

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WR 2001 - 16 - DWR

**IN THE MATTER OF PERMIT 15026 (APPLICATION 5632)
TEMPORARY CHANGE INVOLVING THE TRANSFER OF
UP TO 114,052 ACRE-FEET OF WATER
TO THE DEPARTMENT OF WATER RESOURCES
UNDER YUBA COUNTY WATER AGENCY'S PERMIT 15026**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND POINT OF REDIVERSION
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 7, 2001,

Yuba County Water Agency
c/o Paul M. Bartkiewicz
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Yuba County Water Agency (YCWA) would transfer up to 114,052 acre-feet (AF) of water to the Department of Water Resources (DWR). The water would be released from New Bullards Bar Reservoir for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. If approved, the temporary change would be effective from the date of this order to September 30, 2001.

1.1 Description of the Transfer YCWA proposes to transfer up to 114,052 AF of water under Permit 15026 (Application 5632) to DWR. Of the 114,052 AF of stored water released from New Bullards Bar Reservoir, 61,140 AF of water will result from groundwater substitutions by YCWA contractors within the Cordua, Dry Creek Mutual, Rameriz, and South Yuba Water districts and Hallwood Water Company. Absent the transfer, this water would have been released to the river and diverted at Daguerre Point Dam for other purposes. The remaining 52,912 AF of water is water previously collected to storage that will be released to the river specifically for the transfer.

2.0 BACKGROUND

2.1 Substance of YCWA's Permit Permit 15026 (Application 5632) authorizes the diversion to storage of up to 490,000 AF of water per annum from the North Fork Yuba River between October 1 and June 30. Permit 15026 also authorizes the direct diversion from the

North Fork Yuba and Yuba rivers of up to 1593 cubic feet per second (cfs) between April 1 and July 1. The points of diversion to storage and rediversion for Permit 15026 are located at the New Bullards Bar Dam and the Daguerre Dam. The water is used for irrigation, industrial, recreational, fish mitigation and enhancement, and domestic purposes within the authorized place of use as shown on map EJ-05-08-R3 on file with the SWRCB under Application 5632.

Permit 15026 requires YCWA to adhere to Decision 1644 (D-1644), which, in part, establishes flow requirements measured at the Marysville Gage (located about 6 miles upstream of the confluence of the Feather and Yuba rivers) and the Smartville Gage (located just below the Englebright Reservoir). YCWA has stated that the amount of the transfer water will be defined as the flow measured at the Marysville Gage minus the minimum required instream flow at the time of the transfer (plus an operational buffer of 7 cfs).

2.2 Place of Use and Purposes of Use under the Proposed Transfer The service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of Permit 15026. Municipal, salinity control, and water quality control would be temporarily added as additional purposes of use under Permit 15026.

2.3 Points of Rediversion under the Proposed Transfer The proposed temporary change would add the Clifton Court Forebay as a point of rediversion for Permit 15026.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer was stored under provisions of Permit 15026. In the absence of this transfer, 52,912 AF of the subject water would remain in storage within the New Bullards Bar Reservoir and 61,140 AF of groundwater water would remain in the Yuba groundwater basin. This order includes terms and conditions to ensure that no fishery resources or legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential lowering of water levels in southern Delta Channels associated with the addition of Clifton Court Forebay as a point of rediversion to Permit 15026;
- b. Future refill of New Bullards Bar Reservoir resulting from this temporary change; and
- c. Future groundwater recharge in the North and South Yuba basins.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed temporary change of water rights involves only the amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (Public Resources Code section 21000, et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The proposed temporary change in place of use, purpose of use, and point of diversion involves water that was previously stored. Based on evidentiary hearings held in 1992 and 2000 regarding fishery resources and water right issues of the Lower Yuba River, the SWRCB adopted D-1644, which includes instream flow requirements and provisions to reduce water temperature impacts for the protection of fish and other public trust resources. The approval of this petition will be conditioned consistent with SWRCB Decision 1641 (D-1641), Tables 1, 2, and 3, and D-1644 to ensure that no unreasonable effects on fish, wildlife or other instream beneficial uses are caused by the proposed temporary change.

