

**Order Regarding Petitions for Change and Petitions for Extension of Time for Water Right Permits 15013, 15015, 15017, 15018 and 15024 (Applications 11792B, 12910, 12912, 13091 and 19149) of Calaveras County Water District**

**Order No. 97-05**

**North Fork Stanislaus River  
and Other Sources**

**Calaveras County**

**September 1997**

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



STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permitted )  
Applications 11792, 12910, )  
12912, 13091 and 19149 ) ORDER: WR 97-05  
(Permits 15013, 15015, 15017, )  
15018 and 15024) of )  
 )  
CALAVERAS COUNTY WATER )  
DISTRICT, )  
 )  
Permittee, )  
 )  
NORTHERN CALIFORNIA POWER )  
AGENCY, DEPARTMENT OF FISH )  
AND GAME, OAKDALE IRRIGATION )  
DISTRICT, ET AL., SOUTH DELTA )  
WATER AGENCY, )  
 )  
Protestants, )  
 )  
U.S. BUREAU OF RECLAMATION, )  
 )  
Interested Party. )  
 )

ORDER CONDITIONALLY APPROVING  
PETITIONS FOR CHANGE AND  
PETITIONS FOR EXTENSION OF TIME

BY THE BOARD:

1.0 INTRODUCTION

Calaveras County Water District (CCWD) has filed petitions for (1) extensions of time to complete construction under the above permits, (2) addition of points of diversion and rediversion, (3) additions to the places of use, and (4) addition of purposes of use. Protests were filed, and some protests were not resolved. On November 30, 1995, the State Water Resources Control Board (SWRCB) gave notice of a public hearing on the unresolved protest issues. On January 24 and 25, 1996, the SWRCB

held the public hearing and received evidence from the parties on the key issues listed in the notice. The SWRCB held the record open after the hearing to receive specified items from CCWD as further evidence and to receive written closing statements of the parties. CCWD submitted the further evidence, the other parties commented on the evidence, and CCWD responded. All evidentiary materials for the record were submitted by February 20, 1996. All closing statements were submitted by March 4, 1996. The SWRCB has considered all of the evidence and arguments in the hearing record. The SWRCB finds as follows:

## 2.0 BACKGROUND

The CCWD's North Fork Stanislaus Project (Project) is a multipurpose water development project intended to provide both hydroelectric energy and consumptive use water for Calaveras County. Except for a point of rediversion at Goodwin Reservoir, the project previously has been entirely upstream of New Melones Reservoir. The earliest water right application for this project is Application 11792, filed in 1947. CCWD filed additional applications in 1949 and 1959. The SWRCB issued hydropower and consumptive use permits to CCWD for the Project pursuant to Water Right Decision 1226, adopted August 25, 1965.<sup>1</sup> CCWD filed change petitions in 1978 after negotiating an agreement in 1975 to sell hydropower to the Northern California Power Agency (NCPA). In Order WR 80-7, issued on March 20, 1980, the SWRCB approved the petitioned changes related to the power facilities and the water supply facilities integrally related to the power facilities, but deferred consideration of the consumptive use portions of the petitioned changes pending CCWD's preparation of adequate

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<sup>1</sup> The SWRCB issued Decision 1226 upon reconsideration of Water Right Decision 1114, adopted March 14, 1963.

environmental documentation for these aspects of the Project. The SWRCB reconsidered Order WR 80-7 and affirmed it with amendments in Order WR 80-21. The power facilities have been in operation since 1990.

For the water supply aspects of the Project, CCWD prepared two Environmental Impact Reports (EIRs). The first one was prepared for delivery of water to the Ebbetts Pass area. CCWD filed a change petition for delivery of water to this area on August 9, 1988. CCWD then prepared environmental documentation, completed in 1992, that includes service to Copper Cove, which is adjacent to Tulloch Reservoir, and to the area that will be served by the Limestone Slurry Pipeline (slurry pipeline). The 1992 EIR also covers the Angels-Cherokee Creek diversion project, which has been deferred to a later hearing pursuant to an agreement between CCWD and several of the protestants. After it certified the EIRs, CCWD revised its water right petitions. The SWRCB gave notice of the revised petitions on May 15, 1995. In this proceeding, CCWD is seeking an extension of time and changes in its permits that will authorize it to put Project water to consumptive uses in three locations: Ebbetts Pass, Copper Cove, and the area to be served by the slurry pipeline. CCWD also is seeking deletion of several terms and conditions from its permits.

The North Fork Stanislaus River is fed by several small streams, including Highland Creek and Beaver Creek, before it joins the Stanislaus River upstream of New Melones Reservoir. The permits authorize diversion of water from the North Fork Stanislaus River and its tributaries Highland Creek and Beaver Creek, and from the Stanislaus River. The authorized points of diversion and rediversion are at New Spicer Meadow Reservoir (New Spicer) on

Highland Creek, Goodwin Dam on the Stanislaus River, the North Fork Diversion Dam on North Fork Stanislaus River, the Beaver Creek Diversion Dam on Beaver Creek, and McKay's Point Diversion Dam (McKay's) on North Fork Stanislaus River. New Spicer, with a storage capacity of 189,000 acre-feet (af), is the primary collection point for water diverted under the various permits. From New Spicer, the water used for hydropower generation is released into Highland Creek, thence the North Fork Stanislaus River. The water is rediverted at McKay's Point Diversion Dam into the Collierville tunnel, penstock, and powerhouse facilities, and then is discharged to the Stanislaus River just above New Melones Reservoir. Some water diverted into the Collierville tunnel is released at the "tunnel tap," a controlled release point that discharges water into the Ebbetts Pass community domestic water supply system and into the Utica Canal system. The Utica Canal system delivers water for consumptive use to the city of Angels Camp and vicinity, and for hydroelectric use to the Utica and Angels powerhouses. From the powerhouses, the water returns to Angels Creek, thence to New Melones Reservoir.

Table 1 is a summary of the permits considered in this order, as of the date of the hearing. Figure 1 depicts the points of diversion and the conveyance facilities approved prior to this order.

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**TABLE 1**  
**SUMMARY OF CCWD'S CONSUMPTIVE USE PERMITS**

Application Permit	11792B 15013	12910 15015	12912 15017	13091 15018	19149 15024
Application Priority Date	March 24, 1947	January 25, 1949	January 25, 1949	May 13, 1949	December 23, 1959
Source	(1) North Fork Stanislaus River  (2) Highland Creek	(1) North Fork Stanislaus River  (2) Stanislaus River	North Fork Stanislaus River	Highland Creek	(1) Beaver Creek  (2) North Fork Stanislaus River  (3) Highland Creek
Place of Use <sup>2</sup>	150,449 acres	124,078 acres	Towns within Ebbetts Pass Domestic System	39,078 acres	124,078 acres
Points of Diversion and Permitted Quantities	(1) McKay's Point Diversion Dam-- 2,200 afa  (2) New Spicer Meadow Reservoir-- 76,300 afa	(1) Squaw Hollow Reservoir (this location is close to McKay's Point Diversion Dam)  or  (2) Goodwin Dam-- 65 cfs	Upper End Big Trees Area--7 cfs	New Spicer Meadow Reservoir-- 63,000 afa	(1) Beaver Creek Diversion Dam--340 cfs  (2) New Spicer Meadow Reservoir-- 12,700 afa onstream storage  (3) North Fork Diversion Dam--37,000 afa offstream storage, limited to (continued) 1,000 cfs

<sup>2</sup> All within the service area of the District, as shown on maps on file with the SWRCB (see WR Order 80-7, Appendix, Table 1).

**TABLE 1**  
**SUMMARY OF CCWD'S CONSUMPTIVE USE PERMITS**

<b>Application Permit</b>	<b>11792B 15013</b>	<b>12910 15015</b>	<b>12912 15017</b>	<b>13091 15018</b>	<b>19149 15024</b>
					diversion rate  (4) McKay's Point Diversion Dam-- 25 cfs
<b>Diversion Season</b>	November 1 to July 1	March 1 to July 1	November 1 to July 1	November 1 to July 1	Direct Diversion: March 1 to July 1  Storage: November 1 to June 30
<b>Purpose of Use</b>	Municipal, Irrigation	Irrigation, Domestic, Stockwater	Municipal	Irrigation, Domestic, Stockwater	Irrigation, Domestic, Stockwater
<b>Date to Complete Construction</b>	December 1, 1984	December 1, 1993	December 1, 1993	December 1, 1984	December 1, 1984
<b>Date to Complete Full Beneficial Use</b>	December 1, 2015	December 1, 2015	December 1, 2015	December 1, 2015	December 1, 2015
<b>Constructed Facilities Under Permit</b>	McKay's Point Diversion Dam  New Spicer Meadow Reservoir	Goodwin Dam	None	New Spicer Meadow Reservoir	McKay's Point Diversion Dam  North Fork Diversion Dam  New Spicer Meadow Reservoir

