

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2008-0040-DWR**

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**IN THE MATTER OF PERMITS 13856 & 13858 (APPLICATIONS 18085 & 18087)  
PETITION FOR TEMPORARY URGENCY CHANGE  
INVOLVING THE TRANSFER OF UP TO 20,000 ACRE-FEET OF WATER  
FROM THE PLACER COUNTY WATER AGENCY  
TO THE WESTLANDS WATER DISTRICT**

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**ORDER APPROVING TEMPORARY URGENCY CHANGE IN PLACE OF USE,  
PURPOSE OF USE, AND POINTS OF REDIVERSION**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On August 18, 2008,

Placer County Water Agency  
c/o Hanspeter Walter  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a petition for Temporary Urgency Change pursuant to Water Code section 1435 et seq. Pursuant to the petition, Placer County Water Agency (PCWA) seeks to transfer up to 20,000 acre-feet (af) of water to the Westlands Water District (WWD). The petition states that WWD is suffering an urgent need for additional water to meet the water needs of existing agricultural crops during this statewide drought.

**1.1 Current Dry Conditions:** On June 4, 2008, citing two straight years of below-average rainfall and significant restrictions on diversions from the Delta due to various factors, including federal court actions to protect fish species, Governor Schwarzenegger declared a statewide drought and issued Executive Order S-06-08 (Executive Order). On June 12, 2008, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger issued a Proclamation, proclaiming a state of emergency within the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern. The Governor's Proclamation also directed the State Water Board to expedite the processing and consideration of water rights urgency change petitions filed by the Department of Water Resources (DWR) and other agencies to facilitate water transfers to the San Joaquin Valley. The State Water Board has received several petitions for temporary urgency change to facilitate the transfer of water to the San Joaquin Valley. The information contained in these other petitions is relevant to the current circumstances in WWD and explains the urgent need for the proposed temporary urgency change. Information currently on file with the State Water Board under Application 17512 contains the following statement:



"Due to the extremely dry conditions and the impacts of the Delta smelt remedial actions imposed on the Projects' operations by the Wanger Decision, the current allocation to the [State Water Project (SWP)] water users is only 35% of this year's contract amount and the allocation to [Central Valley Project (CVP)] contractors was initially only 45% of their contract amount. The CVP allocation has now been reduced to 40%. Because of the 45% allocation that Westlands Water District initially received from the CVP, approximately one-third of the District's lands (200,000 acres) were fallowed this year. Even with the fallowing, crops planted this year and permanent crops have created an aggregate demand of approximately 350,000 acre-feet in June, July, and August. However, based on the amount of CVP water presently in storage at San Luis Reservoir and the District's projections of the amount of water the CVP will be able to pump at the Jones Pumping Plant between now and the end of August, the District calculated that the amount of water that it can reasonably expect to receive from the Project prior to the end of the low point period is approximately 240,000 acre-feet. This projection led the Westlands Water District Board of Directors to take action to ration the amount of water available to farmers until the end of the San Luis Reservoir low point period. The ration, apportioned among all irrigable acres in the District, excluding District owned lands, will result in 0.47 acre-feet being available to each irrigable acre. This is insufficient for permanent crops and has created an emergency situation where immediate action is needed to prevent the ir retrievable loss of these crops."

The water proposed for transfer pursuant to this temporary urgency change will be used on land within WWD for irrigation of existing crops within Fresno and Kings Counties. The rationing of CVP supply in WWD threatens the health of those existing crops and has created an urgent need for the proposed change.

**1.2 Description of Temporary Urgency Change:** PCWA proposes to transfer up to 20,000 af of water currently stored in French Meadows Reservoir and Hell Hole Reservoir (the major storage facilities of its Middle Fork Project) under Permits 13856 and 13858 (Applications 18085 and 18087) to WWD. The transfer water would be released between the effective date of this order and December 31, 2008, to the Rubicon River thence the Middle Fork American River and temporarily stored in Folsom Reservoir. The transfer water would then be available for release to the Lower American River thence the Sacramento River to the Delta for export at the Jones Pumping Plant and delivery to WWD. Due to the additional amount of export pumping associated with this transfer, additional Delta inflow will be required to maintain water quality objectives within the Delta. Accordingly, a portion of the transfer water (typically referred to as 'carriage water') will be used for salinity control, fish and wildlife enhancement, and water quality control.