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

5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

The SWRCB received timely comments relative to the proposed change from:

- the California Department of Fish and Game (DFG),
- California Sportfishing Protection Alliance (CSPA),
- Walter Cook,
- Friends of the River (Friends),
- The Northern California Council Federation of Fly Fishers (Fly Fishers),
- The South Yuba River Citizens League and The Bay Institute (SYRCL & BI), and
- Trout Unlimited (TU).

Evidence supporting the comments was not received from any of the parties. The comments and the SWRCB's responses are summarized below:

• California Department of Fish and Game (DFG)

Comment: DFG is concerned about the following four issues: (1) September streamflow levels, (2) ramp down flow increments, (3) juvenile salmonid downstream movement and habitat utilization, and (4) water temperatures.

SWRCB Response: The YCWA has been meeting with DFG, National Marine Fisheries Service (NMFS) and the U. S. Fish and Wildlife Service (USFWS). As a result of these meetings, YCWA has agreed to adjust the release schedule to provide 100 cfs higher flows (500 cfs) at the Marysville gage through the month of September. Starting August 29, 2001, ramp down rates will not exceed an increment of 100 cfs per hour and will be limited to a maximum of 200 cfs per day. YCWA is agreeable to developing and operating a monitoring program to track juvenile salmonid downstream movement and habitat utilization during and after the transfer and will assist DFG with ongoing water temperature monitoring in the Lower Yuba River. The SWRCB will condition the transfer accordingly.

• California Sportfishing Protection Alliance (CSPA)

Comment: CSPA submitted comments regarding the proposed temporary change, potential damage to fishery resources, use of groundwater resources in the transfer, alleged groundwater

pumping undertaken prior to issuance of this order, and water right issues in the Lower Yuba River in general. Comments pertinent to the proposed temporary change and the SWRCB responses are summarized below.

CSPA indicates that groundwater pumping in excess of 32,000 AF has the potential to cause adverse effects based on evidence submitted in Decision 1644. CSPA also contends that the SWRCB has no evidence to support the determination that the proposed transfer "could [sic] not injure any legal user of water, during any potential hydrologic condition that the board determines is likely to occur, [sic] through resulting significant changes in water quality, water quantity..." Finally CSPA contends that the transfer will reduce fall and winter carryover storage which may cause violations of the SWRCB's Basin Plan temperature provisions.

SWRCB Response: Navigant Consulting, an independent contractor, has submitted a groundwater analysis report that estimates the total capacity of the Yuba Groundwater Basins at a depth of 200 feet is 1,710,000 AF. This far exceeds the petitioned 61,140 AF of pumped groundwater proposed in the transfer. The report also indicates that the basin is divided into two sub-basins, the north sub-basin and the south sub-basin and water will be withdrawn from both. The north sub-basin area has been served by surface water for many years and had seen limited groundwater pumping, whereas the south sub-basin was pumped extensively until 1983. Although both basins are geologically similar, more information is available for the south sub-basin. The south sub-basin recharges at a rate approximating 15,000 AF to 20,000 AF per year. At this recharge rate, if all of the water proposed for transfer was withdrawn from the south sub-basin alone, the net recharge to the basin would be affected for a maximum period of 3 to 4 years. Navigant Consulting indicates that the south sub basin has experienced gaining groundwater conditions since that South Yuba Canal began providing surface water supply to the area in 1983 and the groundwater level in that basin is at a much higher level than it has been for many years. Finally, Navigant Consulting advises that the DWR-YCWA conjunctive use operation of 1991 withdrew 80,000 AF from the south sub-basin at a time when the basin was at significantly lower levels than today. Only a few residential wells were impacted by the operation and these impacts were remedied by YCWA immediately. The SWRCB believes that with conditions requiring monitoring of the pumping and recharge of the sub-basins adequate protection of the groundwater basin can be assured.

With respect to potential adverse effects of flows and temperature, this order will be conditioned consistent with provisions of D-1644 and is intended to protect fish and other public trust resources in the Lower Yuba River. As discussed in the SWRCB response to the DFG comments, this order will contain conditions relating to flow, ramp down rates and temperature. Additionally, the transfer will be conditioned to contain an endangered species term. With regard to CSPA's final comment, further discussion of the fall and winter carryover storage issue is found in the SWRCB response to the Trout Unlimited comments.