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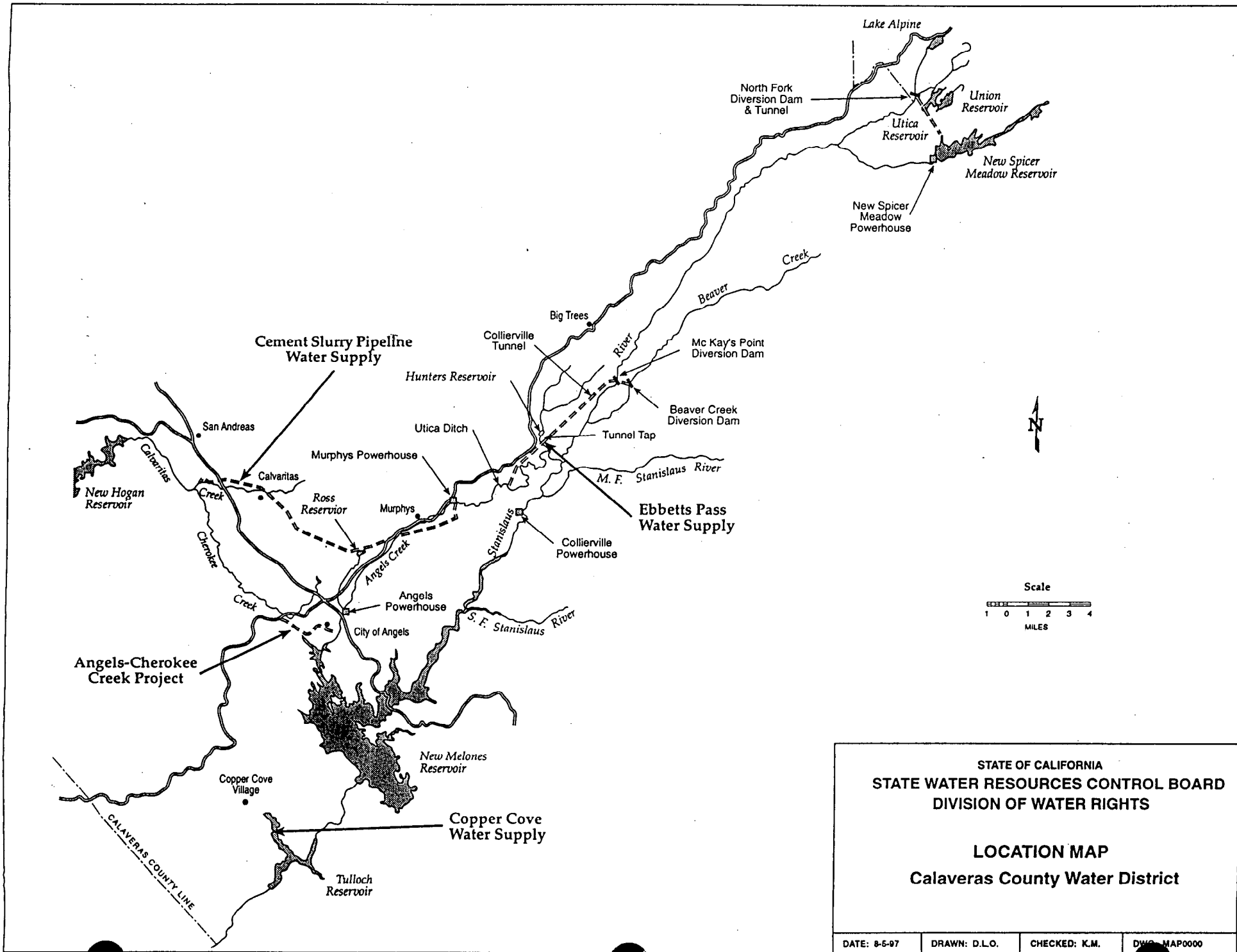


Figure 1

### 3.0 THE PETITIONED CHANGES

Originally the petitioned changes to be considered in this Order included a diversion of water from the Stanislaus River watershed to the Calaveras River watershed above New Hogan Reservoir by way of Angels Creek thence Cherokee Creek. The Angels-Cherokee Creek proposal, which would involve an interbasin transfer of water, drew numerous protests, and CCWD agreed with the protestants to defer its request for action on this proposal for at least two years. The remaining projects, for which water right changes are considered in this Order, are: (1) the Ebbetts Pass Project, (2) the Slurry Pipeline Project to deliver water to the area from Murphys to San Andreas, and (3) the Copper Cove Project to divert water from the Stanislaus River at Lake Tulloch. The water right permit changes associated with these projects include changes in points of diversion and rediversion, an enlarged place of use, and additional purposes of use. CCWD also petitioned for an extension of time to complete construction of the project, until December 31, 1998. Table 2 is a summary of the requested changes that the SWRCB considered during the hearing. With the requested changes to allow increased deliveries to the three service areas, CCWD will be authorized to increase its consumptive use from about 1500 afa to about 15,000 afa, for a net increase of about 13,500 afa. CCWD also requested that the SWRCB delete three existing terms and conditions from the water right permits.

Pursuant to CCWD's contract with the NCPA, CCWD can use no more than 5000 afa of water from New Spicer for consumptive uses until the year 2009. Then the maximum consumptive use the contract allows will be 8000 afa until the year 2039. The contractual restriction applies only to water used for consumptive purposes in the North Fork Stanislaus River watershed, including water taken from the Collierville power tunnel at the tunnel tap.

(R.T. I, pp. 54-55; 182.) Accordingly, while CCWD is requesting authorization to use up to 8000 afa in these areas, it will not be able to use more than 5000 afa until the year 2009.

With the petitioned changes and the current description of the overall Project, CCWD will divert water only at New Spicer on Highland Creek, North Fork Diversion Dam on the North Fork Stanislaus River, McKay's Point Diversion Dam on the North Fork Stanislaus River, and Lake Tulloch on the Stanislaus River.

(R.T. I, p. 184.) Accordingly, it appears that the SWRCB can delete the other currently authorized points of diversion from the permits considered in this Order.

### **3.1 The Ebbetts Pass Deliveries**

The Ebbetts Pass area receives water from CCWD through a system of pipes, pumps, and storage tanks. Ebbetts Pass currently uses approximately 1200 afa, which CCWD supplies under Water Right Permit 14769. While Permit 14769 is not subject to this Order, CCWD points out that a reason why it petitioned for changes is that it has reached the limit of its rights under Permit 14769. CCWD projects that water use in the Ebbetts Pass area will approach 6000 afa by the year 2040. For the Ebbetts Pass area, CCWD is requesting authorization under its permits, including Permit 14769, to deliver up to a combined total of 8000 afa, including direct diversion of up to 7 cfs and rediversion of stored water. CCWD is requesting up to 8000 afa for this area to account for uncertainties and for possible service to the adjacent Murphys/City of Angels area. At McKay's, CCWD will divert water into the Collierville power tunnel and release it at the tunnel tap for delivery to Hunters Reservoir or to the Ebbetts Pass Treatment Plant.

### **3.2 The Copper Cove Deliveries**

The Copper Cove service area is north of Lake Tulloch, and is served water through a diversion from Lake Tulloch. The Oakdale and South San Joaquin Irrigation Districts (also known as Tri-Dams) own and operate Lake Tulloch, and they temporarily are selling water to CCWD for this area. The current consumptive use is approximately 500 afa, and CCWD projects that by the year 2040 the consumptive use in this area will be between 4000 and 9000 afa. CCWD will construct a new intake pump station, pipeline, and treatment plant for deliveries to the Copper Cove service area. Future deliveries to Copper Cove under CCWD's water rights will entail amendment of Water Right Permits 15013, 15018, and 15024 to add points of rediversion at Lake Tulloch and Permit 15015 to add a point of diversion at Lake Tulloch. CCWD requests direct diversions under Permit 15015 up to 10 cfs and rediversions of stored water released from New Spicer under Permits 15013, 15018, and 15024, up to a combined total of 6000 afa for use in the Copper Cove service area. CCWD will divert and redivert water for its deliveries to this area at New Spicer and McKay's, and will pass the water through New Melones Reservoir without its being stored.

### **3.3 The Slurry Pipeline Deliveries**

The slurry pipeline was built in the early 1970's to transport limestone from the Murphys area to near San Andreas, where cement was manufactured. The pipeline has not been used since the mid-1970's. The pipeline is approximately 7 inches in diameter. CCWD proposes to use the pipeline to transport water from the Utica system to users along its route. For this project, CCWD requests direct diversions under Permit 15015 up to 3 cfs and rediversions of stored water under Permits 15013, 15018, and 15024, up to a combined total of 1000 afa. CCWD will divert and

redivert water for its deliveries to this area at New Spicer and McKay's.

**TABLE 2**  
**PETITIONED CHANGES TO THE DISTRICT'S PERMITS**

Application Permit	11792B 15013	12910 15015	12912 15017
<b>Requested Points of Diversion and Rediversion</b>	Add points of rediversion:  1. McKay's Point Diversion Dam  2. Lake Tulloch	Add points of diversion:  1. North Fork Stanislaus River  a. McKay's Point Diversion Dam-- 3 cfs to Utica Ditch thence limestone slurry pipeline project  b. At point 3 on map 7 cfs to Ebbetts Pass Water System  2. Lake Tulloch-- 10 cfs to Copper Cove	No petitioned changes or time extension
<b>Requested Place of Use</b>	All of Calaveras County, except the U.S. Forest Service lands	All of Calaveras County, except the U.S. Forest Service lands	
<b>Requested Additional Purposes of Use</b>	Industrial, Stockwater, Domestic, Recreation	Municipal, Industrial	
<b>Extension of Time</b>	Complete Construction December 31, 1998	Complete Construction December 31, 1998	

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**TABLE 2 (continued)**  
**PETITIONED CHANGES TO THE DISTRICT'S PERMITS**

Application Permit	13091 15018	19149 15024
<b>Requested Points of Diversion and Rediversion</b>	Add points of rediversion:  1. McKay's Point Diversion Dam  2. Lake Tulloch	Add points of rediversion:  1. McKay's Point Diversion Dam  2. Lake Tulloch
<b>Requested Place of Use</b>	All of Calaveras County, except the U.S. Forest Service lands	All of Calaveras County, except the U.S. Forest Service lands
<b>Requested Additional Purposes of Use</b>	Municipal, Industrial, Recreation	Municipal, Industrial, Recreation
<b>Extension of Time</b>	Complete Construction December 31, 1998	Complete Construction December 31, 1998

### 3.4 Change of Place of Use

CCWD petitioned for changes of place of use for Permits 15013, 15015, 15018, and 15024 to include all of Calaveras County except the U.S. Forest Service lands. If fully authorized, this proposed change would allow the diversion of water to New Hogan Reservoir by way of Angels Creek and Cherokee Creek, but CCWD deferred its request for approval of the Angels-Cherokee Creek diversion in response to protests. The Angels-Cherokee Creek diversion would take water from the Stanislaus River watershed and use it in the Calaveras River watershed. Protestants objected to the diversion because the diversion would take a substantial quantity of water to another watershed, bypassing the Stanislaus River users. It is not clear, however, what water right permit changes CCWD would need in addition to the changes requested in this proceeding, to be able to divert Stanislaus River water into the Calaveras River watershed. Accordingly, the protestants against the interbasin transfer cautioned that any approval of the petitioned changes should be narrowly written to

avoid authorizing the delivery of water to places in the Calaveras River watershed except for the specific service areas for the three projects described above.

