b> <b>1W</b> <b>1E</b> <b>2E</b> <b>3E</b> <b>4E</b>	<b>MD</b>	<b>931</b>
<b>Incidental Hydroelectric Power Generation</b>	<b>Los Vaqueros Pipeline Energy Recovery facility within NW ¼ of NW ¼ of</b>	<b>34</b>	<b>2N</b>	<b>2E</b>	<b>MD</b>	

The place of use is shown on maps filed with the State Water Board.

The following list of acronyms shall be added to Permit 20749:

- Department of Fish and Game - DFG
  - National Marine Fisheries Service – NMFS
  - Alternate Intake Project – AIP
  - U.S. Fish and Wildlife Service – USFWS
  - Department of Water Resources – DWR
  - U.S. Bureau of Reclamation – Reclamation
  - State Water Resources Control Board – State Water Board
  - Division of Water Rights – Division
  - Contra Costa Water District – CCWD
5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 95,850 acre-feet per annum to be collected from **November 1** of each year to **June 30** of the succeeding year.

(0000005C)

The combined instantaneous maximum rate of diversion to offstream storage from Old River and Victoria Canal shall not exceed **200 cubic feet per second**.

(0000005J)

6. The maximum instantaneous combined rate of diversion for all diversions from Mallard Slough, Rock Slough, Old River and Victoria Canal under CCWD's Permit 29749 and License 10514 (Application 5941), and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 shall not exceed: **540 cubic feet per second** for the months of June, July, August, September and October; **410 cubic feet per second** for the months of November, December, January, February and March; and **470 cubic feet per second** for April and May; the maximum rate of diversion from Victoria Canal shall not exceed **250 cubic feet per second**; and the maximum combined rate of diversion from Old River and Victoria Canal shall not exceed **320 cubic feet per second**.  
(0000006)
7. Construction work shall be completed by December 31, 1999.  
(0000008)
8. Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2025.  
(0000009)
9. Permittee shall consult with the Division and, within one year from the date of this permit, shall submit to the State Water Board its Urban Water Management Plan as prepared and adopted in conformance with section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the Board.  
All cost-effective measures identified in the Urban Water Management Plan and any supplements thereto shall be implemented in accordance with the schedule for implementation found therein.  
(0000029A)
10. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.  
(0050043B)
11. If the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction under this permit shall not be commenced until DWR has approved the plans and specifications for the dam.  
(0360048)
12. In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.  
(0120050)
13. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.  
(0000080)

14. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento - San Joaquin Delta are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.

(0000090)

15. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction, Permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, or by the State Water Board.

(0000100)

16. No water shall be diverted under this permit until Permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the flow: (1) directly diverted at Victoria Canal; (2) diverted into Los Vaqueros Reservoir from Old River and Victoria Canal; and (3) releases through or flowing out of the outlet facilities of Los Vaqueros Reservoir. Said measuring devices shall be properly maintained.

(0060046m)

17. Permittee shall maintain a daily record of direct diversion and collection to storage under this permit and submit such record to the Division on an annual basis, on or before March 1. The record of water use under this permit may not be combined with diversion or storage records for water use under other rights maintained by the Permittee.

(0090900)

18. The total quantity of water diverted and/or rediverted from Old River and Victoria Canal under this permit, together with that diverted under Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, 16600, and 15735, issued pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858, 15374, 15375, 16767, 17374, 17376, 18115, 19304 and 22316 shall not exceed 180,675 acre-feet per annum from Old River and Victoria Canal combined, and also shall not exceed in any one-year period commencing on March 1, the sum of: (i) 177,000 acre-feet; (ii) 4,000 acre-feet to replace evaporation losses; and (iii) the difference between the quantity of water in storage in Los Vaqueros Reservoir at the end of the period and the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period from Old River, Rock Slough, and Victoria Canal combined. If the quantity of water in storage in Los Vaqueros Reservoir at the end of the period is less than the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period, the change in storage shall be subtracted from the 177,000 acre-feet.

Until further order of the State Water Board, the combined maximum annual diversion shall not exceed 222,000 acre-feet per annum from Old River, Rock Slough and Victoria Canal. Any such further order of the State Water Board shall be preceded by notice to all interested parties, by opportunity for hearing, and a showing that water can be diverted in excess of 222,000 acre-feet per annum, taking into account the needs of public trust uses, senior water right holders, and other beneficial uses. Any petition seeking such a further order of the State Water Board shall be accompanied by any environmental documentation required under California law. This requirement for a further order of the State Water Board shall not preclude Permittee from filing an appropriate petition or petitions for temporary changes or application(s) for temporary permits under laws existing at the time of the filing of the petition or application.

Provided, however, that if during the 12 months after the date when water is first diverted to storage in Los Vaqueros Reservoir there is adequate water available under the water rights listed above, the combined maximum diversion during that initial 12 months shall be 252,000 acre-feet from Old River and Rock Slough.

The total quantity of water under the permits on the above water rights distributed within the authorized place of use for use by Permittee's customers, in any one year period commencing March 1 shall not exceed 177,000 acre-feet.

(0000114m)

19. Permittee shall comply with all legally binding requirements of DFG, USFWS, and NMFS imposed under either the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544) or the California Endangered Species Act (Fish and Game Code Sections 2050 to 2098), with respect to the Los Vaqueros Project.

(0600500)

20. Permittee shall comply with the "Programmatic Agreement Among the U.S. Bureau of Reclamation, Contra Costa Water District, the California State Historic Preservation Office and the Advisory Council on Historic Preservation Regarding the Implementation of the Los Vaqueros Project", executed on February 3, 1993, and shall comply with it as it may be amended in the future. Permittee also shall comply with all historic property treatment plans prepared under the Programmatic Agreement.

Permittee shall continue to consult with Reclamation, U.S. Army Corps of Engineers, the Deputy Director for Water Rights, the State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding cultural resources until all stipulations of the Programmatic Agreement have been completed to the satisfaction of the agencies. Permittee also shall comply with the "Procedure for the Protection of Historic and Cultural Properties" (36 CFR 60) and the implementing regulations of the Advisory Council on Historic Preservation, 36 CFR 800.