- **Walter Cook**

Comment: Walter Cook submitted comments regarding the proposed temporary change, fishery resources, and water right issues relating to the Lower Yuba River in general. Mr. Cook asserts that the transferred flows would be harmful to fish in the lower Yuba River, that YCWA would receive a windfall as a result of added electric generation, and that excess flows must be used to bring the Bay-Delta into balance.

SWRCB Response: 61,140 AF of stored water would normally be released down the Yuba River, through the power plants for rediversion at Daguerre Point Dam, to the farmers. This year, this water will not be rediverted, but will continue downstream to the Delta. The remaining 52,912 AF of water proposed to be transferred this year comes from water previously stored that is in excess of normal irrigation season releases. This water will flow through power plants that will generate additional electricity [approximately 60 million Kilowatt hours (mKw)]. Although it is irrelevant to the issue at hand, YCWA advises that they operate Colgate power plant for PG&E, based on a fixed price operation and maintenance contract and do not receive any additional payments or windfalls from power generation. The proposed transfer water will provide higher summer flows and lower temperatures at the Marysville Gage (see SWRCB response to the DFG comments above). The transfer will occur only under balanced conditions in the Delta.

- **Friends Of the River**

Comment: Friends contends that 1) there is insufficient environmental information to warrant a SWRCB decision, and 2) that the baseline flow levels are inadequate to protect fishery resources.

SWRCB Response: The Friends first comment raises concerns about the environmental consequences of adding additional flow to the Yuba and Sacramento River System and the Delta during the period of the transfer. They request that addition flow, temperature, and quality studies be conducted prior to any determination regarding the proposal. As discussed in the SWRCB response to the DFG comments above, DFG, NMFS, and USFWS have met with YCWA and discussed the proposed transfer. They have defined conditions under which they believe the transfer will not impact the fishery or downstream habitat. Those conditions define streamflow levels during the transfer period, ramp down rates, monitoring programs to track juvenile salmonid downstream movement and habitat utilization during and after the transfer and a water temperature monitoring program. Water Code section 1727(b)(2) states that "the proposed temporary change can not unreasonably affect fish..." Since Friends have provided no specific evidence that would indicate that additional streamflow in the Yuba River during the proposed transfer period would be detrimental to, or would unreasonably affect fish, the SWRCB believes that an order conditioned in accordance with the provisions defined by the DFG, NMFS and USFWS is sufficient to reasonably protect fish.

The second comment of the Friends relates to D-1644, which is not the subject of this transfer. Therefore, the issue is not addressed.

- **Northern California Council Federation of Fly Fishers**

Comment: Fly Fishers made several comments dealing with the fishery, its endangered status, flows in the Yuba River, and lastly, groundwater pumping.

SWRCB Response: The only issue that has not previously been addressed in the above comments relates to the additional electrical demand from the proposed groundwater pumping verses the energy developed as a result of the transfer. YCWA advises that the proposed

transfer will generate 60 mKw of additional electricity, whereas the groundwater pumping will require approximately 4 mKw of electricity. This provides a net increase of 54 mKw of electricity to California electrical users.

- **South Yuba River Citizens League and The Bay Institute (SYRCL & BI)**

Comment: SYRCL & BI contend that the proposed transfer will result in an unnatural flow regime that is harmful to fishery resources and will occur during the summer when needed the least by the fish. Additionally, SYRCL & BI contend, that D-1644 baseline stream flow levels are inadequate to protect fishery resources and flows following completion of the transfer will be inhospitable and increase predation. Finally, SYRCL & BI contend that the transfer involves water that would not otherwise have been stored and should not be credited as transfer water. SYRCL & BI recommend that spawning redd surveys should be conducted and that stream flows of 700 cfs should be maintained during the September through April period following the transfer.