### 3.5 Petition for Extensions of Time and Related Issues

CCWD requests extensions of time to complete construction of the facilities associated with the water supply permits considered in this Order. Approval of such extensions requires a finding that CCWD has prosecuted the construction work with due diligence.

(Wat. Code § 1397; 23 Cal. Code Regs. § 844.) CCWD also requests that the SWRCB remove from its permits a due diligence condition that the SWRCB added pursuant to Order WR 80-7. (R.T. I, p. 38; R.T. II, pp. 3-5.) It provides:

"10. Until environmental documents are prepared, no decision will be made on the petitions for change and extensions of time for commencing construction of features of water supply projects unrelated to the hydroelectric project for permitted Applications 11792, 12910, 12912, 13091, 18728, and 19149. Failure to complete final environmental documents for the water supply projects by December 1, 1983, may be viewed as failure to proceed with due diligence to construct the facilities necessary to put the water to use under permitted Applications 11792, 12910, 12912, 13091, 18728, and 19149."

If the SWRCB finds that CCWD has pursued the construction work with due diligence and that an extension of time is justified, it necessarily will find that Condition 10 of Order WR 80-7 has been substantially satisfied and is no longer needed. As discussed below in Part 5, the petition for extension of time to construct the project facilities is granted. Accordingly, the SWRCB will delete Condition 10 of Order WR 80-7 from the permits that are subject to this Order.

### **3.6 Deletion of Requirement to Construct a Swimming Beach**

In Order WR 80-7, Condition 9.b. and c., the SWRCB required the establishment of a swimming beach at the then-planned Collierville Afterbay or at some other suitable location on the Stanislaus River, to mitigate for the loss of instream recreation connected with putting rafts onto the river in that area. The Collierville Afterbay was not constructed. It was deemed unnecessary because the construction of New Melones Reservoir caused water to be backed up to approximately one-fourth mile below the site of the proposed afterbay. Accordingly, the Federal Energy Regulatory Commission, in its Order No. 2409-013, eliminated the afterbay from the North Fork Stanislaus Hydroelectric Project. CCWD now requests that the SWRCB remove this condition from its permits. (R.T. I, p. 38; R.T. II, pp. 3-5.) CCWD testified that the swimming beach is no longer feasible due to the elimination of the afterbay. (R.T. II, pp. 3-4.) The SWRCB received no opposing evidence or argument. Accordingly, subparagraphs b. and c. of Condition 9 in Order WR 80-7, which require the swimming beach at Collierville Afterbay, will be deleted from the CCWD consumptive use permits that are the subject of this proceeding.

## **4.0 PROTESTS**

### **4.1 Unresolved Protest Issues Noticed for the Hearing**

The SWRCB gave notice of issues raised in the following unresolved protests or portions of protests, for consideration at the hearing. Of the following protestants, only NCPA, Department of Fish and Game (DFG), and South Delta Water Agency (SDWA) participated actively in the hearing. NCPA supported CCWD's proposed changes with the caveat that the changes should not interfere with the hydropower contract between NCPA and CCWD.



The U.S. Bureau of Reclamation (USBR) participated only as an interested party. The USBR had protested some of CCWD's original requests, but CCWD withdrew from consideration all of the requests the USBR had protested, before the SWRCB issued the hearing notice. The parts of the protests of CSPA, Stanislaus River Council, California Trout, and Friends of the River relating to the issues considered in this Order are dismissed for failure to appear at the hearing or show good cause within five days for such failure. (Wat. Code § 1352.)

1. *Northern California Power Agency's* remaining protest issue at the hearing was a request that any approval of CCWD's petitions to change the permits on Applications 11792B, 13091, and 19149 be conditioned to be consistent with the contracts between NCPA and CCWD with respect to the operation of the North Fork Stanislaus River Hydroelectric Development Project. This order is consistent with the contracts.
2. The *Department of Fish and Game's* remaining protest issue at the hearing was a request that the SWRCB establish appropriate bypass flow requirements for the North Fork Stanislaus River in connection with the proposed Copper Cove deliveries.
3. The *South Delta Water Agency, Delta Water Users Association, and Alexander Hildebrand (SDWA)* raised issues whether the proposed changes would (1) change the pattern of water flows entering the Sacramento-San Joaquin Delta, thereby reducing the quantity and quality of irrigation water in the Delta; (2) infringe upon the property and water rights of SDWA members; (3) violate Water Code sections 12230-12232, 12200-12205, and 1702 through increased consumption of water

upstream; (4) be detrimental to the public interest and public trust resources.

4. The *California Sportfishing Protection Alliance's (CSPA)* protest issues that the SWRCB included in the hearing notice were (1) whether CCWD had exercised due diligence in putting water to beneficial use; (2) a request similar to DFG's for bypass flows in connection with the proposed Copper Cove deliveries; (3) whether CCWD currently is exceeding any of its permitted rates of water diversion or storage; (4) operation of the Utica Canal facilities in connection with the existing facilities. As noted above, CSPA's protest is dismissed with respect to these issues. CSPA's protest issues regarding the remaining aspects of CCWD's petitions will remain viable pending SWRCB consideration of the yet-to-be-considered portions of the petitions.

5. The *Stanislaus River Council, California Trout, and Friends of the River* each raised the issue, included in the hearing notice, of whether the proposed diversions would reduce flows in the Stanislaus River downstream from Goodwin Dam, impacting the salmon, steelhead, and rainbow trout fisheries in the lower Stanislaus River. As noted above, these protests are dismissed as to this issue because the protestants failed to appear at the hearing. The protests will remain viable as to the parts of CCWD's petitions that this Order does not consider.

#### **4.2 Project Components Not Considered in This Proceeding**

As mentioned above, CCWD deferred its request for approval of the parts of the change petitions requesting diversions of water from the Stanislaus Basin to New Hogan Reservoir by way of Angels

Creek and Cherokee Creek. The deferral was made pursuant to a settlement agreement between CCWD and the three entities<sup>3</sup> collectively referred to as TRI-DAM. Under the agreement, TRI-DAM dismissed litigation against CCWD and CCWD agreed, among other things, to request that SWRCB hearings on the Angels-Cherokee Creek diversion be bifurcated from the other diversions, and that the SWRCB take no action regarding the Angels-Cherokee Creek diversion for a period of two years. They also agreed that TRI-DAM would protest any uses of Stanislaus River water outside the watershed under the Ebbetts Pass Project and the Copper Cove Project. CCWD could revive its request to approve the Angels-Cherokee Creek diversion into the Calaveras River watershed in the future, and if it does, the SWRCB will consider the protests on the changes associated with this diversion. In addition to TRI-DAM, protestants against this diversion include the U.S. Fish and Wildlife Service, CSPA, USBR, George and Maxine Roster, Stanislaus River Council, Noel and Joyce Helmbrecht, Cal Trout, NCPA, and DFG. This order requires terms and conditions on CCWD's permits to ensure that the protests of the Angels-Cherokee Creek diversion are preserved for future consideration.

CCWD also withdrew its proposal to divert water at Ramsey Reservoir on the North Fork Stanislaus River. With CCWD's permission, the SWRCB has revoked the permit for Ramsey Reservoir. Protestants against the Ramsey Reservoir proposal included CSPA, U.S. Fish and Wildlife Service, U.S. Forest Service, the Mountain Alliance, Friends of the River, Stanislaus River Council, Noel and Joyce Helmbrecht, Central Sierra

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<sup>3</sup> TRI-DAM includes Oakdale Irrigation District, South San Joaquin Irrigation District, and Tri-Dam Power Authority.

Watershed Coalition, Cal Trout, Central Sierra Environmental Resource Center, Stephen Schadlich, and DFG.

#### 4.3 Hearing Issues

The SWRCB's hearing notice, issued November 30, 1995, listed the following issues for consideration in the hearing.

1. Has the District exercised due diligence in maintaining Permits 15013, 15015, 15017, 15018 and 15024 or should the permits be revoked, in whole or in part?
2. Has the District complied with all of the permit conditions for Permits 15013, 15015, 15017, 15018 and 15024, including the diligence criterion established by the SWRCB in Order WR 80-7? If not, what action should the SWRCB take?
3. Will approval of the proposed changes initiate a new right to use water?
4. Will approval of the proposed changes result in injury to any other appropriate or lawful user of water?
5. Will approval of the requested changes result in adverse impacts to public trust resources, including whitewater recreation?
6. Is approval of the requested changes consistent with any area of origin or watershed protection rights which the District has to the Stanislaus River watershed?

7. Has the District prepared adequate CEQA documentation to support all of the proposed changes and time extensions and identified appropriate mitigation measures for any identified adverse environmental impacts as required by the District's permits?
8. Will approval of the requested changes be consistent with the existing contract between NCPA and the District regarding operation of the New Spicer Meadow Reservoir?
9. What quantity of water should be authorized under each permit for service to the District's proposed new place of use?
10. Should the permit conditions requiring construction of the Collierville afterbay and swimming beach be removed from the District's permits?
11. Should the SWRCB approve the petitions for extension of time? If so, what are the appropriate conditions for approval of the petitions?
12. Should the SWRCB approve the change petitions to add a point of diversion/rediversion at McKay's Point Diversion Dam and Lake Tulloch? Should the SWRCB approve the petitioned changes for the Ebbetts Pass Water System and the slurry pipeline projects? What are the appropriate conditions for approval of the petitions?

13. Should the SWRCB approve the petitions for change in place of use? If so, what are the appropriate conditions for approval of the petitions?

#### 5.0 DETERMINATION OF ISSUES

With respect to its consumptive use permits, CCWD has requested extensions of time to construct project facilities, changes in the places of use, changes in points of diversion, and changes in the purposes of use. With respect to proposed changes in place of use, point of diversion, and purpose of use, a permittee is required to establish, to the satisfaction of the SWRCB, that the change will not operate to the injury of any legal user of the water involved. (Wat. Code § 1702.) With respect to an extension of time, the criteria discussed in part 5.1, below, apply.