Permittee shall comply with the Memorandum of Understanding executed July 21, 1993 between CCWD and seven of the Native Americans Most Likely Descendants regarding treatment of Native American human remains and the selection of Native American monitors.

(0430300)

21. Permittee shall comply with mitigation measures 7-1 through 7-19 and 8-1 through 8-12 set forth at pages 19-5 through 19-8 of the final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) dated September 27, 1993. Permittee also shall comply with mitigation measures 1 through 13 under "Additional Environment Commitments Related to the Fish and Wildlife Coordination Act Report" set forth at pages 19-13 through 19-14 of the Final EIR/EIS. The Deputy Director for Water Rights may grant a variance from any of these mitigation measures after making a finding that the variance will have no significant adverse effect on the environment. Any request for a variance shall include the reasons for the variance, environmental information necessary to demonstrate that it will not adversely affect the environment, and proof that Permittee has notified all interested parties of the request.

(0400500)

22. Permittee shall in cooperation with Reclamation implement the mitigation monitoring and reporting measures for Bay-Delta fishery resources, Bay-Delta water quality, vegetation resources, wildlife resources, cultural resources, and to comply with the Fish and Wildlife Coordination Act (16 U.S.C. Section 661 et seq.), which are set forth in the Environmental Commitments and Mitigation Monitoring Reporting Plan for the Los Vaqueros Project Stage 2 Environmental Impact Report/Environmental Impact Statement, dated October 27, 1993. Permittee in cooperation with Reclamation shall provide a report to the Deputy Director for Water Rights by April 1 of each year detailing the results of the previous year's monitoring, plans for the current year's monitoring, and the status of implementation of each mitigation measure required by this decision.

(0400500)

23. No diversion is authorized that would adversely affect the operation of the Central Valley Project or State Water Project under permits and licenses for the Projects in effect on the date of this Order. An

adverse effect shall be deemed to result from Permittee's diversion at any time Reclamation and DWR have declared the Delta to be in balanced water conditions under the Coordinated Operation Agreement or at any other time that such diversion would directly or indirectly require the Central Valley Project or the State Water Project to release water from storage or to reduce their diversion or redirection of water from the Delta to provide or assure flow in the Delta required to meet any applicable provision of state or federal law.

(0350900)

24. Permittee shall minimize increased levels of suspended sediments discharged to Old River during construction, maintenance and repair of the Old River Intake Facility and minimize loss of fish and riparian wildlife at the Old River intake facility construction site by: (1) installing floating silt curtains, silt fences, stormwater detention facilities, and other appropriate sediment control facilities; (2) mapping existing riparian/aquatic fish habitat prior to construction and taking steps to avoid losses to existing habitat during facility construction as much as possible; and (3) reestablishing suitable new habitat on newly constructed or existing levees to compensate for unavoidable losses. Further, Permittee shall perform all construction, maintenance and repair operations on the Old River intake facility only during the period from September 1 through December 30 of each year, unless USFWS and DFG authorized these activities during other periods. Best management practices shall be used to minimize direct and indirect impacts to fish and wildlife.

(0400500)

25. (a) Until the Rock Slough diversion is screened, water diversion from Rock Slough will be minimized under Permits 12725, 12726, and 15735 on Applications 9366, 9367, and 22316 of Reclamation from December 1 through June 30. Permittee shall maximize use of its screened intakes, unless monitoring at the intakes indicates, and DFG, USFWS and NMFS agree, that the incidental take of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, or larvae would be less at Rock Slough than another intake, or that these species are not present at Rock Slough. Permittee shall provide to the Division written concurrence, including the calendar dates when use is authorized, from DFG, USFWS and NMFS prior to use of any unscreened facilities.
- (b) During the period from March 15 through May 31 of each year, Permittee shall not divert water from the Old River or Victoria Canal points of diversion to offstream storage in Los Vaqueros Reservoir except when the reservoir storage level is less than 70,000 acre-feet in a below normal, above normal, or wet water-year, or less than 44,000 acre-feet in a dry or critical water-year ("emergency storage levels"). Water-year types will be as defined in the February edition of DWR Bulletin 120 or the Four Basin Index set forth in the permits and licenses of Reclamation. If reservoir storage is below emergency storage levels, Permittee may fill the reservoir only if: 1) Permittee has provided DFG with notification that reservoir storage is expected to be below emergency storage level and 2) DFG concurs with the proposed diversion and rate of diversion. Permittee shall provide the Deputy Director for Water Rights a minimum 15-day notification after obtaining DFG concurrence with the proposed dates and rate of diversion in advance of any diversion. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modification or proposes an alternative, the Permittee may divert at the identified rate of diversion.
- (c) Beginning in the February following the first operation of the Victoria Canal diversion, Permittee shall not divert water from any of its diversions to storage in Los Vaqueros Reservoir for 15 days from February 14 through February 28, provided that reservoir storage is at or above 90,000 acre-feet on February 1. If reservoir storage is at or above 80,000 acre-feet on February 1 but below 90,000 acre-feet, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 10 days from February 19 through February 28. If reservoir storage is at or above 70,000 acre-feet on February 1, but below 80,000 acre-feet, Permittee shall not divert water to storage in Los Vaqueros Reservoir for five days from February 24 through February 28.
- (d) During the period April 1 to April 30, Permittee shall not divert from the Delta for use by CCWD unless Los Vaqueros Reservoir is below emergency storage levels as defined above, and will

instead release up to 12,500 acre-feet of water from storage in Los Vaqueros Reservoir to meet demand in the CCWD service area. In those instances where diversions are necessary due to the reservoir being at or below emergency storage levels, Permittee may divert from the Delta only for direct use by CCWD within the CCWD service area, and no water may be diverted to storage in Los Vaqueros Reservoir.

- (e) Permittee may submit to DFG, USFWS and NMFS by January 1 of each year, a proposal for modifying the dates of conditions (b), (c), and (d) to better protect threatened or endangered species. DFG may approve modification of the dates for the periods when the reservoir filling is to be avoided and the periods when no diversion shall occur if DFG determines the proposed modification of dates will be more effective in minimizing take of delta smelt and longfin smelt. If no response from DFG is received, Conditions (b), (c), and (d) shall apply. Condition (c) is a condition of DFG only. In addition, prior to modifying the dates of conditions (b) and (d), the concurrence of USFWS and NMFS is required. Permittee shall by February 15, or immediately if after February 15, notify the Deputy Director for Water Rights of the time period modifications for that year. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modifications or proposes an alternative, Permittee shall implement the modifications.

