



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

FEB 19 2014

In Reply Refer to:
GSB:A015204

Mr. Curt Aikens, General Manager
Yuba County Water Agency
1220 F Street
Marysville, CA 95901

Dear Mr. Aikens:

ORDER APPROVING YUBA COUNTY WATER AGENCY'S PETITION FOR TEMPORARY URGENCY CHANGE FOR PERMITS 15026, 15027, AND 15030 (APPLICATIONS 5632, 15204, AND 15574)

The enclosed Order approves the petition for temporary urgency change for the subject water rights. Please review the conditions of the Order and retain the Order with your permits.

If you have any questions, please contact Greg Brown at (916) 323-1847 or by email at greg.brown@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attn: Greg Brown,
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

A handwritten signature in cursive script that reads "Amanda Montgomery".

Amanda Montgomery, Manager
Permitting and Licensing Section
Division of Water Rights

Enclosure

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

DIVISION OF WATER RIGHTS

**In the Matter of Permits 15026, 15027, and 15030
(Applications 5632, 15204, and 15574)**

Yuba County Water Agency

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCE: Yuba River tributary to Feather River

COUNTY: Yuba

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On February 4, 2014, Yuba County Water Agency (YCWA) filed a Temporary Urgency Change Petition (TUCP) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change pursuant to California Water Code section 1435. YCWA has requested temporary changes to several permit terms that were amended by Revised Decision 1644 (Revised D1644) and Corrected Order WR 2008-0014 (Corrected Order). The TUCP requests a variance in instream flow requirements so that YCWA can more effectively manage the limited water supply in the Yuba River watershed due to the ongoing drought that is facing the State of California in 2014. Concurrently with the TUCP, YCWA also petitioned to request a variance from its Federal Energy Regulatory Commission (FERC) requirements.

YCWA's TUCP includes three changes for State Water Board approval. The first is regarding a change to the year type designation which sets the required minimum flow schedule for its operations in the lower Yuba River. YCWA anticipates that its operations this year may fall under "Conference Year" conditions. However final year type designations based on the North Yuba Index will not be made until April or May. Absent the change, YCWA would miss the opportunity to conserve water in New Bullards Bar Reservoir (NBBR) beginning in February. As such, YCWA has requested that the State Water Board allow the agency to operate per the flow schedule for a Conference Year through May 15, 2014, after which time the May Bulletin 120 would be used to determine the North Yuba Index and the appropriate minimum flow schedules.

Secondly, YCWA has requested that the State Water Board authorize a reduction to a minimum instream flow requirement at the Smartsville Gage on the lower Yuba River. The current requirement at the gage is for lower Yuba River flows to not be reduced to less than 65 percent of the maximum flow that has occurred from November to March 21. This calculated flow equates to a minimum release of 683 cubic feet per second (cfs). Pursuant to the Corrected Order, in Conference Years, YCWA is required to provide minimum instream flows of 600 cfs at the Smartsville Gage. YCWA has requested relief from each of these flow requirements so that the minimum release flow can be reduced to 500 cfs from February 1 through March 31, 2014.

Thirdly, YCWA has requested to increase the required instream flow at the Smartsville Gage from April 1 through April 30, 2014, from no requirement to 500 cfs, and increase the required minimum instream flow at the Marysville Gage on the lower Yuba River from February 1 through March 31, 2014, from 245 cfs to 350 cfs. These increases in instream flow would provide a smoother transition of lower Yuba River flows through spring when water deliveries will begin to take place.

On February 4, 2014, YCWA also filed a request to FERC for a temporary variance of the minimum flow requirements for the Yuba River Project No. 2246. On February 7, 2014, FERC issued an order granting the temporary variance.

2.0 BACKGROUND

YCWA diverts water from the Yuba River for consumptive uses under Water Right Permits 15026, 15027, and 15030. These permits authorize diversion of water to storage at NBBR and direct diversion of water for consumptive use at downstream locations. In addition, water released from NBBR is used for power generation at the Colgate Powerhouse and at the Narrows 1 and Narrows 2 Powerhouses below Englebright Reservoir¹. Water diverted under the permits is delivered to multiple water districts in Yuba County and also conveyed as transfer water under the lower Yuba River Accord (Yuba Accord). YCWA is implementing the Yuba Accord conjunctive use program under its Lower Yuba River Accord Agreements for the Conjunctive Use of Surface and Groundwater Supplies with its member units.

YCWA included a report in its TUCP entitled *Yuba River Development Project 2014 Drought Planning (Report)* supportive of the requested temporary changes to its water right permit terms and changes to its FERC license. The Report describes current hydrological conditions in the Yuba River watershed, current supplies and forecasted operations for the Yuba River Development Project (YRDP) and information related to how YCWA would operate its YRDP in a manner that will both conserve water stored in NBBR and ensure a protective flow pattern for fish in the lower Yuba River for the spring of 2014.