#### 5.1 Petitions for Extension of Time

CCWD petitioned for extensions of time until December 31, 1998, to complete construction of the water supply parts of its project under Permits 15013, 15015, 15018, and 15024. The SWRCB issued these permits in 1966, pursuant to Decision 1226. Permits 15013, 15018, and 15024 currently require completion of construction by December 1, 1984. Permit 15015 requires completion of construction by December 1, 1993. All four permits currently require that CCWD complete its application of water to the authorized use by December 1, 2015. CCWD petitions for an extension of time until December 31, 1998, to complete construction.<sup>4</sup>

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<sup>4</sup> CCWD has not requested any changes or extensions of time for Permit 15017. Permit 15017 requires completion of construction by December 1, 1993, and completion of application of water to the authorized use by December 1, 2015.

To approve a request for extension of time, the SWRCB must find that there is good cause for the extension. (Wat. Code § 1398.) A permittee is required to pursue project construction and the beneficial use of the water with due diligence, in accordance with the Water Code, the terms and conditions of the permit, and the SWRCB's regulations. (Wat. Code § 1397.) The SWRCB's regulations require that the time extension be in the public interest and that the permittee make a showing, to the SWRCB's satisfaction, that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and that satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise are generally not considered good cause for delay. (Cal. Code Regs., tit. 23, § 844.)

As explained above, the SWRCB in Order WR 80-7 approved the hydroelectric portions of CCWD's project, but added a permit term (term 10) requiring CCWD to complete environmental documentation for features of the water supply project unrelated to the hydroelectric project before the SWRCB would consider approving construction of the water supply part of the project. Term 10 requires CCWD to complete its water supply environmental documentation by December 1, 1983. Term 10 also provides that the SWRCB may view failure to complete the environmental documentation on time as failure to proceed with due diligence to construct the facilities. This provision, however, is subject to the discretion of the SWRCB, in light of all of the circumstances.

CCWD developed the hydroelectric part of its North Fork Stanislaus Project before preparing the water supply EIRs, to obtain the money needed to prepare the EIRs and to construct the water supply facilities. The SWRCB found, in Order WR 80-21, that CCWD had a financial need to develop the hydroelectric project first, and that it would be unreasonable to require CCWD to complete the EIRs for the water supply projects before developing the hydroelectric project. (Order WR 80-21, Finding 16, p. 7.) CCWD had limited personnel and financial resources, which limited its ability to proceed simultaneously with the hydroelectric and water supply aspects of projects. Litigation delayed the start of construction of the hydroelectric project until 1985. CCWD completed construction of the hydroelectric parts of the Project in 1990.

The construction of New Spicer at the former Spicer Reservoir site increased the total water storage capacity in the North Fork Stanislaus River watershed from 13,642 af to 198,580 af. The capacity of New Spicer is 189,000 af, while the former capacity at that site was 4,062 af. The other storage reservoirs in the area are Alpine, Union, and Utica.<sup>5</sup>

In 1983, CCWD petitioned for an extension of time to complete the environmental documents for its water supply projects. The petition cited delays in the construction of the hydroelectric project. During construction of the hydroelectric project, CCWD prepared an EIR, certified in 1988, for the Ebbetts Pass water supply deliveries. After CCWD completed the hydroelectric

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<sup>5</sup> Other dams on the North Fork Stanislaus River divert but do not store water, including McKay's Point Diversion Dam, Beaver Creek Diversion Dam, and Hunters Reservoir.



project, CCWD prepared another EIR, certified in 1992, covering the Copper Cove deliveries, the Limestone Slurry pipeline deliveries, and the Angels Creek diversion. (CCWD, 3.)

CCWD filed petitions for changes in Permit 15013 in 1987, to add a point of diversion for the Ebbetts Pass project, and in 1990, to add a point of diversion and place of use for the Copper Cove project. In 1993, CCWD modified its existing petitions for changes to Permits 15013, 15015, 15018, and 15024. The SWRCB renoticed the petitions for change in 1995. (CCWD, 3.)

CCWD has pursued the Project's construction with due diligence. CCWD could not reasonably have avoided the delays it encountered. CCWD cannot commence beneficial use under these water supply permits until it receives this approval. The following facilities have been constructed that CCWD will use for water supply: (1) New Spicer Reservoir, (2) a tunnel tap on the Collierville penstock, (3) the Utica Canal, and (4) a new diversion works at Lake Tulloch.

Further, CCWD has demonstrated a need for the water supply that it will obtain under these permits and that it can put the water to beneficial use. (Testimony of Susan Larson and Francis Borcalli; CCWD Exhs. 22, 23.) CCWD serves an area with a growing population that will use an increasing amount of water. Accordingly, commitment of the water to appropriation under these permits is in the public interest. While financial considerations and occupation with other work are not ordinarily considered good cause for delay, these matters were in this case a critical part of the orderly completion of the overall Project, and were incident to the Project itself, not to CCWD.

## **5.2 Effects of the Project on South Delta Water Agency**

SDWA argues that the proposed actions could have hydrologic and water quality impacts on the water users represented by its protest. SDWA's members claim both riparian and appropriative water rights, and they claim water right seniority over CCWD. CCWD did not dispute SDWA's water rights or their seniority. Accordingly, this Order assumes that SDWA's members have senior water rights.

SDWA's water supply is protected by a condition on the USBR's permits for New Melones Reservoir, which under SWRCB Order WR 95-6 requires the USBR to maintain a maximum 30-day running average of mean daily electrical conductivity in the San Joaquin River at Vernalis of 0.7 mmhos/cm during April through August and 1.0 mmhos/cm during September through March. This requirement could revert to a year-round requirement of 500 parts per million total dissolved solids after December 31, 1998, when Order WR 95-6 expires. The USBR releases water from New Melones Reservoir for salinity control at Vernalis, but has not always met the applicable standard.

### **5.2.1 CCWD's Existing Water Rights**

SDWA argues that the SWRCB should not authorize a new appropriation for CCWD. CCWD, however, is not applying for additional water rights. To the contrary, the changes CCWD requests represent a substantial reduction in the amount of water that CCWD could appropriate for consumptive uses compared with the original approval under Decision 1114. The proposed changes in CCWD's existing water right permits will conform the consumptive use permits to CCWD's current plans and the recently completed hydroelectric facilities. The SWRCB convened this proceeding only for the purposes stated in the hearing notice.

Accordingly, this order does not increase CCWD's authorization to appropriate water.

### **5.2.2 Hydrological Effect in the Stanislaus River of CCWD's Project**

The changes in CCWD's appropriations at New Spicer, including its maximum proposed consumptive use of water, have increased the total amount of water stored in the Stanislaus River basin compared to pre-Project conditions. (CCWD Exhs. 17, 18, 27.) With CCWD's maximum proposed consumptive use of water, the Project will reduce the total flow in the Stanislaus River below Goodwin Dam during a drought period like the 1988-1992 period, by 4,000 af. This is 0.5 percent of the flow during that period. (CCWD Exhs. 20a, 20b.) Further, at full use of the additional 13,500 afa CCWD seeks to put to consumptive use, CCWD's model shows that a five-year drought similar to the 1988-1992 period would reduce the end of September storage in New Melones and Tulloch by about 4 percent on the average. (CCWD Exhs. 17c, 17d.) In actuality, changes like these are not measurable in a reservoir system such as New Melones and Tulloch because the calculations cannot be done this precisely and minor variations in operation could have a larger impact than these apparent changes.

### **5.2.3 Effect on SDWA Due to CCWD's Appropriations in New Spicer**

SDWA diverts water for irrigation as early as March and as late as September, but the primary diversions are in April through August. During June, July, and August, SDWA experiences problems with inadequate water supply. (R.T. II, p. 104.) While CCWD's authorized diversion season overlaps SDWA's diversions during March through June, the only overlap month when SDWA experiences shortages is June. Considering SDWA's testimony, however, the

construction of New Spicer and CCWD's current diversion of water during SDWA's diversion season for operation of the hydroelectric project has not diminished SDWA's water supply. (R.T. II, pp. 123-128.) This lack of effect on SDWA's water supply during CCWD's diversion season apparently is due to the operation of New Melones Reservoir, which is situated between CCWD's reservoir and the southern Delta. CCWD's consumptive use of water may result in a reduction in SDWA's water supply during periods outside of CCWD's diversion season, because CCWD will abandon less water in July, August, and September than it has abandoned by operating New Spicer solely for purposes of hydropower generation.

SDWA points out that the consumptive use of water by CCWD will reduce the annual quantity of water flowing down the Stanislaus River. SDWA believes that if the flows entering New Melones are reduced, the USBR will reduce the amount of water it releases from New Melones for salinity control at Vernalis.<sup>6</sup> The current releases from New Spicer for hydroelectric power are made during the fall, and it is the flows currently abandoned from these power releases that will be diminished as CCWD increases its consumptive use of water upstream of SDWA's members' points of diversion. This means that SDWA is claiming injury because of CCWD's ceasing to abandon a quantity of water that CCWD otherwise would release from New Spicer in the fall. In other words, SDWA

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<sup>6</sup> A reduction in fresh water reaching Vernalis could be detrimental to SDWA's farming operations. The USBR, however, is the only entity currently held responsible for controlling the salinity at Vernalis. While maintenance of salinity is a condition on the water right permits for the New Melones Project, it appears that the purpose of this obligation was to protect the quality of water for an existing beneficial use of water designated in a water quality control plan rather than to protect prior water rights. There has been no determination of the extent of the water rights of SDWA's members.

is arguing that it can require a junior appropriator who stored water during an earlier season to abandon that water for its benefit in a later season.

