

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

DIVISION OF WATER RIGHTS

ORDER WR 2010-0019-DWR

In the Matter of Permit 13776 (Application 18115)

U.S. Bureau of Reclamation

SOURCE: Stony Creek tributary to Sacramento River

COUNTIES: Butte, Glenn, and Tehama

ORDER APPROVING TEMPORARY URGENCY CHANGE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 7, 2010, the U.S. Bureau of Reclamation (Reclamation) filed a temporary urgency change petition pursuant to Water Code section 1435 et seq., to extend the season of rediversion under Permit 13776 (Application 18115) for 30 days, from May 15, 2010 to June 15, 2010.

Under Permit 13776, as part of the Central Valley Project (CVP), Reclamation diverts Stony Creek water to storage in Black Butte Reservoir from November 1 of each year to April 30 of the succeeding year. Water is then released from storage and rediverted at the Stony Creek Siphon (Constant Head Orifice or CHO) into the Tehama-Colusa Canal (TC Canal), which serves the Tehama Colusa Canal Authority (TCCA), from April 1 to May 15 and from September 15 to October 29. With the temporary urgency change petition, Reclamation seeks to extend the season of rediversion at the CHO.

2.0 BACKGROUND

2.1 History of Permit 13776

Permit 13776 was issued to Reclamation on November 19, 1962 pursuant to Application 18115, for diversion to storage of up to 160,000 acre-feet from Stony Creek in Black Butte Reservoir from November 1 of each year to April 30 of the succeeding year. Beneficial uses include domestic, irrigation, municipal, industrial and recreational uses within the place of use of the CVP. In an April 1, 1996 Order (1996 Order), the Division of Water Rights (Division) amended the permit, adding a point of rediversion at the CHO to the TC Canal. The 1996 Order included the following condition:

Release of Central Valley Project water from Black Butte Reservoir for rediversion at the Constant Head Orifice under this permit shall not exceed 38,293 acre-feet annually. Rediversions at the Constant Head Orifice may occur for 45 days during each of the periods from April 1 through May 15 and from September 15 through October 29.

2.2 Description of the Temporary Urgency Change

TCCA diverts Reclamation's CVP water into the TC Canal: (a) from Stony Creek by rediversion through the CHO under Permit 13776, or (b) from the Sacramento River by gravity flow at the Red Bluff Diversion Dam (RBDD) under other Reclamation CVP rights. TCCA diverts water by gravity from the Sacramento River into the TC Canal when the gates are down at the RBDD, since sufficient head for gravity diversions to the TC Canal is only available when the gates are down.

Between May 15 and September 14, the RBDD has generally been operated with the gates down, allowing TCCA to divert up to 2,200 cubic feet per second (cfs) by gravity into the TC Canal. However, as a result of the June 4, 2009 Biological Opinion issued by National Marine Fisheries Service (NMFS) for CVP operations, the RBDD gates cannot be lowered until June 15. The Biological Opinion also required fish passage improvements at the RBDD, and has resulted in the Fish Passage Improvement Project (FPIP). The FPIP proposes the installation of a new permanent diversion facility at RBDD in 2011, which will meet the most current protective design standards. In the interim, Reclamation installed a temporary pumping plant at RBDD to supply water to the TC Canal until the gates could be lowered and/or the new permanent diversion facility is installed.

However, it has been determined that some of these temporary pump screens at the RBDD do not meet state and federal criteria designed to prevent fish entrainment. Consequently, various fishery agencies have urged Reclamation and TCCA to use the CHO to divert water into the TC Canal rather than using the least effective fish screens at the temporary pumping plant at RBDD from May 15 through June 15, 2010. Therefore, Reclamation filed the petition for temporary urgency change to extend the season of rediversion for the CHO under Permit 13776 from May 15, 2010 to June 15, 2010 in order to operate in the manner preferred by the fishery agencies.

The agencies in the Technical Advisory Group (TAG) that are developing recommendations for implementation of the FPIP include representatives from NMFS, U.S. Fish and Wildlife Service, California Department of Fish and Game (DFG), California Department of Water Resources, Reclamation, and TCCA. The TAG representatives have been involved in recent discussions regarding whether using the temporary pumping plant at RBDD or the CHO on Stony Creek would be most protective of fishery resources on an interim basis until the new permanent diversion facilities are built at RBDD. TAG members concluded that extending the season of rediversion at the CHO from May 15, 2010 through June 15, 2010 would be the most environmentally conservative method of diverting water into the TC Canal based on the following:

1. Extensive sampling and monitoring over the years indicate that no listed anadromous fish should be present in Stony Creek and subject to entrainment into the canal at the CHO during the May 15 through June 15 extended period of rediversion.
2. High water temperatures at this time of the year and implementation of flushing flow releases to Stony Creek above the CHO prior to its use for diversion starting in April result in an unsuitable habitat for fish in Stony Creek during May 15 through June 15.
3. The Division's 1996 Order only allows rediversions into the CHO when 40 cfs is bypassed downstream in Stony Creek. This will create a downstream bypass that is 10 cfs larger than the usual 30 cfs bypass that is required during this time period by a 2002 NMFS Biological Opinion on Lower Stony Creek operations. The increase in downstream bypass will be beneficial for downstream fisheries.

