

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0036-DWR

**IN THE MATTER OF PERMIT 21112 (APPLICATION 5645B)
OF EL DORADO IRRIGATION DISTRICT
PETITION FOR TEMPORARY URGENCY CHANGES IN
PERMIT CONDITIONS, PLACE OF STORAGE AND
POINTS OF REDIVERSION**

SOURCES: Silver Lake, Caples Lake, Lake Aloha and South Fork American River

COUNTIES: Amador, Alpine and El Dorado

**ORDER APPROVING TEMPORARY URGENCY CHANGES IN PERMIT CONDITIONS, PLACE OF
STORAGE AND POINTS OF REDIVERSION**

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On August 1, 2008, El Dorado Irrigation District (EID) filed a petition with the State Water Resources Control Board (State Water Board) requesting approval of Temporary Urgency Changes to Permit 21112 pursuant to Water Code section 1435. The petition requests authorization to temporarily store 4,000 acre-feet (af) of water released from Caples Lake in Jenkinson Lake by (1) adding Jenkinson Lake as a temporary place of storage; (2) adding a point of rediversion at Sly Park Dam (which forms Jenkinson Lake); (3) adding a point of rediversion at El Dorado Canal to convey water from South Fork American River to Jenkinson Lake; (4) providing relief from permit condition 9 regarding maintenance of Caples Lake at specified levels for recreational purposes during the recreation season; and (5) providing relief from permit condition 12 regarding the bypass, release, and lake capacity requirements imposed by the Federal Energy Regulatory Commission (FERC) license for Project 184.

2.0 BACKGROUND

EID inspected the dam at Caples Lake in June 2008 and determined that repair work at the outlet gate valves was required due to the high risk of gate failure. The outlet works have been in continuous operation, without any known replacement or major repairs, for more than 85 years. EID staff has experienced recent and increasing operational difficulties, including binding, strain accumulation, lurching, and leakage through closed slide gates, debris blockages of the trash rack, and faulty operation of the lower slide gate. On June 10 and 11, 2008, a dive team conducted a two-day dive investigation of the outlet works that revealed a number of structural problems. Based on the inspection, EID concluded that any attempt to operate the lower slide gate carries a substantial risk of gate failure. If this gate were to fail in an open position, the result would be an uncontrolled release of the entire active storage of Caples Lake. Similarly, if the upper gate were to fail in an open position, the result would be an uncontrolled release of all water stored in Caples Lake above the elevation of the upper slide gate. If either gate were to fail in a closed position, EID would be unable to control releases of water from Caples Lake and

storage of water in Caples Lake, creating a substantial risk of uncontrolled filling of the reservoir and overtopping of the Caples Lake Auxiliary Dam.

EID issued a Resolution on July 14, 2008, finding that repair of the dam outlet gate is an emergency pursuant to Public Contract Code section 11102, which defines "emergency" as "a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services." The Resolution also finds that the potential gate failure qualifies as an emergency under California Environmental Quality Act (CEQA) Guidelines section 15359, which defines "emergency" as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services."

EID is presently emptying the reservoir to facilitate making the emergency repairs. Caples Lake will be nearly or completely empty by mid-September 2008. In the temporary urgency petition, EID seeks authorization to temporarily store 4,000 af of the water released from Caples Lake in Jenkinson Lake (Sly Park Dam) for customer use pursuant to Permit 21112 (Application 5645B). The water will be released at Caples Lake and rediverted at Kyburz into the El Dorado Canal, thence the Hazel tunnel, which routes the water to Jenkinson Lake.

Permit 21112 authorizes storage of 21,581 af per annum (afa) in Caples Lake to be collected from November 1 through July 31. Under the permit, EID may release water from Caples Lake for rediversion at Folsom Reservoir for municipal, irrigation, and domestic purposes. The total amount that EID may divert at Folsom, by direct diversion and rediversion of stored water, is 17,000 afa. EID requested to amend Permit 21112 to add temporary points of rediversion at: (1) El Dorado canal and (2) Sly Park Dam (Jenkinson Lake).