#### **5.2.4 CCWD's Priority Position Among the Major Water Rights**

CCWD's water right permits herein are senior to the water rights of the USBR for the New Melones Project (but the SWRCB assumes they are junior to the rights of the SDWA members). First, all of CCWD's permits except Permit 15024 have earlier filing dates than the permits for the New Melones Project. Second, CCWD has seniority over two of the New Melones permits under the County of Origin statutes (Wat. Code §§ 10505 and 10505.5). Finally, the USBR contractually agreed, in 1972 and in 1985, to recognize a priority for all of CCWD's permits, over the New Melones permits. Accordingly, CCWD will be able to appropriate water for consumptive use during its diversion season even in hydrologic circumstances when the New Melones Project cannot appropriate water. Assuming that SDWA is senior to CCWD, SDWA could, during CCWD's diversion season when conditions are so dry that there is no water available under the water diversion rights of the USBR for the New Melones Project, call upon CCWD to bypass water for SDWA's claimed priorities. During CCWD's diversion season, water shortages that would deprive SDWA of adequate good quality water are rare.

#### **5.2.5 SDWA's Appropriative Rights Claim**

SDWA's members cannot require, based on their appropriative rights, that CCWD must abandon water during the fall that CCWD earlier appropriated to storage in the winter and spring. Although appropriative rights can attach to any unappropriated water flowing in a stream (Wat. Code § 1201), previously appropriated water only becomes unappropriated if it is

abandoned. A downstream water right holder cannot require that the owner of an upstream reservoir release water appropriated during another season. (*Lindblom v. Round Valley Water Co.* (1918) 178 Cal. 450 [173 P. 994, 997].) As the *Lindblom* court explained, the downstream water right holder can only demand that the reservoir operator bypass part of the water during the season when the water is present in the stream and is being diverted. Further, an appropriator such as CCWD that has abandoned water in the past, causing an artificial flow of water, may cease to abandon water as it increases its use of water. (*Stevens v. Oakdale Irrigation District* (1939) 13 Cal.2d 343 [90 P.2d 58].) As the *Stevens* court explained, the previous abandonment of the corpus of water is not an abandonment of the water right itself where there is no intent to abandon the water right. In this case, there is no indication that CCWD has abandoned its water right. To the contrary, it has worked diligently to complete its project so that it can put water to consumptive use.

#### **5.2.6 SDWA's Riparian Rights Claim**

The riparian rights of SDWA's members likewise are not a basis for demanding water from CCWD that it appropriated earlier in the year. (See *Lindblom, supra.*) Riparian rights attach only to the natural flow of the stream. Riparian rights do not attach to water that someone has stored from an earlier season and released or that someone has brought in from another watershed. (*Lux v. Haggin* (1884) 69 Cal. 255 4 P. 919]; *Bloss v. Rahilly* (1940) 16 Cal.2d 70 [104 P.2d 1049].)

#### **5.2.7 Absence of Potential Injury to SDWA Under Most Circumstances**

Considering the foregoing, the SWRCB can authorize CCWD to use water for consumptive use, and such authorization will not cause

injury to the rights of SDWA's members. First, as discussed above, SDWA's members cannot require CCWD to release or abandon water in the fall that CCWD stored in an earlier season. In the absence of a right on the part of SDWA's members to require CCWD to abandon water previously stored in New Spicer, SDWA's members cannot be injured, within the meaning of Water Code section 1702, if CCWD's water use reduces the amount of abandoned water that SDWA can appropriate outside of CCWD's diversion season. Second, if a severe water shortage were to occur during CCWD's season of diversion, CCWD could be required to bypass water that is subject to prior rights. This Order will include a term requiring that CCWD bypass water at times during its diversion season when New Melones is bypassing water and there is inadequate inflow to New Melones to satisfy the rights of riparian and appropriative water right holders senior to CCWD.

### **5.3 Request for Change of Place of Use**

As described above, approval of CCWD's proposed Angels-Cherokee Creek diversion or full approval of the requested change of place of use to include all of Calaveras County except for the Forest Service lands could eliminate the need for any further approval from the SWRCB before substantial quantities of water could be diverted from the Stanislaus River watershed to the Calaveras River watershed. A number of parties protested the interbasin transfer of water, contending that it could adversely affect their water rights or instream flows in the Stanislaus River. The parties who protested the interbasin transfer have not yet had an opportunity to make their case against it. During the hearing, CCWD agreed to use water only in the Stanislaus River watershed, except for delivery of up to 1000 afa of water to the area that CCWD will serve via the slurry pipeline. Accordingly, this Order is conditioned to limit the consumptive use of water

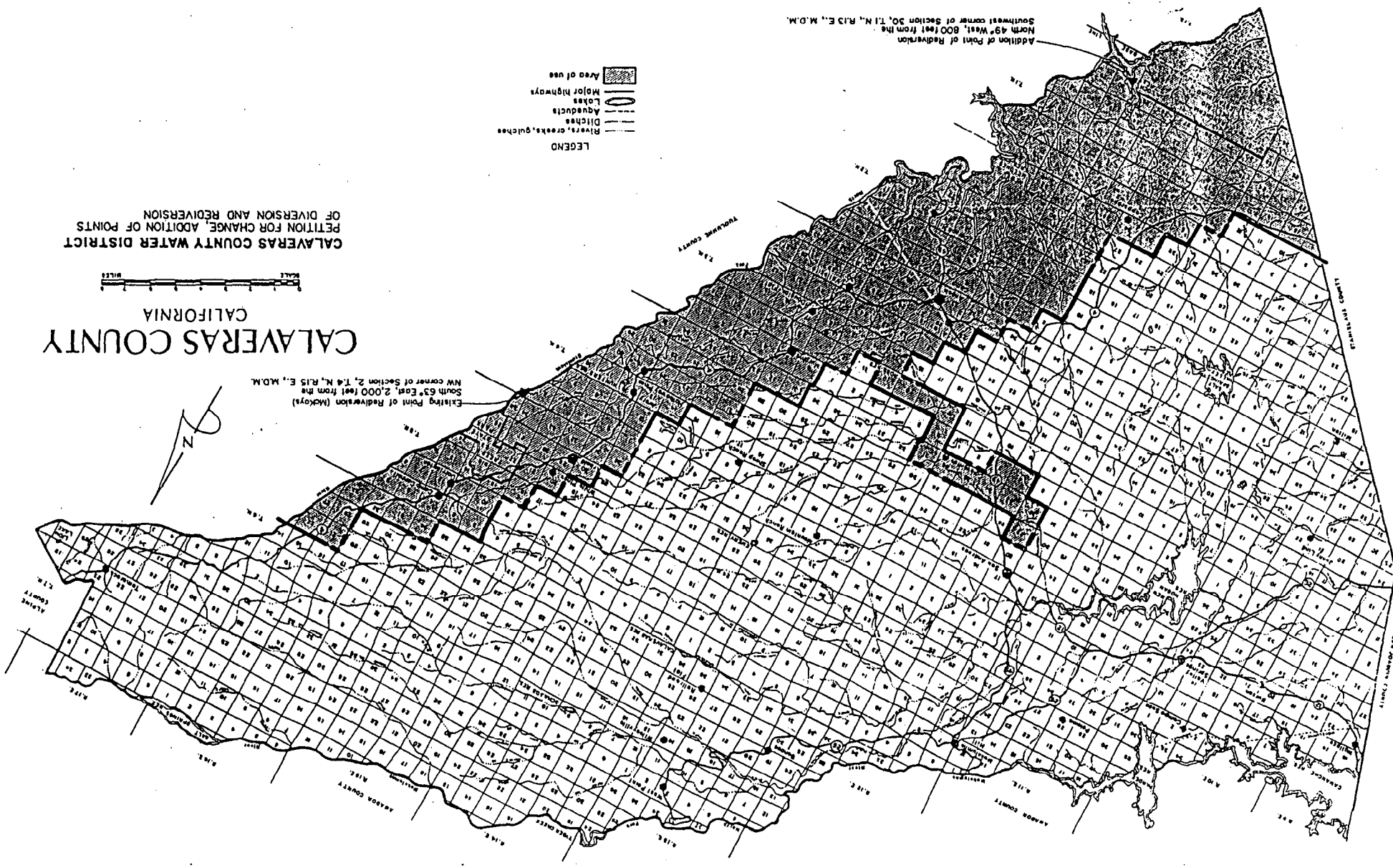
under the permits considered in this Order to the Stanislaus River watershed, except that this Order allows delivery of up to 1000 afa of water to the area that CCWD will serve via the slurry pipeline. Figure 2 shows the authorized place of use pursuant to this Order. The place of use includes the service areas of the slurry pipeline project, the Copper Cove project, and the Ebbetts Pass project. When CCWD requests the SWRCB's approval of additional diversions into the Calaveras River watershed, the SWRCB will give further consideration to enlarging the place of use of water under the permits considered in this Order.

#### 5.4 Permit 15017

An issue for the hearing was whether the SWRCB should revoke Permit 15017. Permit 15017 has a priority date of January 25, 1949, and authorizes the diversion of up to 7 cfs from the North Fork Stanislaus River for municipal use within the Ebbetts Pass service area. The authorized season of diversion is November 1 to July 1 of each year. CCWD did not request any changes to this permit, and the time to complete construction under this permit has expired. The time to complete full beneficial use of water under this permit will expire on December 1, 2015. CCWD has not constructed any facilities, and has not put any water to beneficial use, under this permit. In 1994 a representative of CCWD orally indicated that the SWRCB could revoke this permit, but CCWD never requested revocation in writing. At the hearing, CCWD asked that this permit not be revoked. It makes water available by direct diversion during a longer season than other permits that CCWD can use in the Ebbetts Pass service area, thereby allowing CCWD to deliver water by direct diversion while diverting water to storage under other permits. Considering CCWD's indication that it has not abandoned this permit and intends to use it, the SWRCB will not revoke this permit at this



Figure 2



time. Because CCWD did not file a change petition for this permit, however, this order makes no changes in Permit 15017. CCWD should immediately file a petition for a time extension and other changes of this permit if CCWD wishes to use it. If no petition is filed and pursued, the SWRCB will proceed toward revocation of the permit.