In the absence of this transfer, up to 20,000 af of the subject water would remain in storage in French Meadows Reservoir and Hell Hole Reservoir.

**1.3 Proposed Temporary Urgency Changes:** The proposed temporary urgency change would add the service areas of WWD (as shown on map submitted with the petition) to the authorized place of use under Permits 13856 and 13858. The CVP's Jones Pumping Plant would be temporarily added as a point of diversion under Permits 13856 and 13858. Folsom Reservoir would be added as an alternate point of diversion. In addition, salinity control, fish and wildlife enhancement, and water quality control should be temporarily added as purposes of use under Permits 13856 and 13858 consistent with carriage water requirements described above.

**1.4 Department of Fish and Game Consultation:** PCWA and the State Water Board have consulted with the Department of Fish and Game (DFG) regarding the proposed temporary urgency change. Representatives of DFG did not identify any mitigation measures necessary to prevent unreasonable impacts to fish, wildlife, or other instream beneficial uses resulting from the proposed temporary urgency change.

**1.5 Status of WWD's Project:** In general, irrigated land in WWD's service area has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize



the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, October 2007, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River. Additionally, the water proposed for transfer will be used on existing crops, and will not result in additional acreage being put into production.

In support of this petition, WWD provided historical information regarding the total volume of water supplied to WWD between 2000 and 2007, as well as the projected total volume of water intended for delivery to WWD for 2008, assuming this petition is approved. Between the years 2000 and 2007, an average of approximately 1,000,000 af of water exported from the Delta was delivered for use within WWD. The amount of water scheduled for delivery to WWD this year (assuming this petition is approved) is 600,000 af, which represents approximately 60% of the average yearly total for the years 2000 through 2007.

## **2.0 BACKGROUND**

**2.1 Substance of PCWA's Permits.** Permits 13856 and 13858 (Applications 18085 and 18087), issued on January 10, 1963, authorize PCWA to divert to storage up to a maximum of 133,700 af per year (afa) in French Meadows Reservoir and up to 208,400 afa in Hell Hole Reservoir. These permits also authorize the direct diversion of up to a total of 2025 cfs between November 1 and July 1 of each year. The authorized purposes of use under Permits 13856 and 13858 are irrigation, municipal, industrial, recreation and incidental domestic and the place of use is shown on PWCA's map set dated July 31, 1996.

PCWA also holds Permits 13855 and 13857 (Applications 18084 and 18086), issued on January 10, 1963. These permits authorize similar direct diversion and storage totals and locations as Permits 13856 and 13858, however, these permits are for non-consumptive uses (i.e., power generation and recreation). Accordingly, Permits 13855 and 13857 are not included in this petition for temporary urgency change.

**2.2 The Middle Fork Project.** PCWA owns and operates the Middle Fork Project (located within the upper American River watershed) which consists of the French Meadows and Hell Hole reservoirs, with combined storage capacity of approximately 342,000 af, and associated canals, pipelines, powerhouses and regulating reservoirs. French Meadows Reservoir is located on the Middle Fork American River and Hell Hole Reservoir is located on the Rubicon River (which is tributary to the Middle Fork American River). PCWA's Federal Energy Regulatory Commission (FERC) licenses require PCWA to maintain minimum instream flows in the Middle Fork American River and Rubicon River (below both reservoirs) based on the season and water year type. Water stored in French Meadows Reservoir may be pumped via underground pipeline to Hell Hole Reservoir and, during normal operations, PCWA uses Hell Hole reservoir as the release point for most of the water it uses for power generation and its authorized consumptive uses.

**2.3 Southern Delta Salinity.** In Revised Decision 1641 (D-1641) the State Water Board added conditions to the water right permits for the SWP and CVP, which require the SWP and CVP to meet water quality objectives for the protection of agricultural beneficial uses (including salinity objectives at three southern Delta locations). These objectives are contained in Table 2, located on page 182 of D-1641. Additionally, in D-1641 the State Water Board authorized DWR and the United States Bureau of Reclamation (USBR) to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the SWP and CVP meet all other provisions of their permits before they may perform JPOD operations. Salinity at the southern Delta salinity compliance locations may exceed the objectives during the period of the proposed temporary change. Order WR 2008-0029-EXEC temporarily amended



the SWP and CVP water right permits to allow JPOD operations to occur even though southern Delta water quality objectives are exceeded if

“the State Water Board’s Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the use of JPOD will not unreasonably affect salinity in the southern Delta.”