(0400500)

26. If DFG, USFWS, or NMFS notifies CCWD that the periods described in permit terms 6 or 26(b) is desirable, then CCWD will, no later than January 5 of any year, provide the Division with a written request to modify the condition and any change approved by the Division shall be implemented.

(0400500)

27. Permittee shall construct, operate and maintain a fish screen and fish screen cleaning system at the Old River Intake Facility, satisfactory to DFG, USFWS and NMFS. The fish screen facility shall be constructed and made fully operational prior to operation of the Old River Intake Facility and by not later than January 1, 1997. In addition, the screen facility shall be designed and operated to achieve an average water approach velocity no greater than 0.2 feet per second for a 3/32" vertical slotted screen opening, and be operated to effectively screen fish greater than 21 millimeters long.

(0400500)

28. To avoid construction impacts to Swainson's hawks, surveys shall be conducted weekly beginning the first week of April through May 15 by a biologist acceptable to DFG to determine if any nesting is occurring within ½ mile of the Old River diversion point, and to determine whether there is any suitable nesting habitat within ½ mile. If nesting is occurring within ½ mile, construction may not be initiated or continued until August 15 without additional consultation with DFG. This term shall expire upon completion of construction.

(0400500)

29. Permittee shall, during construction of the Victoria Canal Intake Facility, implement measures to prevent a measurable increase in turbidity at the Victoria Canal Intake that could result in an exceedance of specified turbidity criteria contained in any permits, license, or court orders for Reclamation's Central Valley Project or DWR's State Water Project.

(0300800)

30. Permittee shall comply with the following:

- a) Diversions at Victoria Canal Intake under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 of Reclamation can be made only when no adverse impact in water levels or water quality resulting from said diversions is detected at West Side Irrigation District (WSID) diversion points.
- b) The State Water Board reserves jurisdiction over the permits providing for diversions from the new intake at Victoria Canal for such additional time as necessary to determine if use of said point

of diversion adversely impacts the water supply or water quality available to WSID. The State Water Board shall, after giving due notice thereof, make any further orders that it finds to be necessary concerning proper use of the point of diversion, and impose conditions providing for additional measurements or studies as it may deem necessary.

- c) Until further order of the State Water Board, CCWD shall make or cause to be made suitable field investigations, measurements, and studies, and shall install necessary measuring facilities, to determine the impact of diversions from the Victoria Canal Intake under permits granted or amended by this order on water levels and water quality in the vicinity of WSID diversion points and as otherwise required to fully comply with the provision of these permits. CCWD shall submit to the State Water Board, at such times as the Board may require, a report of such investigations, measurements, and studies and the results thereof. CCWD shall make its records of such investigations and measurements available for inspection by the State Water Board and shall allow authorized representatives of the State Water Board reasonable access to project works and properties for the purpose of gathering information and data.

(0300800)

31. The Victoria Canal Intake Facility screened diversion shall be constructed and shall be continuously functioning prior to and during any diversion operation on the Victoria Canal. Permittee shall construct, operate, and maintain fish screens and fish screen cleaning systems at the Old River and Victoria Canal facilities which conform with the fish screening system design criteria identified by DFG in its Incidental Take Permit. In addition, an average approach velocity of 0.2 feet per second shall be maintained at the screen in accordance with the reasonable and prudent measures in the USFWS delta smelt opinions for the Los Vaqueros Project (USFWS 1993a, as clarified and modified, Reclamation 1993) and the Victoria Canal Intake Facility (USFWS 2007).

(0400500)

32. The effectiveness of the no-fill and no-diversion timing and conditions to protect smelt in their various life stages shall be determined by an expanded monitoring program. Permittee shall continue to utilize the DFG approved Rock Slough Expanded Monitoring Program (circa 2003), Revised Biological Monitoring Program for the Old River Fish Screen Facility (circa 2000) and the Proposed Program to Sample the Overflow Structure at the CCWD Mallard Slough Pumping Plant (circa 2000). Permittee will monitor at Victoria Canal in a manner consistent with the methods approved by DFG for the Old River Fish Screen Facility. Additionally, to provide an indication of the possible presence of larval longfin and delta smelt, Permittee will perform additional plankton net sampling at Old River, Rock Slough and Victoria Canal. To provide an indication of the presence of the estuarine food-chain, Permittee will begin a program of zooplankton net sampling at Old River, Rock Slough and Victoria Canal. A summary of the real time monitoring for adults, juveniles, and larvae present near CCWD intakes and water quality data shall be transmitted at the beginning and middle of each month to DFG. The above-monitoring data will be used by Permittee to determine diversion of water at the Rock Slough, Old River, Victoria Canal, and Mallard Slough intakes. The monitoring information may be used to recommend changes to permit Conditions 26(b), 26(c), and 26(d) or as a trigger for other measures such as diversion reductions for the protection of the species identified by this permit. An annual summary of all collected information shall be submitted to DFG and the Division by October 31 of each year.

(0400500)

33. By August 1, 2010 and every three years subsequently, Permittee shall submit an updated study plan to DFG and the Division for approval to determine the presence of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, and larvae at all CCWD intakes. DFG and the Division shall provide written comments and requests regarding the adequacy of the submitted study plan and its elements by September 1 of each year in which an updated study plan is submitted. Permittee shall resubmit a revised study plan that addresses DFG's and the Division's comments and requests by October 1 of each year in which an updated study plan is submitted. This study plan must be acceptable to and must be approved by DFG and the Division prior to November 1 of each year in which an updated study plan is submitted. If the Division does not

respond in writing within 30 days, the study plan shall be considered approved by the Division. This continuous study shall begin by November 1 and shall continue until June 30 unless an alternative schedule is agreed to by DFG and the Division. A summary of the results of each study shall be transmitted to DFG and the Division in accordance with the schedule contained within the approved study plan. Fish sampling techniques and handling procedures shall be done so that fish mortality is minimized. Permittee shall coordinate with the ongoing Interagency Ecological Studies Program (IEP), and make its monitoring data available upon request by the IEP.

