

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

DIVISION OF WATER RIGHTS

**In the Matter of Permit 15026
(Application 5632)**

Yuba County Water Agency

**ORDER APPROVING PETITION FOR CHANGE ON LONG-TERM
TRANSFER**

SOURCE: North Yuba River and Yuba River

COUNTY: Yuba

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION FOR CHANGE

On October 16, 2014, Yuba County Water Agency (YCWA) filed a Petition for Change with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change pursuant to California Code of Regulations section 791, et seq. of a long-term transfer authorized under Water Code section 1735, et seq. The requested change is to add a point of diversion (POD) at San Luis Reservoir's (SLR) dam under YCWA's Permit 15026 (Application 5632) until December 31, 2025. Addition of the POD would enable the United States Bureau of Reclamation (Reclamation) to enter into Warren Act contracts for the San Luis Delta-Mendota Water Authority (SLDMWA) to store up to 70,000 acre-feet per year (afa) of Yuba Accord transfer water to SLDMWA for consecutive contract years through December 31, 2025. Storage of transfer water in SLR would involve only water that is currently being transferred under the Yuba Accord.

1.1 Background

YCWA is currently authorized under Corrected Order WR 2008-0014 (Corrected Order) for Long-Term Transfer to transfer up to 200,000 afa of water under Permit 15026 until December 31, 2025, subject to the terms and conditions established in the order. The Corrected Order: (a) approved the inclusion of Yuba Accord streamflow requirements in the permit; (b) added the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, and 4 on file with Application 5629) and the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626) to the place of use in Permit 15026 for the duration of the long-term transfer; and (c) approved the addition of the Central Valley Project's (CVP) and the State Water Project's (SWP) (collectively, Projects) south Delta export diversion facilities as PODs in Permit 15026 for the term of the Water Purchase Agreement (WPA), which ends on December 31, 2025.

YCWA previously petitioned to add the point of diversion for the Freeport Regional Water Project as a POD for its long-term transfer under the Yuba Accord. Addition of the Freeport POD was approved by the Division on March 18, 2014. On January 23, 2014, YCWA petitioned for a Temporary Urgency Change (TUCP) to add SLR Dam as a POD in order to enable Yuba Accord transfer water to be stored in SLR for diversion by members of the SLDMWA. The Division approved the TUCP on February 14, 2014. Approval of the subject Petition for Change would add SLR Dam as a POD until the end of the WPA.

1.2 Project Description

The project associated with YCWA's Petition for Change on the long-term transfer would include the addition of SLR dam in Merced County as an authorized PORD for Permit 15026 for the purpose of allowing carryover storage of up to 70,000 afa in SLR for CVP contractors until December 31, 2025. No facilities would be constructed, and no diversions from natural watercourses would occur in conjunction with the change. A portion of the water stored in SLR is YCWA transfer water authorized by the Corrected Order for use within the Projects' service areas until December 31, 2025.

The Petition for Change states that Reclamation and the SLDMWA have requested the change in order for Reclamation to enter into Warren Act contracts to enable members of SLDMWA to store approximately 70,000 afa of YCWA transfer water in SLR for subsequent CVP contract years for the duration of the long-term transfer.

1.3 Public Notice

On December 5, 2014, the State Water Board issued a notice and LYRIS notification of the Petition for Change. Any protests were required to be submitted by January 5, 2015. No protests were received within the protest period.

2.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

On October 28, 2014, YCWA adopted Addendum No. 3 (SCH #200506211) to the Yuba Accord Environmental Impact Report (EIR), which evaluated the project associated with addition of the PORD at SLR Dam for Permit 15026. The addendum evaluated the proposed project and documented that addition of the PORD for Yuba Accord transfer water will not result in: (a) new significant environmental impacts not analyzed in the Yuba Accord EIR, (b) substantial increases in the severity of significant impacts analyzed in the Yuba Accord EIR, or (c) any other conditions or circumstances that would require preparation of a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guidelines section 15162.

The proposed change to the Yuba Accord Project would not involve any changes to: (1) YCWA's operations in the Yuba River Basin; or (2) flow and water temperatures in the Feather and Sacramento rivers and the Delta, as previously evaluated under YCWA's Yuba Accord EIR and prior addenda. Therefore the analytical approach taken in Addendum No. 3 was to evaluate fisheries and aquatic resources in SLR.

The addendum evaluated the potential for warmwater and coldwater fish populations in SLR to be exposed to reduced levels of dissolved oxygen as algal blooms become more concentrated and reservoir storage approaches the "low point" of 300,000 acre-feet (af) during August and September. The addendum found that the proposed project would not be expected to reduce habitat suitability for warmwater and coldwater fish species in SLR as a result of reduced dissolved oxygen concentrations related to the low point storage in comparison to a "no project" alternative. Simulations of potential scenarios of low point storage frequency indicated that with the project, there are slightly fewer occurrences of reducing SLR storage below the 300,000 af benchmark during August and September, which are months susceptible to reduced levels of dissolved oxygen and potential algal blooms.

The addendum also evaluated the potential for changes to the habitat availability of warmwater fishes during spawning/nesting and rearing seasons and found that the proposed project would not result in new significant environmental impacts or a substantial increase in the severity of previously identified significant impacts to warmwater fishes in SLR. Potential effects to warmwater fisheries were evaluated based on the occurrence of monthly reductions in water surface elevation of six feet or more during March through June (spawning/nesting season) and from April through November (rearing). Modeled scenarios for the spawning/nesting season indicated that the frequency of six foot or greater monthly reductions in water surface elevation under the proposed project would be essentially equivalent during March, May, and June,

but occur slightly higher (3.2%) in the month of April under the proposed project scenario. Modeling scenarios for the rearing season indicated that elevations are generally similar or slightly higher during all months evaluated during all water year types under the proposed project scenario. Water surface elevation probability of exceedance distributions also indicated that water surface elevations are generally similar or slightly higher under the proposed project compared to a “no project” alternative.

