

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0045-DWR

**IN THE MATTER OF LICENSE 3165 (APPLICATION 27)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 7,220 ACRE-FEET OF WATER
FROM RECLAMATION DISTRICT NO. 1004
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Reclamation District No. 1004
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Reclamation District No. 1004's (RD 1004) petition requests the transfer of up to 7,220 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. RD 1004 proposes to transfer up to 7,220 af of water under License 3165 (Application 27) to DWR's 2009 DWB through the CVP's and SWP's Pumping Plants. To facilitate this transfer, RD 1004 will pump additional groundwater and reduce its direct diversion from the Sacramento River by 130 cubic feet per second (cfs) if all wells proposed to participate in the DWB are operating simultaneously. At times when pumping capacity is available in the Delta, the additional 130 cfs in the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. RD 1004's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation

(USBR) for use in the DWB will be used for the proposed temporary transfer. RD 1004 is developing a groundwater management plan, which will include the wells and the overlying lands within the boundaries of RD 1004. RD 1004 submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of RD 1004's License. License 3165 (Application 27) authorizes the direct diversion of up to 166 cfs of water per annum from the Sacramento River between April 1 and October 15 of each year for irrigation purposes. The authorized points of diversion for License 3165 are located on the Sacramento River near Butte Slough Road. The authorized place of use consists of 22,838 acres, with the maximum area irrigated in any one year not to exceed 7,000 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 3165. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 3165. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 3165.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and 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 Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 3165. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.

- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the “ESA-listed” giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The “cap” on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the 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 JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to “unreasonably damage and harm” anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.

- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the 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 JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with “the continuing failure of DWR and USBR to observe, and the State Water Board’s failure to enforce” the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition

include the following term:

“If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met.”

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 3165. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code

section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the 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). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S 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 change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

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.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 3165 (Application 27) of the Reclamation District No. 1004 (RD 1004) for the transfer of up to 7,220 acre-feet of water is approved.

All existing terms and conditions of License 3165 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 3165 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 166 cubic feet per second.
4. The place of use under License 3165 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 3165.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and 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 points of diversion/rediversion, 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 of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 3165.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, RD 1004 shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 3165 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - e. The daily average pumping rate of groundwater pumped by RD 1004 in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of RD 1004 prior to the proposed transfer.

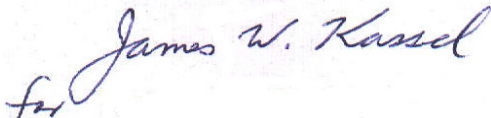
RD 1004 shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of RD 1004, until such time as these elevations correspond to pre-transfer levels.

8. 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 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 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 permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer 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: JUN 30 2009