Petitions for change (such as the subject petition) which add either the Clifton Court Forebay or the Jones Pumping Plant as points of redirection to water rights other than those of the SWP or CVP are not considered JPOD operations. The impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Clifton Court Forebay or the Jones Pumping Plant as points of redirection to water rights other than those of the SWP or CVP, however, are similar to the impacts of JPOD operations. In the absence of other equivalent measures, the orders approving these petitions should include conditions similar to those required of JPOD operations. For some period of PCWA’s proposed temporary change, it is likely that the southern Delta salinity objectives will be exceeded. Accordingly, this Order includes the following condition to allow this transfer to occur only if it will not unreasonably affect salinity in the southern Delta during the period of the proposed temporary change.

Rediversion of water at the Jones Pumping Plant pursuant to this Order is subject to compliance by the SWP and CVP project operators with all applicable biological opinions, and any court orders applicable to these operations. Rediversion of water at the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the following exception:

The rediversion of water at Jones Pumping Plant under Permits 13856 and 13858 may occur, even if the southern Delta water quality objectives are exceeded, provided that the State Water Board’s Executive Director either has made the findings necessary to allow the use of JPOD pursuant to Order WR 2008-0029-EXEC, or has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the rediversion of water at Jones Pumping Plant under Permits 13856 and 13858 will not unreasonably affect salinity in the southern Delta.

### **3.0 PUBLIC NOTICE**

The State Water Board may issue a temporary urgency change order in advance of public notice. (Wat. Code, § 1438, subd. (a).) The State Water Board will comply with the noticing requirements as soon as practicable.

### **4.0 REQUIRED FINDINGS OF FACT**

Pursuant to Water Code section 1435, subdivision (b), the State Water Board must make the following findings prior to issuing a temporary change order:

1. The petitioner 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.



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.

**4.1 The Petitioner Has an Urgent Need to Make the Proposed Change:** Pursuant to 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 urgency 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.

On June 12, 2008, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger issued a Proclamation, proclaiming a state of emergency within the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern. The water proposed for transfer pursuant to this temporary urgency change will be used on land within WWD's service area for irrigation of existing crops within Fresno and Kings Counties. The rationing of CVP supply in WWD threatens the health of those existing crops and has created an urgent need.

Based on this information, I find that without the proposed temporary urgency change, the potential for irretrievable loss of crops exists. The petitioner has an urgent need to make the proposed change.

**4.2 No Injury to Other Legal Users of Water and No Increase in Amount the District is Entitled to Use:** The water proposed for transfer pursuant to this temporary urgency change consists of water previously stored in French Meadows Reservoir and Hell Hole Reservoir pursuant to Permits 13856 and 13858. In the absence of the proposed transfer, the water would remain in storage for future use by PCWA.

In general, irrigated land in WWD's service area has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's map, Generalized Depth to Shallow Ground Water, October 2007, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River. Additionally, the water proposed for transfer will be used on existing crops, and will not result in additional acreage being put into production.

Finally, this Order includes terms and conditions to ensure that other legal users of water are not injured by:

- a. Potential water level and water quality impacts in southern Delta channels associated with the addition of the Jones Pumping Plant as a point of redirection to Permits 13856 and 13858; and
- b. Future refill of French Meadows Reservoir and Hell Hole Reservoir associated with the proposed temporary urgency change.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(2) that the proposed temporary urgency change would not injure any legal user of the water.

**4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses:** DFG was contacted regarding the proposed temporary urgency change and did not identify any concerns regarding fish, wildlife, and other instream beneficial uses. This Order requires PCWA to comply with applicable FERC requirements during the period of the proposed temporary change. Rediversion of water at the Jones Pumping Plant pursuant to this Order is subject to compliance by the SWP and CVP project operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on



pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations. In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(3) that the proposed temporary urgency change will have no unreasonable effect on fish, wildlife or other instream beneficial uses.