SWRCB Response: YCWA responded to SYRCL&BI's first concern by indicating that hydrologic data gathered over the course of the last 15 years shows flows in the range of those proposed under the transfer frequently occur in the lower Yuba River, especially in wet years. Discussions with DFG also indicate that there is no evidence that would indicate that higher, colder flows attract fish downstream or that fish mortality increased downstream of Daguerre Point Dam during years exhibiting similar flow patterns to those proposed in the transfer. Further, SYRCL&BI did not provide any evidence to substantiate their concerns. As discussed in the SWRCB response to the DFG comments, the proposed transfer will contain conditions relating to instream flow, ramp down rates and temperature. Additionally, the transfer will be conditioned to contain an endangered species term.

The second comment of SYRCL & BI relates to D-1644, which is not the subject of this transfer. Therefore, the issue is not addressed.

SYRCL & BI contend that YCWA fails to show that the water would have been consumptively used or stored pursuant to Water Code section 1726(e) because power releases and releases to obtain flood storage levels in New Bullards Bar would be released to the river anyway. As defined in Permit 15026, YCWA has the right to collect 490,000 AF annually to storage. During the 2000-2001 collection season, water in excess of 114,000 AF was collected to storage. Therefore, water in excess of the amount proposed for transfer was stored. YCWA advises that the critical storage line for New Bullards Bar Reservoir is 872,000 AF and PG&E cannot call for power releases when the reservoir is below this storage level. The present storage level in the reservoir is 743,000 AF. Therefore, any release from storage during the period of the proposed transfer would be specifically made by YCWA for a primary purpose other than power generation.

Finally, YCWA has worked with DFG to structure the transfer so that most of the water is moved in July and August and flows will be stabilized at 500 cfs through the September spawning period. On October 1, the streamflow will decrease to 400 cfs per D-1644. The reduction from 500 cfs to 400 cfs will amount to approximately a 2 inch change in water surface elevation in the lower river and should eliminate potential impacts to spawning redds.

- **Trout Unlimited (TU)**

Comment: TU presented comments that reduced carryover storage at New Bullards Bar Reservoir will impact fishery resources by reducing the amount of spillage occurring at the reservoir. They also commented that the SWRCB flow regime for the Yuba River as defined in D-1644 is inadequate for maintaining fisheries.

SWRCB Response: TU's comments attempt to reopen issues relating to D-1644, which is not the subject of this transfer and will not be addressed, except to say that the minimum instream flows mandated in D-1644 are applicable to YCWA's permits and to this transfer.

While the transfer of 52, 912 AF of water from New Bullards Bar Reservoir will reduce carryover storage, typically New Bullards Bar Reservoir only spills an average of 3 out of 10 years. According to the Yuba River Index (YRI) submitted by YCWA and confirmed by DWR, the Yuba River is in a Critically Dry year, which, by itself, indicates that the river may not provide sufficient inflow to produce spillage at the reservoir this coming winter. This occurrence would not be substantially different from the non-spill occurrences in 7 out of every 10 years. Flows in the lower Yuba River would be maintained by releases in accordance with D-1644 and tributary inflow downstream of Englebright Reservoir. Since there is no evidence submitted that spillage will occur on a yearly basis, or that temperatures will be higher in the Yuba River, as a result of the transfer, we cannot accept this as a valid objection.

Lastly, TU indicated that the SWRCB in Order WR 2001-08 stated "Decision 1644 does not conclude that the interim flow requirements would be sufficient to maintain lower Yuba River fisheries in good condition on a long term basis." The proposed transfer is a short term (3 month) operation. Therefore, the test under Water Code section 1727(b)(2), that the proposed transfer would not unreasonably affect fish is met. As previously discussed in the SWRCB response to the DFG comments, the YCWA has been meeting with DFG, NMFS and USFWS and have worked out a revised transfer operation that is satisfactory to the agencies and should not unreasonably affect fish. The proposed transfer should be conditioned accordingly.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On April 29, 1999, the SWRCB adopted Resolution 99-031, continuing the delegation of authority to approve petitions for temporary change to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and point of redirection under Yuba County Water Agency's permitted Application 5632 for the transfer of up to 114,052 AF of water is approved.