#### **5.5 Abandonment of Quantities of Water Under Permits 15015 and 15024**

As explained in the hearing notice, CCWD filed a letter dated June 14, 1993, voluntarily abandoning 335 cfs of permitted diversion rights under Permit 15015 and abandoning 29,500 afa by storage and 365 cfs by direct diversion under Permit 15024. With these changes, CCWD's remaining rights under Permit 15015 are 65 cfs from the North Fork Stanislaus River and from the Stanislaus River. Under Permit 15024 the remaining rights are 12,700 afa by diversion to storage in New Spicer from Highland Creek and 37,000 afa from the North Fork Stanislaus River at a rate not to exceed 1000 cfs. This order requires the amendment of these permits to reflect the partial abandonment of rights under these permits.

#### **6.0 ENVIRONMENTAL CONSIDERATIONS**

##### **6.1 Compliance With the California Environmental Quality Act**

Under the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), CCWD is the lead agency for the preparation of environmental documentation for CCWD's three proposed consumptive water use deliveries considered in this Order. CCWD prepared two Environmental Impact Reports (EIRs) covering the three places where it will deliver water under the proposed changes. In July 1988, CCWD certified a Final EIR (State Clearinghouse No. 87113019) for implementation of a water

supply master plan for Ebbetts Pass Improvement District No. 5 (CCWD Exhs. 5A, 5B.) In May 1992, the District completed a Final EIR (State Clearinghouse No. 91082090) covering the proposed expansion of the water supply system for the Copper Cove service area near Lake Tulloch and the proposed limestone slurry pipeline project to serve the area between the communities of Murphys and San Andreas (CCWD, 6A; CCWD, 6B).

Under CEQA, the SWRCB is a responsible agency for the three proposed consumptive water use deliveries. In deciding whether and how to approve the change petitions and time extension, the SWRCB must review and consider the environmental effects of the projects as shown in the two EIRs along with the other relevant evidence in the hearing record. As a responsible agency, the SWRCB is responsible for mitigating or avoiding only the significant environmental effects of the parts of the projects subject to its jurisdiction which it decides to approve. The SWRCB must make findings of overriding considerations for environmental effects within its responsibility that it cannot avoid or mitigate.

## **6.2 Water Resource Impacts and Mitigation Measures Identified in the EIRs**

If a public agency approves a project for which an EIR identifies one or more significant environmental effects, Title 14, California Code of Regulations, section 15091, requires the public agency to make a written finding for each significant effect, accompanied by a brief explanation of the rationale for each finding. The following sections contain the required findings under section 15091 for each direct or indirect significant environmental impact of the water resources aspects of the project that this Order approves. Section 15093 requires

that the SWRCB make a statement of overriding considerations for each significant effect on the environment that it does not substantially mitigate. This Order mitigates or avoids each of the following significant impacts. Accordingly, section 15093 requires no findings.

Where needed, this Order requires reporting or monitoring under Public Resources Code section 21081.6(a) to ensure that the required mitigation will be implemented.

#### **6.2.1 Ebbetts Pass Project**

The 1988 Final EIR for the Ebbetts Pass project describes a number of facilities that CCWD would construct and operate to augment and replace the existing water supply system, which routes water from North Fork Stanislaus River to Hunters Reservoir via the Collierville Tunnel and the tunnel tap. The proposed facilities include (1) a 5,000 linear foot, 20-inch diameter pipeline to carry raw water from the Collierville Tunnel to the existing water treatment facilities; (2) a supplemental pump station at the treatment plant to lift the treated water to the Avery Pump Station; (3) a new 2.0 million gallons per day (mgd) capacity filtration plant, increasing the capacity of the existing plant from 2.5 mgd to 4.5 mgd; (4) improvements to the existing treatment facilities; (5) additional pumps and transmission lines, and replacement of about 104,000 linear feet of existing pipelines with larger diameter pipelines, to lift the additional water throughout the service area; and (6) additional storage facilities, auxiliary generators and a warehouse facility. (CCWD, 5A, ES-1 to ES-8 and II-1 to II-10.)

The 1988 Final EIR identified the following significant adverse environmental impacts related to water resources. An evaluation

of the impacts and the associated mitigation measures identified in the EIR follows.

The 1988 EIR stated that some of the pipeline replacements may require site dewatering that could impact local drainage systems. The EIR does not give the precise nature of these potential impacts, but the nature of the recommended mitigation measure indicates they are water quality impacts. When project construction requires site dewatering, the EIR recommends that on-site water management procedures, such as settling the particulates in the water and water disposal, be followed in accordance with U. S. Environmental Protection Agency and California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) guidelines. The mitigation measure specifies that construction contractors will be responsible for contacting the Regional Water Board and making appropriate permit applications. (CCWD, 5A, IV-1 to IV-2.) The EIR does not specify how CCWD will assure that its construction contractors will adhere to this mitigation measure. This order requires compliance with the recommended mitigation measure.

CCWD's annual water right permittee progress reports for calendar years 1990-1993 show that CCWD constructed new facilities to carry out the Ebbetts Pass Master Water Plan commencing in 1990. CCWD completed the new water treatment plant in 1991 and constructed other unspecified facilities continuing through 1993. CCWD did not submit progress reports for the years 1994-1995 before the close of the hearing record. None of the progress reports describe the completion stage of pipeline replacements. (Staff, 1.) This Order requires appropriate construction site dewatering management plans to protect surface water quality in

accordance with applicable discharge requirements of the Regional Water Board.

### **6.2.2 Copper Cove Deliveries**

The 1992 Final EIR includes a proposed expansion of the water supply system that currently serves the Copper Cove area near Lake Tulloch. CCWD proposes to divert 6,000 afa of water from Lake Tulloch for domestic use in the Copper Cove service area. CCWD would construct and operate the following facilities: (1) a new raw water intake facility in Lake Tulloch; (2) replacement of two existing raw water pumps with three 400-horsepower pumps; (3) a new 4.0 mgd capacity water treatment plant, expandable to a design capacity of 8.0 mgd; (4) several new water storage tanks, ranging in capacity from 500,000 to 1,000,000 gallons; (5) several water pumps with capacities of at least 2,675 gallons per minute; and (6) various new pipelines of unspecified lengths, with diameters ranging from 8 inches to 24 inches, to transmit raw water to the treatment facilities or treated water to the water users. (CCWD, 6A, 2-1 to 2-10.)

The 1992 Final EIR identifies the following potential significant environmental impact of the Copper Cove Project related to water resources. An evaluation of this impact and its mitigation follows below.

Depending upon the type and location of the proposed intake facility in Tulloch Lake, the facility could cause losses of fish and other aquatic life in the lake. To mitigate for this, CCWD proposes to put a fish screen on the intake facility. The fish screen should meet criteria established by the DFG. (CCWD, 6A, 5-9 to 5-10, 6-3, and 7-3 to 7-5.) This Order requires that CCWD

design and operate the intake facility to meet applicable DFG fish screen criteria.

### 6.2.3 *Limestone Slurry Pipeline Project*

The 1992 Final EIR covers proposed use of an abandoned limestone slurry pipeline to transport about 1,000 afa of water from the Utica Ditch for unspecified, nonpotable consumptive uses in the area between the communities of Murphys and San Andreas. The existing pipeline consists of about 16,500 linear feet of 6-inch diameter aluminum pipe between the Utica Ditch intake and the Cataract quarry, plus about 92,000 linear feet of 7-inch diameter steel pipe between the Cataract quarry and a cement plant near San Andreas. Given that the existing pipeline cannot withstand full hydrostatic pressure, its capacity by gravity flow is about 1.36 cfs. CCWD plans the following structural changes:

1. The aluminum pipe would be cut at elevation 2,400 feet and a new 2,000 feet section of 8-inch diameter pipeline would be added and placed along the 2,400 foot contour, connecting it to the steel pipeline past the quarry, and
2. CCWD would replace a section of the steel pipeline with a new section of pipe about 8,000 feet in length, to traverse around a high point at about elevation 2,300 feet. (CCWD, 6A, 2-20 to 2-21 and 5-29.)

The 1992 Final EIR does not describe any nonpotable uses along the modified pipeline route that likely would be served under the proposed project, nor does it say where turnout facilities would be located along the pipeline.

### 6.3 Contentions of the Department of Fish and Game

The DFG raised numerous concerns regarding potential impacts of the three proposed consumptive water use projects on aquatic public trust resources. The concerns relate to (1) impacts on resident trout in the North Fork Stanislaus River between McKay's Point and the Collierville Powerhouse, (2) impacts on resident trout in the Utica Ditch, and (3) impacts on anadromous fish in the Stanislaus River below Goodwin Dam. A discussion of these concerns follows.

#### 6.3.1 *Impacts on Resident Trout in North Fork Stanislaus River Between McKay's Point and the Collierville Powerhouse*

DFG provided testimony that the proposed Ebbetts Pass and Limestone Slurry Pipeline project diversions could have cumulative effects on flows needed to protect resident trout in the reach of the North Fork Stanislaus River between McKay's Point Diversion Dam and the Collierville Powerhouse. CCWD's Federal Energy Regulation Commission license requires maintenance of specific minimum flow levels in this reach to protect instream uses, but DFG considers these minimum flow levels inadequate to protect resident trout. DFG believes that the proposed diversions might increase the frequency of holding the actual flows to the FERC minimum flow levels. (R.T. II, pp. 24-26; DFG, 96-2.)

At the time of the hearing, the FERC was reviewing its required minimum flows in the reach between McKay's Point and the Collierville Powerhouse based on a three-year trial period that included an instream flow study conducted by CCWD and NCPA. Based upon the results of this study, DFG, the U.S. Fish and Wildlife Service and the U.S. Forest Service petitioned FERC to increase the minimum flow requirements in CCWD's FERC license in



order to provide increased protection for resident trout. At the time of the hearing, FERC had not yet acted upon the petition. (R.T. II, pp. 25-26.)

DFG did not identify its recommendations for higher minimum flow requirements in this river reach and did not provide usable evidence to establish minimum flows. In the absence of such evidence, the SWRCB cannot formulate instream flow requirements for the reach.<sup>7</sup> Although DFG would have been willing to submit this information to the SWRCB after the hearing, CCWD objected to such a late submittal. After discussion, CCWD and DFG agreed that the SWRCB could add a condition to CCWD's permits requiring compliance with all of the FERC-required minimum flows for instream uses in the reach. (R.T. II, pp. 36-39.) Accordingly, this Order includes such a condition.