3.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

On February 4, 2014, YCWA filed a Notice of Exemption (NOE) with the State Clearinghouse for the proposed project. The NOE indicated that the project is exempt for the following reasons: (a) approval of the TUCP is necessary to preserve scarce water supplies in NBBR and natural resources in the lower Yuba River; (b) the existence of emergency conditions is confirmed by the Governor's January 17, 2014 Proclamation of a State of Drought Emergency for the State of California (Proclamation); and (c) the requested changes are within the scope of stream flows authorized in YCWA's permits.

YCWA has indicated that there is a compelling need to take extraordinary measures to manage very limited water supplies in the lower Yuba River watershed. The 2014 water supply for the YRDP and the lower Yuba River for all beneficial uses is likely to be mostly derived from stored water in NBBR that was carried over from 2013. In addition, YCWA has projected that runoff could account for as little as 25 percent of the water supply to the lower Yuba River this year because of the persistence of drought conditions. Since January 2014, inflow to NBBR has been the driest (lowest volume) of record. Due to the extreme drought conditions, the petitioner has requested the variance to instream flows to conserve water in NBBR. Accordingly, the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency. (Pub. Resources Code, § 21080, subd. (b)(4).)

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.) The State Water Board may approve a temporary urgency change only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1435, subd. (b)(4).) The independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code

¹ YCWA's power generation is authorized under eight water right licenses that are not the subject of this Order.

section 1435 evaluation. The State Water Board has included specific conditions in the Order that are based on recommendations of state and federal fisheries agencies, which will ensure that the temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

4.0 PUBLIC NOTICE OF THE TEMPORARY URGENCY CHANGE PETITION

The State Water Board will issue and deliver to YCWA as soon as practicable, a notice of the temporary urgency change order pursuant to Water Code section 1438(a). Pursuant to Water Code section 1438(b)(1), YCWA is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion are located. The State Water Board will post the notice of the temporary urgency change and the TUCP (and accompanying materials) on its website. The State Water Board also will distribute the notice through an electronic notification system. Pursuant to Water Code section 1438, the State Water Board may issue a temporary urgency change order in advance of the required notice.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.
(Wat. Code, § 1435, subd. (b)(1-4).)

5.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented . . ." However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, an urgent need exists for the proposed temporary change due to the current critically dry hydrologic conditions that are facing the State of California in 2014. Section 5.2, below includes additional information related to the urgency of the proposed change.

5.2 Governor's 2014 Drought State of Emergency Proclamation

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Drought Proclamation. The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The Governor's Order states

“urban water suppliers and municipalities are called upon to implement their local water shortage contingency plans immediately in order to avoid or forestall outright restrictions that could become necessary later in the drought season. Local water agencies should also update their legally required urban and agricultural water management plans, which help plan for extended drought conditions.” Further, the Order directs the State Water Board to consider modifying requirements for reservoir releases or diversion limitations, where existing requirements were established to implement a water quality control plan. These changes would enable water to be conserved upstream later in the year to protect cold water pools for salmon and steelhead, maintain water supply, and improve water quality. The Order also states that the State Water Board will put water right holders throughout the state on notice that they may be directed to cease or reduce water diversions based on water shortages.

5.3 No Injury to Any Other Lawful User of Water

There is no evidence in the record that the changes associated with YCWA's TUCP would result in injury to any other lawful user of water. YCWA has requested the variance in instream flows in order to conserve water in NBBR to ensure that enough water remains available later in the year. Thus, YCWA's proposal will save water during the months of February and March and use this water to provide more stable flows in April, increase storage in NBBR, and add to carryover storage for 2015.

Accordingly, granting this TUCP will not result in any injury to any other lawful users of water. In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(2) that the proposed change may be made without injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

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

YCWA's proposal would conserve water during the months of February and March and use this water to provide more stable lower Yuba River flows in April and conserve water in NBBR to improve water temperature conditions for salmonids later in the year. YCWA developed the TUCP in consultation with the Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service (collectively, Fisheries Agencies). The Fisheries Agencies² provided letters in support of the TUCP and expressed similar recommendations to prevent potential stranding of salmonids and redd dewatering in the lower Yuba River. The recommendations were to (a) ensure that flows were ramped down flow over a period of several days to prevent stranding of salmonids; and (b) that YCWA monitor potential redd dewatering and fry stranding during the period of the variance in conjunction with the Yuba River Fisheries Management Team (Fisheries Team)³. The State Water Board has considered the recommendations by the Fisheries Agencies and has included ramping rate and monitoring requirements to prevent potential stranding and redd dewatering of salmonids.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.5 The Proposed Change is in the Public Interest

Approval of the TUCP will enable YCWA to conserve water in NBBR so that the agency can more effectively manage the very limited water supply that is likely to result from the current and ongoing dry conditions in the State. YCWA has indicated that under the most severe conditions anticipated, and without any action, Conference Year flows will eventually be needed and will result in severe restriction to irrigation deliveries to YCWA Member Units. These conditions would also lead to NBBR reaching a minimum pool by August. It is in the public interest for YCWA to conserve this water supply for beneficial use during the present critically dry hydrological conditions in 2014.