The quantity of water that will be made available to TCCA as a result of approval of this urgency change petition will not exceed the authorized seasonal limit of 38,293 afa by rediversion from Stony Creek. All other limitations relative to use of the CHO as a point of rediversion will remain in place, including the minimum bypass of 40 cfs in Stony Creek immediately downstream of the TC Canal.

3.0 COMMENTS REGARDING THE PETITION

The State Water Board issued a public notice of the temporary urgency change petition on May 12, 2010, and the deadline for comments is May 26, 2010. This temporary urgency change is being approved in advance of the comment deadline in accordance with Water Code section 1438(a).

On May 10, 2010, Department of Fish and Game staff approved Reclamation's request to modify the rediversion season of Lake and Streambed Alteration Agreement (Notification No.1600-1999-0093-R2) to allow rediversion at the CHO from May 15 through June 15, 2010.

4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the provisions of the California Environmental Quality Act (CEQA), the State Water Board is issuing a Notice of Exemption based on Class 7, Actions by Regulatory Agencies for Protection of Natural Resources, in accordance with Title 14, California Code of Regulations, section 15307. The project as proposed will not have a significant effect on the environment and should be exempt from CEQA as follows:

1. Class 7 exemptions from CEQA consist of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.
2. The TAG fishery agencies have determined that some of the screens on the temporary pumping plant at the RBDD are inadequate to protect fishery resources on the Sacramento River and indicated that rediversions at the CHO on Stony Creek are preferable as it is unlikely that fish will be present in Stony Creek near the CHO during the extended period of rediversion.
3. During the extended rediversion season of the CHO, downstream bypasses in Stony Creek will be 40 cfs, which is 10 cfs higher than normal bypasses during this time period.
4. Therefore operation of the CHO from May 15 through June 15 is protective of fishery resources on both 1) the Sacramento River due to prevention of fish entrainment at the temporary pumping plant at the RBDD; and 2) downstream in Stony Creek, given an increase in mandatory bypass flows.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Chapter 6.6 of part 2, division 2, of the Water Code, commencing with section 1435, provides that 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 may petition for a conditional temporary urgency change order. 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 temporary urgency 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 urgency 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.

5.1 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 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. 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.

Operation of both the Stony Creek and Sacramento River diversions are constrained by Biological Opinions for protection of fishery resources. Reclamation has indicated that compliance with the Biological Opinions has resulted in an urgent need to re-operate facilities in order to negate harm to fisheries due to fish entrainment at the temporary fish pumping plant at the RBDD. Re-operation of the CHO will result in protection of Sacramento River fisheries at the RBDD.

5.2 No Injury to Other Legal Users of Water

The water to be rediverted at the CHO from May 15 to June 15, 2010 was stored in Black Butte Reservoir prior to April 30, 2010. Water released from storage is not available for diversion by other water right holders. Therefore, there is no injury to other legal users of water.

5.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses

The underlying need for the temporary urgency change is to protect fishery resources. Reclamation consulted with the TAG fishery agencies regarding the proposed temporary urgency change. The proposed change minimizes use of poorly performing temporary fish screens on the Sacramento River at the RBDD. The extension of the rediversion season at the CHO will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses because no listed anadromous fish should be present and subject to entrainment into the canal at the CHO location during the extended Stony Creek rediversion period of May 15 to June 15, 2010.

5.4 The Proposed Change is in the Public Interest

The proposed change will provide water in the TC Canal for delivery to CVP contractors within the TCCA service area. Without the modification to the rediversion season, the water supply in the TC Canal may not be adequate to supply the TCCA service area from May 15 to June 15, 2010. Moreover, the proposed change minimizes use of poorly performing temporary fish screens on the Sacramento River.

6.0 STATE WATER BOARD DELEGATION OF AUTHORITY

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

7.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

1. Reclamation has an urgent need to make the proposed change;
2. The petitioned change does not operate to the injury of any other lawful user of water;
3. The petitioned change does 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 petition filed by Reclamation for temporary urgency change in Permit 13776 is approved.

All existing terms and conditions of the subject permit, and orders issued pursuant to the subject permit remain in effect, except as temporarily amended by the following provisions:

1. Rediversion at the Constant Head Orifice is authorized from the date of issuance of this Order through June 15, 2010.
2. Release of Central Valley Project water from Black Butte Reservoir for rediversion at the Constant Head Orifice under Permit 13776 shall not exceed 38,293 acre-feet from April 1, 2010 through October 29, 2010.
3. By July 15, 2010, Reclamation shall report the total quantity of water rediverted at the Constant Head Orifice pursuant to this temporary urgency order and shall report the total quantity subsequently put to beneficial use. By December 31, 2010, Reclamation shall report its compliance with the 38,293 acre-feet diversion limit.

STATE WATER RESOURCES CONTROL BOARD

for James W. Kassel
Victoria A. Whitney
Deputy Director for Water Rights
Dated: **MAY 25 2010**