### **6.3.2 *Impacts on Resident Trout in Utica Ditch***

The Utica Ditch is a fish-bearing conduit, containing resident rainbow and brown trout. DFG provisionally recommended that the slurry pipeline project diversion from Utica Ditch be equipped with a fish screen to protect resident trout in the ditch. DFG indicated this recommendation assumes that there is prime fish habitat in the vicinity of the diversion. DFG's recommendation could change after a DFG fishery biologist conducts a site visit to evaluate the quality of fish habitat in the vicinity of the diversion facility. If the site visit shows that the diversion

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<sup>7</sup> The permits before the SWRCB in this case are CCWD's consumptive use permits for the North Fork Stanislaus River Project. The SWRCB could have conditioned these permits for the North Fork Stanislaus River Project to protect fish and wildlife in the North Fork Stanislaus River if DFG had presented evidence on this issue and if such conditions were otherwise appropriate.

point is located in a section of the ditch that is gunnited on both sides or is otherwise not prime fish habitat, DFG will not recommend a screen. (R.T. II, pp. 26-28 and 35-36; DFG, 96-2.)

CCWD has no objection to following DFG's suggestion that the need for a fish screen at the slurry pipeline project intake facility be determined by a site visit to evaluate existing conditions.

(R.T. II, p. 30.) The appropriate time for a site visit by a DFG fishery biologist would be in May or June, after the close of the hearing record. DFG's attorney suggested that the SWRCB develop a permit condition on the limestone slurry pipeline project that would deal with the need to install a fish screen depending on the outcome of a site visit. CCWD agreed to this approach.

(R.T. II, pp. 34-35.) Accordingly, this Order contains such a condition.

### **6.3.3 *Impacts on Anadromous Fish in the Stanislaus River Below Goodwin Dam***

DFG provided testimony that a potential exists that the three proposed consumptive water use projects will have cumulative impacts on anadromous fish in the lower Stanislaus River below Goodwin Dam. In particular, DFG is concerned that at times these diversions may reduce the availability of cold water from New Melones Reservoir and perhaps from Lake Tulloch to maintain proper water temperature regulation for protection of fall run Chinook salmon habitat in the reach between Goodwin Dam and the town of Riverbank. This 23-mile reach contains most of the Stanislaus River's spawning and egg incubation habitat for fall run Chinook salmon, whose population has declined to dangerously low levels in recent years. Other important anadromous fish species that use this reach of the river include small

populations of spring run Chinook salmon and steelhead trout.  
(R.T. II, pp. 43-44; DFG, 96-4; DFG, 96-6.)

DFG considers the range of acceptable water temperatures for incubation of Chinook salmon eggs to be 42-56 degrees Fahrenheit (°F). At temperatures in excess of 56°F, significant mortality occurs, and the mortality level can reach 75 percent with temperatures from 60 to 62°F. Since salmon spawning in the reach between Goodwin Dam and Riverbank typically starts by mid-October, DFG estimates that in recent years, up to 90 percent of salmon eggs deposited in the reach by about mid-November may be exposed to lethal water temperatures in excess of 56°F. After mid-November, ambient air temperatures are generally cool enough to keep water temperatures in this reach within the acceptable range. (R.T. II, pp. 45-47; DFG, 96-6.)

The DFG testimony included a description of a thermal protection plan carried out in the fall of 1991 to reduce the exposure of salmon eggs in the reach to lethal water temperatures above 56°F. This plan was implemented as a cooperative effort among DFG, water right holders and other affected parties in the lower Stanislaus River basin. The cooperative plan included:

1. Reducing the storage level in Lake Tulloch between mid-September and October 1, 1991, to evacuate warm water from the lake;
2. Backfilling Lake Tulloch by October 15 with cold water releases from New Melones Reservoir taken from the bottom (nonpower) outlets; and

3. Reverting back to normal instream flow release schedules below Goodwin Dam, just prior to the onset of the salmon spawning in mid-October, using the cold water moved into Lake Tulloch.

The thermal protection plan implemented in 1991 apparently was successful, and a similar plan was carried out in the fall of 1992. (R.T. II, pp. 47-52; DFG, 96-6.)

Protecting fish habitat in the Lower Stanislaus River is important, but the question here is whether CCWD, because of its proposed consumptive uses, should be required to participate in similar thermal protection plans in the future. DFG argued that CCWD should have some responsibility to help protect salmon eggs from exposure to lethal water temperatures whenever the following circumstances occur:

1. Drought conditions occur similar to or worse than those experienced during the period of 1987-1992;
2. The drought conditions lead to a situation where the end-of-September carryover storage levels in New Melones Reservoir become exceedingly low (i.e., somewhere below about 300,000 af); and
3. The thermocline and upper warm water pool (epilimnion) in New Melones Reservoir approach the elevation of the crest of the old dam, making it difficult to access the lower cold water pool (hypolimnion) from any ports of New Melones Dam in September and October.

DFG contends that if CCWD's consumptive use diversions contribute to reduced end-of-September carryover storage levels in New Melones Reservoir, and if the above three conditions are triggered, such diversions would cause cumulative impacts on salmon spawning success below Goodwin Dam. Accordingly, DFG argues that the SWRCB should impose conditions on CCWD to prevent or mitigate for such potential cumulative impacts. (R.T. II, pp. 55-58; DFG, 96-6.)

The facts do not support DFG's request for conditions on the CCWD permits. CCWD's maximum annual diversion by the year 2015 under its consumptive use projects would be about 15,000 af. This is an additional annual demand of only 13,500 afa, and it would have an almost imperceptible effect on end-of-September storage levels in New Melones Reservoir. (See Part 5.2.2, above.) Further, CCWD has no control over the USBR's releases of water from New Melones. The USBR's management of New Melones Reservoir could result in situations where CCWD had to release water to make up for water the USBR had sold to a water user. Because CCWD has the senior water rights, a required release could in effect reverse the relative priority of CCWD's and the USBR's water rights. Even if cumulative impacts were to occur, the burden for mitigating such impacts would fall first on the USBR, whose water rights for New Melones are junior to CCWD's consumptive use water rights within the Stanislaus River watershed.

Considering the above, the SWRCB will not require CCWD to reduce its consumptive use diversions or otherwise participate in future thermal protection plans to reduce exposure of anadromous fish below Goodwin Dam to lethal water temperatures. If any problem arises in which the DFG believes the USBR should take more action

to provide better access to the cold water pool in New Melones Reservoir for protection of anadromous fish, DFG could petition the SWRCB to impose appropriate conditions in the USBR's New Melones water rights to correct the problem. If DFG files a petition with the SWRCB to impose conditions on CCWD, DFG should support the petition with evidence that the USBR has implemented all the remedies available to it and that measures in addition to USBR's action are needed.

## 7.0 CONCLUSIONS

1. CCWD does not have an obligation under its water rights to release previously stored water to dilute salinity in the southern Delta. During periods of shortage during CCWD's diversion season, however, CCWD must bypass water that is subject to senior water rights. The SWRCB will add a condition to CCWD's permits requiring CCWD to bypass water in favor of senior water rights during a water shortage.
2. The SWRCB will not revoke Permit 15017 at this time.
3. This Order requires amendment of Permits 15015 and 15024 in accordance with CCWD's voluntary abandonment on June 14, 1993, of excess water rights under these permits.
4. CCWD has prosecuted construction of its facilities associated with the water right permits considered herein with due diligence. This Order authorizes extensions of time under Permits 15013, 15015, 15018, and 15024 until December 31, 1998, to complete construction. The SWRCB will not extend the time for completion of construction under Permit 15017 because CCWD did not request any changes under this permit. All five permits already provide that CCWD has until

December 1, 2015, to complete full beneficial use of the water. Therefore, CCWD does not need an extension of time until December 1, 2015, to complete full beneficial use of the water.

5. This Order deletes from Permits 15013, 15015, 15018, and 15024 the requirement of a swimming beach at the Collierville Afterbay or such other location as is suitable.
6. There was no opposition to adding the requested purposes of use to CCWD's permits. Accordingly, this Order authorizes the additional purposes of use CCWD requested: it adds to Permit 15013 purposes of use for industrial, stockwater, domestic, and recreation; it adds to Permit 15014 purposes of use for municipal and industrial; it adds to Permit 15018 purposes of use for municipal, industrial, and recreation; it adds to Permit 15024 purposes of use for municipal, industrial, and recreation.
7. This order increases the places of use of Permits 15013, 15015, 15018, and 15024 by adding those areas delineated on Figure 2.
8. This Order adds points of diversion and rediversion as follows: points of rediversion at McKay's Point Diversion Dam and Lake Tulloch in Permits 15013, 15018, and 15024; points of diversion in Permit 15015 at the North Fork Diversion Dam, McKay's Point Diversion Dam (3 cfs to the Utica Ditch, thence the limestone slurry pipeline project), at a point on the North Fork Stanislaus River (diversion of 7 cfs to the Ebbetts Pass water system), and at Lake Tulloch (10 cfs).

9. This Order adds terms and conditions to the subject permits to mitigate the significant adverse environmental effects of the changes as identified in the EIRs.