In addition, EID seeks relief from condition 9 of the permit, which requires EID to maintain Caples Lake at specified levels for recreational purposes. The lake levels are expressed as staff gage heights in the permit and are based on water year type. Maintenance of lake levels is required only for June, July, August, September and October. This year was a dry water year. The following table shows minimum and average lake levels for this year, based on water year type.

| Month | August | September | October |
|-------------------------------------|--------|-----------|---------|
| Minimum Gage Height (feet) | 44.9 | 39 | 38 |
| Corresponding Reservoir Volume (af) | 12,696 | 10,103 | 9,456 |
| Average Gage Height (feet) | 50.8 | 45.4 | 41.5 |
| Corresponding Reservoir Volume (af) | 15,761 | 12,941 | 11,052 |

Finally, EID seeks relief from condition 12 of the permit, which requires EID to maintain the release, bypass and lake capacity requirements imposed by the FERC license for Project 184. During the lake drawdown period, EID is releasing substantially more water than required by the FERC license. After the lake is drawn down, however, EID will be unable to comply with the reservoir bypass or release requirement while repairs are being made because the contractor must have dry conditions to make the repairs. Once repairs are completed, there will be minimal water in the reservoir until the reservoir refills.

Permit 21112 requires EID to demonstrate that it has met a number of conditions prior to water diversion and use. Inasmuch as EID has not previously documented compliance, EID was required to document compliance prior to approval of the urgency petition.

Condition 7

Condition 7 does not allow diversion until Permittee installs measuring devices at the Folsom Reservoir point of diversion.

On August 4, 2008, EID documented compliance with this condition indicating that measuring devices were installed at the Folsom Lake point of diversion.

Condition 18

Condition 18 does not allow diversion until Permittee has filed a report of waste discharge with the Central Valley Regional Water Quality Control Board (Regional Board), and the Regional Board or the State Water Board has prescribed waste discharge requirements or found that none are required. This condition also provides that no water shall be used until Permittee has prepared and the Regional Board has approved a mitigation plan that will ensure that increased wastewater discharges from the Deer Creek and El Dorado wastewater treatment plants due to water use under this permit will not reasonably affect wildlife habitat or aquatic habitat.

On August 8, 2008, EID submitted the following documentation: (1) Order R5-2007-0069, NPDES No. CA 0078671, Waste Discharge Requirements for the El Dorado Hills Wastewater Treatment Plant; (2) Order R5-2002-020, NPDES No. CA 0078662, Waste Discharge Requirements for the Deer Creek Wastewater Treatment Plant; (3) Order No. R5-2002-0210 (Amendment No. 1) (as amended by Resolution No. R5-2005-0028, Waste Discharge Requirements for Deer Creek Wastewater Treatment Plant; (4) Order R5-2002-0210, NPDES No. CA 0078662, Waste Discharge Requirements for the Deer Creek Wastewater Treatment Plant; and (5) Order WR 95-9 Reconsidering Approval of Changes in Point of Discharge, Purpose of Use, and Place of Use of Treated Wastewater Subject to Terms and Conditions for the Deer Creek Waste Water Treatment Plant. Therefore, EID documented compliance with this condition.

Condition 19

Condition 19 does not allow diversion until Permittee has adopted a general plan protective of threatened and endangered plant species.

On August 4, 2008, EID documented compliance with this term by indicating that El Dorado County adopted a General Plan in 2004, which was subsequently approved by the local voters and the Sacramento County Superior Court.

Condition 24

This condition provides that, in accordance with Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has implemented measures to protect fishlife.

EID indicates that it is not constructing any facilities at this time. Consequently, the condition is not currently in effect. EID states that it will comply with the term in the future when it constructs facilities. In its August 4, 2008 submittal, EID states that the Kyburz diversion dam at the head of the El Dorado Canal that will be used for the temporary urgency petition has a fish screen, which was approved by the Department of Fish and Game (DFG). The Division concurs that there are no actions associated with the urgency petition that would trigger the need to implement any additional measures in order to comply with condition 24.

Condition 29

Condition 29 requires the Permittee to have a contract with Reclamation prior to diversion at Folsom Reservoir.

Although modification of condition 29 is not part of the petition, the Division must determine if all pre-conditions for water use under the permit have been met. In its August 4, 2008 submittal, EID states that the condition is irrelevant because EID will not be using the Folsom Reservoir point of diversion for the urgency action. A contract is not required for the diversion locations specified in the urgency petition. The Division concurs that a contract is not required for the temporary urgency petition.