34. In-channel maintenance and repair operations on the Old River and Victoria Canal intakes shall take place from September 1 through November 15, except as approved by DFG and the Division. If emergency in-channel maintenance and repairs of the Old River or Victoria Canal intakes are required, DFG and the Division shall be notified within 48 hours.  
(0390500)
35. Permittee shall relocate one agricultural diversion from the channel to behind the Victoria Canal fish screen, thereby screening the one 16-inch agricultural diversion and reducing overall entrainment potential at the agricultural siphon to help mitigate for the entrainment of delta smelt and longfin smelt. This will reduce overall entrainment potential at the agricultural siphon.  
(0400500)
36. Delta smelt and longfin smelt habitat impacted by diversion operations during the term of this permit shall be mitigated by the acquisition and enhancement of 36 acres of shallow water tidal habitat approved by DFG that shall be maintained in perpetuity. The habitat shall be acquired or financial assurances provided to DFG prior to operation of the Victoria Canal Intake.  
(0400500)
37. If DFG, pursuant to Fish and Game Code section 2081, amends the Incidental Take Permit or issues a new Incidental Take Permit with modified terms, Permittee shall petition the Division to amend the permit, as needed to conform to the new Incidental Take Permit.  
(0400500)
38. To compensate for the loss of 0.7 acres of shallow water habitat, CCWD shall acquire, conserve, fund, and manage at least 2.1 acres of shallow water habitat at a mitigation bank or other location approved by USFWS, DFG, and NMFS. If 2.1 acres cannot be acquired prior to project impacts, CCWD shall provide DFG the following prior to construction: 1) an irrevocable letter of credit or other form of security approved by USFWS, DFG, and NMFS in the amount of \$73,500 to cover the costs of land acquisition, land conservation, and land management planning and 2) payment in the amount of \$10,500 for use as principal for a permanent capital endowment.  
(0400500)
39. To prevent temporary degradation of surface water quality as a result of contaminant releases and runoff during construction, construction activities must comply with the Stormwater Pollution Prevention Plan prepared in July, 2008.  
(0300800)
40. To mitigate for the loss of 0.8 acres of seasonal wetland, CCWD shall construct 1.6 acres of seasonal wetland at the Holland Tract Preserve.  
(0400500)
41. Nothing in this permit shall alter the relative priority of diversions under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 of Reclamation from that contained in State Water Board Decision 1629.  
(0900999)

**ALL PERMITS ISSUED BY THE STATE WATER BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.  
(0000006)
- B. Progress reports shall be submitted promptly by Permittee when requested by the State Water Board until a license is issued.  
(0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.  
(0000011)

- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the Permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.  
(0000013)
- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered

Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between DFG and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a stream or lake agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every Permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any Permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any Permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*for James W. Kassel*  
*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: MAR 25 2010

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 20749 (Application 20245)

**of Contra Costa Water District**

and

Central Valley Project Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316)

**of United States Bureau of Reclamation**

**ORDER APPROVING CHANGES  
IN POINT OF DIVERSION AND REDIVERSION AND PURPOSE OF USE  
AND ISSUING AMENDED PERMIT 20749  
AND  
ORDERS SUPERSEDING AND REPLACING ORDERS DATED  
JULY 18, 1994 AMENDING PERMITS TO CONFORM WITH  
DECISION NO. 1629**

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SOURCE: Victoria Canal tributary to Old River

COUNTIES: Contra Costa and San Joaquin

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**WHEREAS:**

1. The State Water Resources Control Board (State Water Board) adopted Decision 1629 (D1629) on June 2, 1994, which conditionally approved water right Application 20245 of Contra Costa Water District (CCWD). The Division of Water Rights (Division) subsequently issued Permit 20749 to CCWD on July 6, 1994.
2. Permit 20749 authorizes the collection to storage of 95,850 acre-feet (af) in Los Vaqueros Reservoir from November 1 of each year through June 30 of the succeeding year. The maximum rate of diversion to offstream storage in Los Vaqueros Reservoir is 200 cubic feet per second (cfs). The point of diversion is located at CCWD's existing intake facility on Old River and the point of redirection is located at Los Vaqueros Reservoir. Diversion of water is authorized for municipal, industrial, domestic, irrigation, recreation, incidental fish and wildlife preservation and/or enhancement, and water quality purposes.
3. The State Water Board issued Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 to the United States Bureau of Reclamation (collectively "Reclamation permits") pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858A, 15374, 15375, 16767, 17374, 17376, 19304, 22316 and 18115, respectively. These Reclamation permits cover a portion of operations

of the Central Valley Project (CVP) and include points of diversion/redirection at existing intake facilities on Old River and Rock Slough.