**ORDER**

**IT IS HEREBY ORDERED** that the petitions for extension of time to complete construction and for changes in points of diversion and rediversion, purposes of use, and places of use filed by Calaveras County Water District (permittee) regarding Water Right Permits 15013, 15015, 15018, and 15024 are approved in part, subject to the following changes in the terms and conditions of these permits:

1. Until further order of the State Water Resources Control Board, permittee may deliver no more than a total of 1000 acre-feet per annum (afa) of water under Permits 15013, 15015, 15018, and 15024 for use within the area serviceable from the slurry pipeline. Permittee may use all or part of such water in the authorized place of use within the Calaveras River watershed. Permittee shall install and maintain a shut-off valve at the beginning of the pipeline. Permittee shall continuously operate the valve to ensure that no more water is diverted into the pipeline than can be placed to beneficial use.
2. The place of use permit term is revoked and a new permit term designating the place of use is added as follows:

Until further order of the State Water Resources Control Board, permittee may deliver water for use only within the places of use identified on Figure 2 dated February 2, 1996, titled "Calaveras



County Water District Petition for Change, Addition of Points of Diversion and Rediversion" and described below. The place of use under Permits 15013, 15015, 15018, and 15024 is within the following sections (all within MDB&M):

Sections 21, 22, 23, 27, 28, 31, 32, 33, 34 of  
T6N, R16E  
Section 36, T6N, R15E  
Sections 4, 5, 6, 7, 8, 18 of T5N, R16E  
Sections 1, 2, 3, 10 through 16, 20 through 24,  
25 through 35, T5N, R15E  
Section 36, T5N, R14E  
Sections 2 through 10, 16 through 21, 29, 30,  
31, T4N, R15E  
Sections 1, 12, 13, 14, 21 through 28, 31  
through 36, T4N, R14E  
Section 31, T4N, R13E  
Sections 29, 32 through 36, T4N, R12E  
Sections 1 through 23, 27 through 34, T3N, R14E  
Sections 7 through 10, 12 through 15, 21  
through 29, 31 through 36, T3N, R13E  
Section 6, T3N, R13E  
Section 6, T3N, R15E  
Sections 3, 4, T3N, R12E  
Sections 4 through 9, 17 through 19, T2N, R14E  
Sections 1 through 33, T2N, R13E  
Sections 1, 11 through 14, 23 through 26, 33  
through 36, T2N, R12E  
Sections 2 through 11, 15 through 22, 29, 30,  
31, 32, T1N, R13E  
Sections 1 through 5, 7 through 30, and  
projected Sections 31 through 36, T1N, R12E  
Sections 13 through 16, 22 through 27, 35, 36,  
T1N, R11E  
Section 31, T1N, R13E  
Projected Sections 1 through 11, 15, 16, 17,  
20, 21, 22, T1S, R12E  
Projected Section 1, T1S, R11E

3. Until further order of the State Water Resources Control Board, permittee may deliver no more than a total of 8000 afa

of water under Permits 15013, 15015, 15017, 15018, 15024, and 14769 for use within the Ebbetts Pass service area.<sup>8</sup>

4. Until further order of the State Water Resources Control Board, permittee may deliver no more than a total of 6000 afa of water under Permits 15013, 15015, 15018, and 15024 for use within the Copper Cove service area. Permittee shall deliver treated waste water in lieu of water diverted from the Stanislaus River for irrigation use on the Saddle Creek Golf Course in the Copper Cove service area whenever such delivery will comply with the requirements of Order No. 96-052 (and any subsequent order) issued by the Regional Water Quality Control Board for the Central Valley Region.
5. Permittee shall bypass uncontrolled flow at its diversion points at times during its season of diversion when  
(1) uncontrolled flow is being bypassed at New Melones Reservoir and (2) there is inadequate inflow to New Melones Reservoir to satisfy the water rights of riparian and appropriative water right holders with rights senior to the water rights of Permittee.
6. To protect surface water quality during construction or replacement of any water delivery pipeline facilities associated with implementation of the water supply master plan for Ebbetts Pass Improvement District No. 5 (Ebbetts Pass Water Supply Project), Permittee shall require all pipeline construction contractors to prepare written site dewatering plans covering any site dewatering activities

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<sup>8</sup> The permittee and the Northern California Power Agency have agreed that no more than a total of 5,000 afa of water may be used within the service area before 2009. See finding 3.0. This footnote will not appear in the permit.

associated with planned pipeline construction or replacement activities. The site dewatering plans shall describe on-site management procedures that Permittee will implement to prevent discharge of sediments or other pollutants into nearby surface streamcourses. The site dewatering plans shall receive written approval from the California Regional Water Quality Control Board, Central Valley Region (CVRWQCB), prior to their implementation. The Permittee shall submit a copy of each site dewatering plan approved by the CRWQCB to the Chief, Division of Water Rights, within 30 days after the CVRWQCB approves it. Permittee shall not engage in pipeline construction or replacement activities involving site dewatering without implementing appropriate site dewatering plans approved by the CRWQCB.

7. For the protection of resident trout habitat in the reach of North Fork Stanislaus River between McKay's Point Diversion Dam and Collierville Powerhouse, Permittee at all times shall maintain the minimum flow requirements established by the Federal Energy Regulatory Commission (FERC) for the reach. Permittee shall report any changes in the minimum flow requirements established by the FERC for this reach to the Chief, Division of Water Rights.
8. For the protection of resident trout in Utica Ditch, prior to commencement of diversion from Utica Ditch for delivery to the Limestone Slurry Pipeline Project service area, Permittee shall request that the Department of Fish and Game (DFG) inspect the site for the proposed diversion intake facility and make a written determination as to whether or not the diversion intake facility should be equipped with a fish screen. If DFG makes a written determination within 180 days

after Permittee requests the inspection, Permittee shall furnish the Chief, Division of Water Rights, a copy of the DFG's written determination. If the DFG's written determination finds that no fish screen facility is needed, no further action by Permittee shall be required. If, however, the DFG's written determination finds that a fish screen facility is needed, Permittee shall not operate the diversion intake facility unless it is equipped with a fish screen facility that is designed, constructed, operated, and maintained in strict accordance with applicable DFG fish screen criteria. If a fish screen facility is required, then prior to commencement of operation of the intake facility, Permittee shall submit to the Chief, Division of Water Rights, final written plans for design, construction, operation, and maintenance of the fish screen facility, along with a written statement signed by the DFG that such plans meet applicable DFG fish screen criteria. If DFG does not provide a written determination within the above 180-day period, the SWRCB will not require any further action by Permittee.

9. To protect fish and other aquatic life in Tulloch Lake, Permittee shall not divert water from the lake at the diversion intake facility to serve the Copper Cove area unless the intake facility is equipped with a fish screen facility that is designed, constructed, operated, and maintained in strict accordance with applicable fish screen criteria established by the California Department of Fish and Game (DFG). Prior to commencement of operation of the intake facility, Permittee shall submit to the Chief, Division of Water Rights, final written plans for design, construction, operation, and maintenance of the fish screen facility, along

with a written statement signed by the DFG that such plans meet applicable DFG fish screen criteria.

10. Permittee shall consult with the Division of Water Rights and, within one year from the date of this permit, shall submit to the State Water Resources Control Board its Urban Water Management Plan as prepared and adopted in conformance with Water Code section 10610, et seq., 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.

11. Permittee shall install and maintain devices, satisfactory to the State Water Resources Control Board, capable of measuring water diverted to: (1) Copper Cove service area, (2) Limestone Slurry Pipeline service area, and (3) Ebbetts Pass service area. Satisfactory devices shall include:

A. For Pumping Stations: (1) in-line flow meter having the capability to measure both instantaneous and total flow, or (2) proof of a pump test performed within the last five years, together with official monthly power consumption records for the electric meter serving the pump.

B. For Gravity Diversions: (1) a weir, flume, or other flow measuring device that is properly installed and certified by a registered engineer, or (2) a flow-rating curve established by volumetric measurements and certified by a registered engineer. On the annual progress report, Permittee shall

separately submit the daily and annual records of water use for each service area.

**IT IS FURTHER ORDERED** that:

1. Condition 8 of Water Right Permits 15013, 15018, and 15024 (Applications 11792, 13091, and 19149) and Condition 4 in Water Right Permit 15015 (Application 12910), is amended to provide:

Construction work shall be completed by December 31, 1998.

2. Conditions 22 and 27 are deleted from Water Right Permits 15013, 15018, and 15024.
3. Condition 1 of Water Right Permit 15015 (Application 12910) is amended to provide:

The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed a total of 65 cubic feet per second to be diverted from March 1 to July 1 of each year. At McKay's Point Diversion Dam, Permittee may divert up to 7 cubic feet per second for water delivery to the Ebbetts Pass service area, and up to 3 cubic feet per second to the Utica system for rediversion into the limestone slurry pipeline. At Lake Tulloch, Permittee may divert or redivert up to 10 cubic feet per second for use in the Copper Cove service area. Until further order of the State Water Resources Control Board, Permittee shall not divert the remaining 45 cubic feet per second.

4. Condition 5 of Permit 15024 (Application 19149) is amended to provide:

The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 1000 cubic feet per second by storage from November 1 of each year to about June 30 of the succeeding year as follows: (1) 37,000 acre-feet per annum by offstream storage in New Spicer Meadow Reservoir, to be diverted from the North Fork Stanislaus River at North Fork Diversion Dam; (2) 12,700 acre-feet per annum by storage in New Spicer Meadow Reservoir, to be diverted from Highland Creek. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

5. Condition 2 of Permit 15024 (Application 19149) is amended to delete the point of diversion, but retain the point of rediversion, at McKay's Point Diversion Dam; to delete Beaver Creek Diversion Dam as a point of direct diversion; and to add a point of rediversion at Lake Tulloch, located at N 49°W, 800 feet from the SW corner of Section 3, T1N, R13E, MDB&M.

6. Condition 2 of Permits 15013 and 15018 (Applications 11792B and 13091) is amended to add points of rediversion at McKay's Point Diversion Dam, located at NE¼ of NW¼ of Section 2, T4N, R15E, MDB&M, and at Lake Tulloch, located at N 49°W, 800 feet from the SW corner of Section 3, T1N, R13E, MDB&M.

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7. Purposes of use shall be added to Permits 15013, 15014, 15018, and 15024 as follows: Permit 15013 (Application 11792B), industrial, stockwater, domestic, and recreation; Permit 15015 (Application 12910), municipal and industrial; Permit 15018 (Application 13091), municipal, industrial, and recreation; Permit 15024 (Application 19149), municipal, industrial, and recreation.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 18, 1997.

AYE: John Caffrey  
James M. Stubchaer  
Marc Del Piero  
Mary Jane Forster  
John W. Brown

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board