All existing terms and conditions of the subject permit including those ordered by SWRCB Decision 1644 (or as may be subsequently amended by further order of the SWRCB) remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continues through September 30, 2001.
2. The place of use of YCWA's Permitted Application 5632 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626).
3. The Clifton Court Forebay is temporarily added as a point of redirection to YCWA's Permitted Application 5632. Water redirected at the Clifton Court Forebay pursuant to with this order shall comply with the standards set forth in Table 1, 2, and 3 of Water Right Decision 1641.
4. Municipal, salinity control, stockwatering, and water quality are temporarily added as purposes of use under YCWA's Permitted Application 5632.
5. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by D-1644 (or as may be subsequently amended by further order of the SWRCB):
 - a. Maintain minimum instream flows at the USGS gaging installations at Marysville and Smartville as specified in D-1644, Term 1 for YCWA, amended as follows:
 - The minimum streamflow in the lower Yuba River passing the Marysville Gage during the period from September 1 through September 30 shall be maintained at or above 500 cfs.
 - b. Minimize water temperature impacts on anadromous fish and other public trust resources as specified in D-1644, Term 2 for YCWA.
 - c. Perform ramping of flow releases from Englebright Dam as specified in D-1644, Term 3 for YCWA, amended as follows:

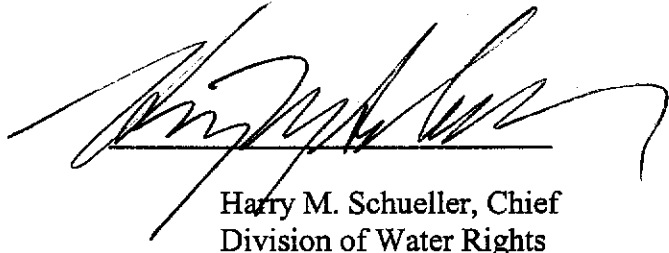
- During the period from August 29 through September 15, ramp down rates shall not exceed an increment of 100 cfs per hour and shall be limited to a maximum reduction of no more than 200 cfs in any 24 hour period.
6. Permittee shall monitor the downstream movement, distribution and habitat utilization of juvenile salmonid, during and after the transfer in the lower Yuba River and the Feather River downstream of the confluence with the Yuba River. The sampling program and protocol shall be developed and approved in consultation with the DFG, NMFS and USFWS.
 7. The refill criteria delineated in Exhibits A, A1, and A2 of the Petition for Temporary Transfer Of Water shall govern the conditions under which refill occurs for the transferred storage allowed in this order.
 8. Permittee shall prepare a monthly accounting of the actual groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer. Permittee shall provide to the Chief of the Division of Water Rights, a map of the recent (circa spring 2001) ground water levels in the North and South Yuba Groundwater Basins. An additional map shall be developed and submitted by June 1 of each year following the transfer defining the spring groundwater levels in the North and South Yuba Groundwater Basins until such time as groundwater levels correspond to the pre-transfer groundwater levels.
 9. By June 1, 2002, petitioner shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order and refill of storage resulting from this Order. The report shall include the following information:
 - a. General locations where the transferred water was used or stored;
 - b. The daily release rates of the transferred water from New Bullards Bar Reservoir;
 - c. The average daily streamflow measured at the USGS gaging stations located on the Yuba River at Marysville and Smartville;
 - d. The hourly temperature readings at the Smartville Gage, Daguerre Point Dam, and the Marysville Gage as required of YCWA in Term 2(d) of D-1644;
 - e. The daily values of the Transfer Amount Account, as defined in the refill criteria contained in Appendix A, A1, and A2 of the Petition for Temporary Transfer of Water; and
 - f. The monthly amounts (if any) of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.

Should the amount of the Transfer Amount Account exceed zero at the time of this report, the permittee shall submit subsequent annual reports until the Transfer Amount Account reaches zero. These reports shall contain the daily values of the Transfer Amount Account and the monthly amounts (if any) of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.

10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

11. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take prior to commencing transfer of water or water rights. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
12. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.



Harry M. Schueller, Chief
Division of Water Rights

Dated: **JUL 16 2001**