4. CCWD also holds License 10514 (Application 5941) and Permit 19856 (Application 27893) for diversion from Mallard Slough. Although License 10514 and Permit 19856 are not part of the present petition, there are combined right limits for all rights combined of CCWD and Reclamation that refer to this license and permit and are included in this order.
5. Reclamation relies on the seventeen Reclamation Permits to serve CVP water to CCWD pursuant to Water Service Contract 175r-3401A-LTR1. CCWD diverts its CVP contract water at the existing intake facilities on Rock Slough and Old River. The Rock Slough facility is owned by Reclamation and operated by CCWD. CCWD owns and operates the Old River and Mallard Slough intake facilities.
6. The maximum combined rate of diversion at Old River under the Reclamation permits and CCWD Permit 20749 is 250 cfs. The maximum combined rate of diversion at Rock Slough under Reclamation Permits 12725, 12726 and 15735 is 350 cfs.
7. On August 9, 2007, CCWD and Reclamation jointly filed petitions to add a new point of diversion at CCWD's "Alternative Intake Project" (AIP) on Victoria Canal to CCWD's Permit 20749 and to add the AIP Victoria Canal diversion as a new point of diversion and/or redirection to the Reclamation permits. The purpose of the AIP is to improve the quality of water available for diversion. The project named in the petitions will include an intake and pump station on Victoria Canal, levee improvements at the pump station site, and a conveyance pipeline across Victoria Island to CCWD's existing conveyance facilities on Byron Tract. The Petitioners seek a maximum rate of diversion from Victoria Canal of 250 cfs. The Petitioners also seek a maximum combined rate of diversion from both the existing Old River diversion facility and the new AIP facility on Victoria Canal of 320 cfs.
8. Public notice of the change petitions was issued by the Division on October 19, 2007. Protests were filed by Department of Fish and Game (DFG), Department of Water Resources (DWR), West Side Irrigation District (WSID), and Stockton East Water District (SEWD). The DWR and WSID protests were resolved on April 25, 2008 and May 28, 2008, respectively, based on agreement by CCWD and Reclamation concerning inclusion of certain terms in any order issued on the petitions. On May 28, 2008, the SEWD protest was resolved based on CCWD and Reclamation's agreement to withdraw the petitions on Permits 16597 and 16600.<sup>1</sup> On September 2, 2009, the DFG protest on the CCWD water right was resolved based on agreement by CCWD for inclusion of certain conditions in any order issued on CCWD Permit 20749. On September 29, 2009, CCWD and WSID entered into a letter agreement for the inclusion of a term in any order issued on the petitions and for dismissal of WSID's protest to the petitions. The protest dismissal terms and conditions are listed in the order section below. The protests are dismissed.
9. The DFG protest dismissal agreement, term 3, proposes to change the requirement to install a fully operational fish screen on Rock Slough by October 1, 1998. (Decision 1629, term 11, pp. 89, 90.) The existing condition requires that after March 1997, water shall be diverted under Permits 12725, 12726, and 15735 (Applications 9266, 9367 and 22316) only at the Old River intake between January 1 and August 31 unless other points of diversion authorized under this permit are approved by DFG and USFWS. The required fish screen has not been built.

In lieu of this condition, DFG proposes a relaxation of the criteria to allow for installation of a fish screen once customer demand reaches 160,000 af per year, or implementation of a subsequent



<sup>1</sup> Although Permits 16597 and 16600 will not be modified because the petitions were withdrawn, the combined water right caps for the Los Vaqueros Reservoir Project include those permits since they were part of the original project.

project that changes Los Vaqueros Project Operations occurs, or the end of 2018, if neither of the other options has occurred. In other words, fish screen installation may be delayed by up to 20 years. The petition did not request to change the date when a fish screen must be installed at Rock Slough. Therefore, the terms will be modified only to add reference to the Victoria Canal diversion.

10. On July 16, 2009 CCWD and Reclamation jointly filed petitions to include incidental power generation as a purpose of use under CCWD Permits 20749 and 20750 (Applications 20245 and 25516A) and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316). The incidental power will be generated at the Los Vaqueros Pipeline Energy Recovery (LVPER) facility, adjacent to the Contra Costa Canal Pumping Plant No. 4. Public notice of these petitions was not issued pursuant to California Code of Regulations, title 23, section 795(a). Addition of incidental hydropower generation using water routed through the existing Los Vaqueros pipeline will not change the timing, location, amount, or rate of diversions under the permits. The proposed project adds incidental power as a use and does not otherwise change the use of the water diverted. CCWD and Reclamation notified DFG of the proposed change and DFG did not object.
11. CCWD and Reclamation served as joint lead agencies for preparation of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the AIP pursuant to the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). On November 15, 2006, CCWD certified the Final EIR/EIS (and approved the project). On May 2, 2008, Reclamation signed the Record of Decision for the project.
12. The State Water Board is a responsible agency for purposes of considering whether to approve the change petitions that will allow CCWD to proceed with the proposed AIP. As a responsible agency, the State Water Board must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) The State Water Board has considered the EIR/EIS in deciding whether to approve the petitions for the AIP project.
13. CCWD's environmental review was limited to impacts associated with the proposed change petitions, i.e., the impacts associated with construction and operation of the new diversion facility on Victoria Canal. Consequently, the State Water Board's approval of the change petitions must be similarly limited in scope. Because in-channel construction activities on the AIP are complete (see CCWD January 26, 2010 email) the orders and amended permit approving the AIP will only include mitigation terms from the EIR/EIS covering on-going operation of the AIP. The State Water Board will issue an NOD within five days of the date of this order.
14. In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the change petitions with the inclusion of protest dismissal terms and mitigation measures from the EIR/EIS to minimize impacts to biological resources will have any adverse impacts on public trust resources.
15. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition will be placed in the permits making the Permittees aware of possible obligations resulting from these acts.
16. Pursuant to the California Endangered Species Act, DFG issued Incidental Take Permit No. 2081-2009-013-03 which expires on December 31, 2018.

17. Pursuant to the federal Endangered Species Act, the AIP's impacts to fish and wildlife are set forth in the United States Fish and Wildlife Service's Biological Opinion issued on April 27, 2007 and National Marine Fisheries Service's Biological Opinion issued on July 3, 2007.
18. Term 5 on page 94 of State Water Board Decision 1629 (the "special Delta Term") applies fully to all diversions made under Permit 20749.
19. On February 13, 2009, CCWD filed a Notice of Exemption for the proposed LVPER project. The project is considered exempt under CEQA Guidelines Section 15328 which exempts small hydroelectric projects at existing facilities, provided that the capacity of the proposed facility is five megawatts or less, will not be located in an environmentally sensitive area, and will not adversely impact water quality or fish habitat. Further, as defined in 18 CFR 380.4(a)(14), exemptions for small conduit hydroelectric facilities have been determined by the Federal Energy Regulatory Commission (FERC) to not have a significant effect on the human environment, either individually or cumulatively. Therefore, these projects do not require the preparation of an Environmental Assessment or an EIS in compliance with the NEPA. As defined by FERC, consideration of the environmental effects of a small conduit hydroelectric facility is limited to the area contained within the project boundaries. The proposed project meets FERC Conduit Exemption requirements as it does not change the timing, location or amount of water delivered through the existing Los Vaqueros pipeline conveyance system and is entirely located on non-federally owned property with the exception of the buried power line. Reclamation will approve a categorical exclusion for the buried power line and interconnection to Contra Costa Canal Pumping Plant No. 4 that is located on its property. The State Water Board will issue an NOE for the incidental power project.
20. The State Water Board has determined that the addition of the Victoria Canal point of diversion and/or rediversion and the addition of incidental power as a purpose of use as requested in the petitions for change does not constitute the initiation of new water rights and does not operate to the injury of any other lawful user of water. Approval of the additional point of diversion and/or rediversion does not authorize any additional water diversion. Moreover the projects do not have any adverse impacts on public trust resources.
21. The State Water Board has delegated the authority to act on change petitions to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057. (Resolution No. 2007-0057, section 4.2.9) Resolution No. 2007-0057 authorizes the Deputy Director to redelegate this authority to the Assistant Deputy Director for Water Rights. This authority has been so redelegated.
22. On July 18, 1994, the Division issued individual Orders Amending Permit for each Reclamation permit to conform with Decision No. 1629 for the Reclamation water rights affected by this order. The current petitions modify some, but not all, conditions of those orders. To simplify future reference to the orders, the July 18, 1994 orders shall be superseded and replaced with new orders including the terms listed below.
23. An amended Permit 20749 shall be issued, which incorporates the terms of the order below.