³ The Fisheries Team is comprised of the Fisheries Agencies, South Yuba River Citizens League, The Bay Institute, Trout Unlimited, Pacific Gas and Electric Company, California Department of Water Resources, and Friends of the River.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The permittee has an urgent need to make the proposed change;
2. The petitioned change will not operate to the injury of any other lawful user of water;
3. The petitioned change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The petitioned change, with the modifications described above, is in the public interest.

ORDER

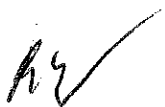
NOW, THEREFORE, IT IS ORDERED THAT: the Petition filed by YCWA for temporary urgency changes in Permits 15026, 15027, and 15030 are approved.

All existing terms and conditions of the subject permits remain in effect, as modified by the State Water Board Revised Decision 1644 (RD-1644) and Corrected Order WR 2008-0014, except as temporarily amended by the following provisions:

1. Term 3 on pages 178-179 of Revised Decision 1644 is temporarily modified to authorize a reduction to a minimum required flow of 500 cfs from the date of this Order through March 31, 2014. The reduction from any flow less than or equal to 700 cfs shall be ramped down to 500 cfs at a rate not to exceed 70 cfs per day, as measured at the Smartsville Gage, which will require ramping the flow down over a period of three or more days. This ramping rate will be implemented for the protection of juvenile salmonids and to minimize the stranding of fish mobilized in the water column.
2. YCWA shall develop and implement a monitoring plan under consultation with the Yuba River Management Team (RMT) and submit this plan to the Deputy Director for Water Rights by March 3, 2014. The monitoring plan shall focus on river temperatures, juvenile habitat use, and redd monitoring for anadromous fishes during the period of flow variance. A monthly report shall be submitted to the Deputy Director for Water Rights and a final report of the results of the monitoring submitted no later than January 31, 2015.
3. The required minimum instream flows referred to in Term 1 on pages 56-58 of Corrected Order WR 2008-0014 are temporarily modified to be minimum instream flows designated for Conference Years from the date of issuance of this Order through May 15, 2014. On and after May 15, 2014, the May Bulletin 120 will be used to determine the North Yuba Index and the appropriate minimum instream flow schedules.
4. The minimum flow requirement of 600 cfs at the Smartsville Gage (paragraph 1.d on page 57 of the Corrected Order) may be reduced to a minimum required flow of 500 cfs from the date of this order through March 31, 2014.

5. For the period of April 1 through April 30, 2014, the required minimum instream flow, as measured at the Smartsville Gage, shall be increased from no requirement to 500 cfs.
6. From the date of this Order through March 31, 2014, the required minimum instream flow, as measured at the Marysville Gage, shall be increased from 245 cfs to 350 cfs.
7. This Order does not authorize any act that results in the taking of a candidate, 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 Order, the permittee shall ensure authorization for an incidental take permit is obtained prior to operation of the project. YCWA shall be responsible for meeting all requirements of the applicable Endangered Species Act for the changes authorized under this Order.
8. The State Water Board reserves jurisdiction to supervise the temporary urgency changes under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.
9. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. This Order shall automatically expire 180 days after the date of its issuance or unless it has been revoked.
10. During the period covered by this Order, YCWA shall continue its implementation of mandatory irrigation conservation measures described in a February 11, 2014 memorandum. These measures shall include: (a) per section 5.1.5 of the Yuba Accord Fisheries Agreement, a minimum reduction in diversions as specified in the Strategic Management Plan that YCWA is required to submit to the RMT for a Conference Year if the Bulletin 120 results in a Conference Year. The Plan shall also be submitted to the Deputy Director for Water Rights. These reductions in diversion as specified in the Fisheries Agreement limit diversions to 250,000 acre-feet (af) and are expected to result in a 20% reduction in diversions to serve irrigation as compared to current irrigation demand levels, (b) per Section 5.1.3 of the Yuba Accord Fisheries Agreement, implementation of Yuba Accord Schedule 6 reduction in irrigation deliveries of 30,000 af if the Bulletin 120 results in a Schedule 6 year and (c) cessation of storage releases from New Bullards Bar Reservoir for irrigation deliveries from December 1 through March 31, 2014.
11. Right holder shall document compliance with the conditions of this Order with the electronic report(s) of water diversion and use covering the period of this Order.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **FEB 19 2014**