**4.4 The Proposed Change is in the Public Interest:** Based on the discussion in sections 4.1, 4.2, and 4.3, above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed temporary urgency change is in the public interest.

#### **5.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE**

Because of the drought conditions and water supply shortages this year, approval of the proposed change will not result in an increase in the deliveries to WWD relative to operations and deliveries since 2000. Based on information contained in the petition, projected total water deliveries for all of 2008 (assuming approval of this petition) will be approximately 60% of the average total annual volume of water delivered to WWD for the period from 2000 through 2007. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists within Fresno County. Accordingly, approval of the proposed change is exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15301. In addition, approval of the proposed change is exempt from CEQA pursuant to Public Resources Code sections 21080, subdivision (b)(3) and 21172 because the change is necessary to minimize damage to crops in the San Joaquin Valley.

#### **6.0 STATE WATER BOARD DELEGATION OF AUTHORITY**

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary urgency change if no objections have been received. This order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2007-0057.

#### **7.0 CONCLUSIONS**

Based on the information in the record, I find that:

1. The petitioner has an urgent need to make the proposed temporary change.
2. The proposed temporary change will not operate to the injury of any other lawful user of water.
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The petitioned change is in the public interest.

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## 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 Placer County Water Agency's (PCWA) Permits 13856 and 13858 (Applications 18085 and 18087) to authorize the transfer of up to 20,000 af of water is approved. The temporary urgency change is effective commencing on the date of this Order through December 31, 2008, although one reporting term imposed in this Order will extend beyond that date.

All existing terms and conditions of Permits 13856 and 13858 remain in effect, except as temporarily amended by the following provisions:

1. The place of use under Permits 13856 and 13858 is temporarily amended to include the service area of the Westlands Water District as shown on map submitted with the petition and on file with the State Water Board under Application 18085.
2. Folsom Reservoir is temporarily added as an authorized point of redirection under Permits 13856 and 13858.
3. The Jones Pumping Plant is temporarily added as an authorized point of redirection under Permits 13856 and 13858. Rediversion of water at the Jones Pumping Plant pursuant to this Order is subject to compliance by the SWP and CVP project operators with all applicable biological opinions, and any court orders applicable to these operations. Rediversion of water at the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the following exception:

The rediversion of water at Jones Pumping Plant under Permits 13856 and 13858 may occur, even if the southern Delta water quality objectives are exceeded, provided that the State Water Board's Executive Director either has made the findings necessary to allow the use of JPOD pursuant to Order WR 2008-0029-EXEC, or has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the addition of the Jones Pumping Plant as a point of redirection to Permits 13856 and 13858 will not unreasonably affect salinity in the southern Delta.

4. Salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under Permits 13856 and 13858.
5. The criteria delineated in the *Refill Agreement for 2008 Water Transfer Between Placer County Water Agency and Westlands Water District* (Refill Agreement), submitted with the petition, shall govern the conditions under which the excess storage capacity in French Meadows Reservoir and Hell Hole Reservoir resulting from this transfer is refilled.
6. During the period of the transfer, petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the petitioner.
7. By March 1, 2009, the petitioner shall provide the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include the following information:



- a. The duration and magnitude of the increased releases of water and the corresponding volume of water released from Hell Hole Reservoir as a result of this transfer (reported on a daily basis);
- b. The average daily release rates and corresponding volume of water released from Folsom Reservoir as a result of this transfer (reported on a daily basis); and
- c. The value of the Refill Reservation as defined in the Refill Agreement (reported on a daily basis).

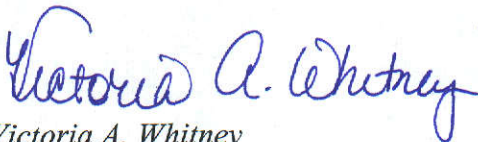
Should the value of the Refill Reservation exceed zero at the time of this report, PCWA shall submit subsequent reports by June 1 of each year until the Refill Reservation equals zero. These reports shall include the daily values of the Refill Reservation.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary urgency change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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 State Water Board 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.

9. 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 & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this temporary urgency change, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.
10. 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.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney*  
*Deputy Director for Water Rights*

Dated: **OCT 24 2008**