## ORDER

**THEREFORE, IT IS HEREBY ORDERED THAT CONTRA COSTA WATER DISTRICT'S PERMIT 20749 (APPLICATION 20245) IS AMENDED AS FOLLOWS:**

The following list of acronyms shall be added to Permit 20749:

- Department of Fish and Game - DFG
- National Marine Fisheries Service – NMFS
- Alternate Intake Project – AIP
- U.S. Fish and Wildlife Service – USFWS
- Department of Water Resources – DWR
- U.S. Bureau of Reclamation – Reclamation
- State Water Resources Control Board – State Water Board
- Division of Water Rights – Division
- Contra Costa Water District – CCWD

1. The attached Amended Permit 20749 is issued, superseding former Permit 20479 issued on July 6, 1994. The priority of Amended Permit 20749 is June 5, 1961.
2. The following shall be added as a source in Condition 1 of the permit:

Victoria Canal tributary to Old River thence San Joaquin Delta Channels

3. The County of San Joaquin shall be added to Condition 1 of the permit.

4. The following shall be added as a Point of Diversion in Condition 2 of the permit:

Victoria Canal Intake, California Coordinate System of 1983 in Zone 3: North 2,139,610 feet and East 6,259,970 feet, being within NE ¼ of NW ¼ of Section 9, T1S, R4E, MDB&M.

5. Condition 5 of the permit is amended as follows:

The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 95,850 acre-feet per annum to be collected from November 1 of each year to June 30 of the succeeding year.

(0000005)

The combined instantaneous maximum rate of diversion to offstream storage from Old River and Victoria Canal shall not exceed 200 cubic feet per second.

(000005J)

6. The condition of the permit related to the purpose of use shall be amended to include incidental hydroelectric power generation at: California Coordinates, NAD 83, Zone 3, North 2,182,439 feet and East 2,201,417 feet, being within the NW ¼ of NW ¼ of Section 34, T2N, R2E, MDB&M.

7. Condition 15 of the permit is updated as follows:

Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043B)

8. Condition 17 of the permit is updated as follows:

In accordance with the requirements of Water Code Section 1393, Permittee shall clear the site of the reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

(0120050)

9. Condition 18 of the permit is updated as follows:

No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a Lake and Streambed Alteration Agreement between DFG and the Permittee is filed with the Division. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee. If a Lake and Streambed Alteration Agreement is not necessary for this permitted project, the Permittee shall provide the Division a copy of a waiver signed by DFG.

(0000063)

10. Condition 22 of the permit is amended as follows:

No water shall be diverted under this permit until Permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the flow: (1) directly diverted at Victoria Canal; (2) diverted into Los Vaqueros Reservoir from Old River and Victoria Canal; and (3) releases through or flowing out of the outlet facilities of Los Vaqueros Reservoir. Said measuring devices shall be properly maintained.

(0060046m)

11. Condition 24 of the permit is amended as follows:

The total quantity of water diverted and/or rediverted from Old River and Victoria Canal under this permit, together with that diverted under Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, 16600, and 15735, issued pursuant to Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 14858, 15374, 15375, 16767, 17374, 17376, 18115, 19304 and 22316 shall not exceed 180,675 af per annum from Old River and Victoria Canal combined, and also shall not exceed in any one-year period commencing on March 1, the sum of (i) 177,000 af and (ii) 4,000 af to replace evaporation losses and (iii) the difference between the quantity of water in storage in Los Vaqueros Reservoir at the end of the period and the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period from Old River, Rock Slough, and Victoria Canal combined. If the quantity of water in storage in Los Vaqueros Reservoir at the end of the period is less than the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period, the change in storage shall be subtracted from the 177,000 af.

Until further order of the State Water Board, the combined maximum annual diversion shall not exceed 222,000 af per annum from Old River, Rock Slough and Victoria Canal. Any such further order of the State Water Board shall be preceded by notice to all interested parties, by opportunity for hearing, and a showing that water can be diverted in excess of 222,000 af per annum, taking into account the needs of public trust uses, senior water right holders, and other beneficial uses. Any petition seeking such a further order of the State Water Board shall be accompanied by any environmental documentation required under California law. This requirement for a further order of the State Water Board shall not preclude the Permittee from filing an appropriate petition or petitions for temporary changes or applications for temporary permits under laws existing at the time of the filing of the petition or application.

Provided, however, that if during the 12 months after the date when water is first diverted to storage in Los Vaqueros Reservoir there is adequate water available under the water rights listed above, the combined maximum diversion during that initial 12 months shall be 252,000 af from

Old River and Rock Slough.

The total quantity of water under the permits on the above water rights distributed within the authorized place of use for use by the Permittee's customers, in any one year period commencing March 1 shall not exceed 177,000 af.