3.0 PUBLIC NOTICE OF THE PETITION

The State Water Board will issue and deliver to EID as soon as practicable a notice of the temporary urgency change petition pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), EID is required to publish the notice in a newspaper having a general circulation, and that is published within the counties where the points of diversion lie. The State Water Board will also mail or provide electronic copy of the notice to the interested parties who have requested notice of proposed temporary urgency changes and to other known interested parties. The State Water Board will post the notice of the temporary urgency change and a copy of the petition for temporary urgency change and accompanying materials on its website.

4.0 COMMENTS REGARDING THE PETITION

4.1 Reclamation

On July 25, 2008, Division staff contacted Reclamation staff Ray Sahlberg and Marty Kaiser regarding the petition. Reclamation indicated that the additional water flowing into Folsom Lake due to Caples Lake drawdown releases by EID this year was beneficial. Reclamation was concerned, however, about whether the subsequent refill of Caples Lake next year would result in lower inflow at Folsom Lake than would otherwise occur.

The Division notes that drawdown of the lake will occur, irrespective of whether the petition is approved, to facilitate emergency repairs. Thus, the impact that Reclamation is concerned about, lowering of the lake and resultant refill, is associated with the repair project, not the temporary urgency change petition.

4.2 Department of Fish and Game

On August 8, 2008, DFG advised the Division that the effects of Caples Lake drawdown will be mitigated to the greatest extent feasible under the given circumstances based on a proposed fish restocking plan and collaboration on fish rescue, and the State Water Board should approve the urgency petition. DFG requested clarification that the relief requested from lake level and minimum bypass/release flow requirements would be limited to the duration of the construction repair work and until the lake refills to a level whereby the specified minimum streamflows can be resumed. DFG recognized that the request for the temporary urgency change and the drawdown for repairs at Caples Lake are two separate issues in terms of biological effects. Thus, DFG found that the temporary urgency change will not have unreasonable effects upon fish and wildlife resources.

5.0 COMPLIANCE WITH CEQA

EID prepared a Notice of Exemption for the Caples Lake Dam Outlet Works Emergency Repairs and Water Salvage Project on July 30, 2008. EID states in its Notice of Exemption that the proposed action is exempt from CEQA (Sec. 21080(b)(2)(4); 15269(b),(c)) because the emergency repairs to the dam are

necessary to prevent uncontrolled water releases from the dam should the dam outlet facilities fail in the open position. Uncontrolled releases would pose risks to public safety and the environment and impede EID's ability to provide adequate drinking water to its customers and generate hydroelectric power for the California market. In addition, EID found that the redirection of water released from Caples Lake to Jenkinson Lake is necessary to maintain essential water service to the public.

The State Water Board has reviewed the information submitted by EID and has determined that the petition qualifies for an exemption under CEQA. The emergency repairs to the dam, and the associated drawdown of Caples Lake, are necessary to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services that would occur if the slide gates within Caples Lake Dam were to fail. EID has documented the potential impacts associated with failure of the dam gate mechanisms and has also documented the extremely poor condition of the existing gates. A video of the dive inspection showing the need for imminent repair is available on the EID website. To implement the repairs, EID's contractor needs to work in dry conditions for purposes of health and safety. Thus, the lake must be drawn down during the repair period and flows at the dam curtailed during installation of the new gate facilities.

In addition, the re-storage in Jenkinson Lake of some of the water released from Caples Lake is necessary to mitigate the impact of the emergency repair work on EID's ability to supply water to its customers, which is an essential public service. EID indicates that it will have less water in storage in its water supply system as a result of the emergency repair project. If next winter is classified as a dry or critically dry year, EID states that it will have a high risk of water shortage.

The State Water Board will issue a Notice of Exemption for the temporary urgency change petition pursuant to section 21080, subdivision (b)(4) of the Public Resources Code and section 15269, subdivision (c) of the CEQA Guidelines.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license can petition for a conditional temporary change order provided under Chapter 6.6 of part 2, division 2, of the Water Code, starting at section 1435. The State Water Board's regulation, at California Code of Regulations, title 23, section 791, subdivision (e), provides that the State Water Board shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under Water Code section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The State Water Board must make the findings specified in section 1435, subdivision (b) when issuing a temporary change order pursuant to chapter 6.6. The required findings are:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

6.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of

which they are capable and that waste of water be prevented. However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

EID has also shown that it has an urgent need to recapture and temporarily store some of the water lost from its system during dewatering of the project site, in order to keep more water in its system for customer service next year if next winter is classified as a dry or critically dry water year.