In respect to coldwater fishes, it was concluded that the proposed project may slightly improve habitat conditions for coldwater fisheries, particularly during September of dry and critical water years since storage levels would be somewhat higher (6.6 and 8.5% higher) as indicated by simulated scenarios. In addition, probability of exceedance distributions indicate that storage estimates (with the project) are generally similar or slightly higher during the period from April through November.

The addendum did not identify any additional mitigation measures for inclusion in the permit; however, the Division has considered permit conditions proposed by YCWA for inclusion in any order approving the change petition. The State Water Board has considered the environmental documentation and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The State Water Board will file a Notice of Determination within five days from the issuance of this Order.

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 has considered the information in the Yuba Accord EIR, EIR addenda, and the ordering conditions below and determined that these items satisfy the State Water Board’s public trust responsibility.

3.0 CRITERIA FOR APPROVING THE PROPOSED CHANGE

Water Code sections 1735 through 1737 govern the State Water Board’s review of changes in permitted points of diversion, place of use or purpose of use for water transfers for periods in excess of one year. Under Water Code section 1736, the State Water Board may approve a long-term transfer petition if the State Water Board finds that the transfer will not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses. YCWA is currently authorized under Corrected Order WR 2008-0014 for Long-Term Transfer to transfer up to 200,000 afa of water under Permit 15026 until December 31, 2025, subject to the terms and conditions established in the order. On October 16, 2014, Yuba County Water Agency filed a Petition for Change with the State Water Resources Control Board, Division of Water Rights requesting approval of a change pursuant to California Code of Regulations section 791, et seq.

Pursuant to California Code of Regulations section 791, (a) and (e), changes in permits or licenses other than changes in point of diversion, place of use, and purpose of use may be allowed only upon petition and provided that the Petitioner establishes that the proposed change(s) will neither in effect initiate a new right nor injure any other legal user of water.

3.1 No injury to Other Legal Users of the Water

YCWA has provided information in its Petition for Change and EIR Addendum, which shows that addition of the PORD at SLR Dam, under the conditions noted in the order below, will not operate to the injury of any lawful user of water. The Petition for Change states that addition of the proposed PORD will not injure any legal users of water because the water that may be carried over in SLR storage would be water already approved for transfer. In addition, the petition states that there are no water right holders in SLR other than the CVP and the SWP approved transfers of YCWA water within the places of use approved in the Corrected Order. The petition information also indicates that good cause has been shown for the change and, based on the existing facilities, that the project does not constitute the initiation of a new right.

3.2 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a change in order to facilitate a transfer of water, the State Water Board must find that the proposed change to Corrected Order WR 2008-0014 would not unreasonably affect fish, wildlife, or other instream beneficial uses. Refer to Section 2.0 regarding discussion and conclusions that this change has no unreasonable effect on fish, wildlife, or other instream beneficial uses. The petitioner notified CDFW on October 16, 2014 regarding the proposed change. CDFW subsequently contacted the Division on January 13, 2015, to state that they had no concerns with the change.

NOW, THEREFORE, IT IS ORDERED THAT: YCWA's Petition for Change on the Long-Term Transfer for Permit 15026 is approved.

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

1. The PORD at San Luis Dam is authorized until December 31, 2025. The location of the PORD is on San Luis Creek at NAD 83, Zone 3, North 1,848,478 feet and East 6,393,579 feet, being within the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M, as shown on map on file in Application 5632.
2. The maximum quantity of water that may be stored in SLR by virtue of one or more Warren Act contracts between CVP contractors and Reclamation under this Order is 70,000 afa.
3. Diversions at the PORD at SLR Dam are subject to all terms of any biological opinions and incidental take permits that apply to the operation of SLR by Reclamation and DWR.
4. The PORD at SLR Dam is authorized to enable carryover storage of YCWA water transferred pursuant to the Corrected Order under one or more Warren Act contracts between CVP contractors and Reclamation.
5. The addition of SLR Dam as an authorized PORD shall not authorize any diversions of water under Permit 15026 at Clifton Court Forebay and Jones Pumping Plant other than those authorized by the Corrected Order.
6. YCWA shall provide a report describing the storage of YCWA water in SLR authorized under this Order to the Deputy Director for Water Rights with the annual electronic report(s) of water diversion and use for Permit 15026 covering the period of this Order. The report shall include average monthly rates and volumes of water rediverted at the SLR Dam PORD and shall include the annual total of water placed in storage in SLR.
7. This Order does not authorize any physical use of the CVP or SWP facilities absent independent agreements with DWR or Reclamation for the use of those facilities.
8. 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 Right Holder shall ensure authorization for an incidental take permit is obtained prior to operation of the project.
9. YCWA shall comply with all applicable requirements of the State Water Board's Revised Decision 1644, as amended by the Corrected Order. All of the instantaneous and annual limits on pages 59-60 of the Corrected Order shall apply to the total of all rediversion under Permit 15026 at the Freeport Regional Water Authority PORD, Clifton Court Forebay, and Jones Pumping Plant.

10. Only Released Transfer Water, as defined in Exhibit 1 (Scheduling and Accounting Principles) to Exhibit YCWA-11a, as submitted during the State Water Board's 2007 hearing that led to the Corrected Order, may be transferred through the SLR Dam PORD under this permit.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **FEB 25 2015**