(0000114)

12. Condition 31 of the permit is amended as follows:

- a) Until the Rock Slough diversion is screened, water diversion from Rock Slough will be minimized under Permits 12725, 12726, and 15735 on Applications 9366, 9367, and 22316 of Reclamation from December 1 through June 30. Permittee shall maximize use of its screened intakes, unless monitoring at the intakes indicates, and DFG, USFWS and NMFS agree, that the incidental take of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, or larvae would be less at Rock Slough than another intake, or that these species are not present at Rock Slough. Permittee shall provide to the Division written concurrence, including the calendar dates when use is authorized, from DFG, USFWS and NMFS prior to use of any unscreened facilities.
- b) During the period from March 15 through May 31 of each year, Permittee shall not divert water from the Old River or Victoria Canal points of diversion to offstream storage in Los Vaqueros Reservoir except when the reservoir storage level is less than 70,000 af in a below normal, above normal, or wet water year, or less than 44,000 af in a dry or critical water year ("emergency storage levels"). Water year types will be as defined in the February edition of the California Department of Water Resources Bulletin 120 or the Four Basin Index set forth in the permits and licenses of Reclamation. If reservoir storage is below emergency storage levels, Permittee may fill the reservoir only if: 1) Permittee has provided DFG with notification that reservoir storage is expected to be below emergency storage level and 2) DFG concurs with the proposed diversion and rate of diversion. Permittee shall provide the Deputy Director for Water Rights a minimum 15-day notification after obtaining DFG concurrence with the proposed dates and rate of diversion in advance of any diversion. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modification or proposes an alternative, the Permittee may divert at the identified rate of diversion.
- c) Beginning in the February following the first operation of the Victoria Canal diversion, Permittee shall not divert water from any of its diversions to storage in Los Vaqueros Reservoir for 15 days from February 14 through February 28, provided that reservoir storage is at or above 90,000 af on February 1. If reservoir storage is at or above 80,000 af on February 1 but below 90,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 10 days from February 19 through February 28. If reservoir storage is at or above 70,000 af on February 1, but below 80,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 5 days from February 24 through February 28.
- d) During the period April 1 to April 30, Permittee shall not divert from the Delta for use by CCWD unless Los Vaqueros Reservoir is below emergency storage levels as defined above, and will instead release up to 12,500 af of water from storage in Los Vaqueros Reservoir to meet demand in the CCWD service area. In those instances where diversions are necessary due to the reservoir being at or below emergency storage levels, Permittee may divert from the Delta only for direct use by CCWD within the CCWD service area, and no water may be diverted to storage in Los Vaqueros Reservoir.
- e) The Permittee may submit to DFG, USFWS and NMFS by January 1 of each year, a proposal for modifying the dates of conditions (b), (c), and (d) to better protect threatened or endangered species. DFG may approve modification of the dates for the periods when the reservoir filling is to be avoided and the periods when no diversion shall occur if DFG

determines the proposed modification of dates will be more effective in minimizing take of delta smelt and longfin smelt. If no response from DFG is received, Conditions (b), (c), and (d) shall apply. Condition (c) is a condition of DFG only. In addition, prior to modifying the dates of conditions (b) and (d), the concurrence of USFWS and NMFS is required. Permittee shall by February 15, or immediately if after February 15, notify the Deputy Director for Water Rights of the time period modifications for that year. Unless within 15 days the Deputy Director for Water Rights objects to the proposed modifications or proposes an alternative, the Permittee shall implement the modifications.

13. The following condition shall be added to the permit:

The maximum instantaneous combined rate of diversion for all diversions from Mallard Slough, Rock Slough, Old River and Victoria Canal under CCWD's Permit 29749 and License 10514 (Application 5941), and Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 shall not exceed: 540 cfs for the months of June, July, August, September and October; 410 cfs for the months of November, December, January, February and March; and 470 cfs for April and May; the maximum rate of diversion from Victoria Canal shall not exceed 250 cfs; and the maximum combined rate of diversion from Old River and Victoria Canal shall not exceed 320 cfs.

14. The following condition shall be added to the permit:

If DFG, USFWS, or NMFS notifies CCWD that a change in the periods described in condition 12(b) or condition 13 above is desirable, then CCWD will, no later than January 15 of any year, provide the Division with a written request to modify the condition and any change approved by the Division shall be implemented.

15. The following condition shall be added to the permit:

Permittee shall, during construction of the Victoria Canal Intake facility, implement measures to prevent a measurable increase in turbidity at the Victoria Canal Intake that could result in an exceedance of specified turbidity criteria contained in any permits, license, or court orders for Reclamation's Central Valley Project or DWR's State Water Project.

16. The following condition shall be added to the permit:

Permittee shall comply with the following:

- a) Diversions at Victoria Canal Intake under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 of Reclamation can be made only when no adverse impact in water levels or water quality resulting from said diversions is detected at West Side Irrigation District (WSID) diversion points.
- b) The State Water Board reserves jurisdiction over the permits providing for diversions from the new intake at Victoria Canal for such additional time as necessary to determine if use of said point of diversion adversely impacts the water supply or water quality available to WSID. The State Water Board shall, after giving due notice thereof, make any further orders that it finds to be necessary concerning proper use of the point of diversion, and impose conditions providing for additional measurements or studies as it may deem necessary.
- c) Until further order of the State Water Board, CCWD shall make or cause to be made suitable field investigations, measurements, and studies, and shall install necessary measuring facilities, to determine the impact of diversions from the Victoria Canal Intake under permits granted or amended by this order on water levels and water quality in the vicinity of WSID's

diversion points and as otherwise required to fully comply with the provision of these permits. CCWD shall submit to the State Water Board, at such times as the Board may require, a report of such investigations, measurements, and studies and the results thereof. CCWD shall make its records of such investigations and measurements available for inspection by the State Water Board and shall allow authorized representatives of the State Water Board reasonable access to project works and properties for the purpose of gathering information and data.

17. The following condition shall be added to the permit:

The Victoria Canal Intake Facility screened diversion shall be constructed and shall be continuously functioning prior to and during any diversion operation on the Victoria Canal. Permittee shall construct, operate, and maintain fish screens and fish screen cleaning systems at the Old River and Victoria Canal Intake facilities which conform with the fish screening system design criteria identified by DFG in its Incidental Take Permit. In addition, an average approach velocity of 0.2 feet per second shall be maintained at the screen in accordance with the reasonable and prudent measures in the USFWS delta smelt opinions for the Los Vaqueros Project (USFWS 1993a, as clarified and modified, Reclamation 1993) and the Victoria Canal Intake Facility (USFWS 2007).