6.2 No Injury to Any Other Lawful User of Water

Kirkwood Ski Resort

Kirkwood Ski Resort (Kirkwood) diverts 250 afa from Caples Lake for snowmaking purposes under Permit 20851 (Application 30062) from November 1 of each year to March 1 of the succeeding year. Caples Lake will be drawn down for the emergency repairs, irrespective of whether the petition is approved. Therefore, approving the temporary urgency change petition will not injure Kirkwood's water right.

Reclamation

As noted in Section 4,1, Reclamation is concerned about lowering of the Caples Lake and resultant refill. This impact is associated with the repair project, not the temporary urgency change petition. There will be no injury to Reclamation's rights as a result of the petitioned changes.

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

In its August 8, 2008 memorandum, DFG found that the drawdown for repairs at Caples Lake and the temporary urgency changes are two separate issues in terms of biological effects. DFG found that the temporary urgency changes will not have unreasonable effects upon fish and wildlife resources. DFG requested clarification, however, that the relief requested from lake level and minimum bypass/release flow requirements would be limited to the duration of the construction repair work and until the lake refills to a level whereby the specified minimum streamflows can be resumed. The Division agrees that streamflows should be restored as soon as feasible, and will condition this approval accordingly.

6.4 The Proposed Change is in the Public Interest

The proposed changes are in the public interest because they will allow EID to salvage of some of the water released from the reservoir and put the water to beneficial use.

7.0 STATE WATER BOARD DELEGATION OF AUTHORITY

Resolution 2007-0057, section 4.4.1, delegates to the Chief of the Division of Water Rights the authority to approve temporary urgency changes pursuant to Water Code Section 1435 provided the necessary findings can be made.

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8.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

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

ORDER

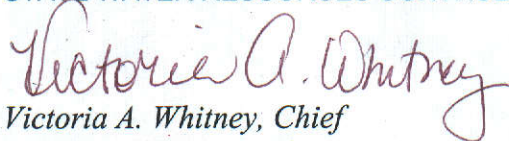
NOW, THEREFORE, IT IS ORDERED THAT: the filed petition for temporary change is approved for a period of 180 days.

All existing terms and conditions of Permit 21112 remain in effect, except as temporarily amended for a period of 180 days by the following provisions:

1. Permit condition 9 is waived for the duration of the temporary change.
2. Permit condition 12 is waived only until the emergency dam repairs are completed and it is feasible to release water from Caples Lake Dam. Permittee shall resume the required bypasses/releases from Caples Lake as soon as feasible after completion of repairs and shall notify the Division within 10 days of completion of repairs. If flows are inadequate to fully comply with bypass/release requirement of Permit 21112, Permittee shall notify the Division Chief immediately upon completion of repairs, and shall provide an alternate schedule of flow bypasses/releases for modification and approval of the Chief, Division of Water Rights.
3. Rediversion and storage of 4,000 af in Jenkinson Lake using the following points of rediversion is approved. The water temporarily stored in Jenkinson Lake shall be put to beneficial use prior to end of the 180-day period of this Order.
 - (a) Point of rediversion at Sly Park Dam (Jenkinson Lake): South 3,375 feet and West 2,830 feet from NE corner of Section 17, T10N, R13E, MDB&M, being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 17.
 - (b) Point of rediversion at El Dorado Canal: North 52° 02' West, 1,596.7 feet from SE corner of Section 29 T11N, R15E, MDB&M, being within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 29.
4. This Order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this Order, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.

5. The State Water Board reserves jurisdiction to supervise the temporary urgency change 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.
6. EID shall record the beneficial use of water by using USGS gages 11436900, 11437000, 11439501, 11439500 and EID gages at the Hazel Tunnel diversion from the El Dorado Canal and at the Sly Park Dam (Jenkinson Lake) and shall report diversions to the Division by March 15, 2009.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **AUG 14 2008**