18. The following condition shall be added to the permit:

The effectiveness of the no-fill and no-diversion timing and conditions to protect smelt in their various life stages shall be determined by an expanded monitoring program. Permittee shall continue to utilize the DFG approved Rock Slough Expanded Monitoring Program (circa 2003), Revised Biological Monitoring Program for the Old River Fish Screen Facility (circa 2000) and the Proposed Program to Sample the Overflow Structure at the CCWD Mallard Slough Pumping Plant (circa 2000). Permittee will monitor at Victoria Canal in a manner consistent with the methods approved by DFG for the Old River Fish Screen Facility. Additionally, to provide an indication of the possible presence of larval longfin and delta smelt, Permittee will perform additional plankton net sampling at Old River, Rock Slough and Victoria Canal. To provide an indication of the presence of the estuarine food-chain, Permittee will begin a program of zooplankton net sampling at Old River, Rock Slough and Victoria Canal. A summary of the real time monitoring for adults, juveniles, and larvae present near CCWD intakes and water quality data shall be transmitted at the beginning and middle of each month to DFG. The above monitoring data will be used by Permittee to determine diversion of water at the Rock Slough, Old River, Victoria Canal, and Mallard Slough intakes. The monitoring information may be used to recommend changes to permit Conditions 31(b), 31(c), and 31(d) or as a trigger for other measures such as diversion reductions for the protection of the species identified by this permit. An annual summary of all collected information shall be submitted to DFG and the Division by October 31 of each year.

19. The following condition shall be added to the permit:

By August 1, 2010 and every three years subsequently, Permittee shall submit an updated study plan to DFG and the Division for approval to determine the presence of winter-run Chinook salmon, spring-run Chinook salmon, delta smelt and longfin smelt adults, juveniles, and larvae at all CCWD intakes. DFG and the Division shall provide written comments and requests regarding the adequacy of the submitted study plan and its elements by September 1 of each year in which an updated study plan is submitted. Permittee shall resubmit a revised study plan that addresses DFG's and the Division's comments and requests by October 1 of each year in which an updated study plan is submitted. This study plan must be acceptable to and must be approved by DFG and the Division prior to November 1 of each year in which an updated study plan is submitted. If the Division does not respond in writing within 30 days, the study plan shall be considered approved by the Division. This continuous study shall begin by November 1 and shall continue until June 30 unless an alternative schedule is agreed to by DFG and the Division. A summary of

the results of each study shall be transmitted to DFG and the Division in accordance with the schedule contained within the approved study plan. Fish sampling techniques and handling procedures shall be done so that fish mortality is minimized. Permittee shall coordinate with the ongoing Interagency Ecological Studies Program (IEP), and make its monitoring data available upon request by the IEP.

20. The following condition shall be added to the permit:

In-channel maintenance and repair operations on the Old River and Victoria Canal intakes shall take place from September 1 through November 15, except as approved by DFG and the Division. If emergency in-channel maintenance and repairs of the Old River or Victoria Canal intakes are required, DFG and the Division shall be notified within 48 hours.

21. The following condition shall be added to the permit:

Permittee shall relocate one agricultural diversion from the channel to behind the Victoria Canal fish screen, thereby screening the one 16-inch agricultural diversion and reducing overall entrainment potential at the agricultural siphon to help mitigate for the entrainment of delta smelt and longfin smelt. This will reduce overall entrainment potential at the agricultural siphon.

22. The following condition shall be added to the permit:

Delta smelt and longfin smelt habitat impacted by diversion operations during the term of this permit shall be mitigated by the acquisition and enhancement of 36 acres of shallow water tidal habitat approved by DFG that shall be maintained in perpetuity. The habitat shall be acquired or financial assurances provided to DFG prior to operation of the Victoria Canal Intake.

23. The following condition shall be added to the permit:

If DFG, pursuant to Fish and Game Code section 2081, amends the Incidental Take Permit or issues a new Incidental Take Permit with modified terms, Permittee shall petition the Division to amend the permit, as needed to conform to the new Incidental Take Permit.

24. The following condition shall be added to the permit:

To compensate for the loss of 0.7 acres of shallow water habitat, CCWD shall acquire, conserve, fund, and manage at least 2.1 acres of shallow water habitat at a mitigation bank or other location approved by USFWS, DFG, and NMFS. If 2.1 acres cannot be acquired prior to project impacts, CCWD shall provide DFG the following prior to construction: 1) an irrevocable letter of credit or other form of security approved by USFWS, DFG, and NMFS in the amount of \$73,500 to cover the costs of land acquisition, land conservation, and land management planning and 2) payment in the amount of \$10,500 for use as principal for a permanent capital endowment.

25. The following condition shall be added to the permit:

To prevent temporary degradation of surface water quality as a result of contaminant releases and runoff during construction, construction activities must comply with the Stormwater Pollution Prevention Plan prepared in July, 2008.

26. The following condition shall be added to the permit:

To mitigate for the loss of 0.8 acres of seasonal wetland, CCWD shall construct 1.6 acres of seasonal wetland at the Holland Tract Preserve.

27. The following condition shall be added to the permit:

Nothing in this permit shall alter the relative priority of diversions under Permit 20749 of CCWD and Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 16597, 11968, 11969, 11971, 11973, 12364, 16600, 15735 and 13776 of Reclamation from that contained in State Water Board Decision 1629.

28. The following condition shall be added to the permit:

This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that 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 water right, the Permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

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29. All other conditions of Permit 20749 not specifically modified or added by this Order are still applicable.
30. An amended Permit 20749 shall be issued. The term numbers in the amended permit reflect changes in the Division's standard format and do not match the numbers in the original permit.

**IT IS FURTHER ORDERED THAT:**

The July 18, 1994 Orders Amending U.S. Bureau of Reclamation Permits 12721, 11967, 12722, 12723, 12725, 12726, 11315, 11316, 11968, 11969, 11971, 11973, 12364, 13776, and 15735 (Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 13371, 15374, 15375, 16767, 17374, 17376, 18115, and 22316) to Conform with Decision No. 1629 are hereby superseded by the attached Orders Amending Permits to Conform with Decision No. 1629 and the August 9, 2007 and July 16, 2009 Petitions to Change.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
by *Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: MAR 25 2010

Attachment