

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

DIVISION OF WATER RIGHTS

WR ORDER 2004-0024-DWR

**IN THE MATTER OF PERMIT 15026 (APPLICATION 5632)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 150,000 ACRE-FEET OF WATER
FROM THE YUBA COUNTY WATER AGENCY
TO THE DEPARTMENT OF WATER RESOURCES**

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

1.0 SUBSTANCE OF PETITION

On January 20, 2004,

Yuba County Water Agency
c/o Curt Aikens
1402 D Street
Marysville, CA 95901

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. Yuba County Water Agency's (YCWA) petition requested the transfer of up to 150,000 acre-feet (af) of water to the Contra Costa Water District (CCWD) and the Department of Water Resources (DWR). By email correspondence of March 8, 2004, YCWA indicated that CCWD would not be receiving water under this transfer and amended its petition to transfer water only to DWR. Accordingly, the 150,000 af of water is intended for use by DWR under its portion of the CALFED Environmental Water Account (EWA) and its 2004 Dry Year Water Purchase Program. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year.

1.1 Description of the Transfer YCWA originally proposed to transfer up to 150,000 af of water under Permit 15026 (Application 5632) to CCWD and DWR. However, (as stated above) YCWA has indicated that CCWD would not be receiving water under this transfer and amended its petition to transfer water only to DWR. To facilitate the transfer, YCWA proposes to release up to 150,000 af of water currently stored in the New Bullards Bar Reservoir (between June 1 and October 31, 2004). Water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Power House) thence the Yuba River (through Daguerre Point Dam) to the Feather River thence the Sacramento River to the Delta. Water reaching the Delta would be available for: 1) use by DWR to provide salinity and water quality control within the Delta, 2) export to users within the State Water Project (SWP) or Central Valley Project (CVP) service areas, or 3) long-term groundwater storage. YCWA indicated that the maximum additional release rate from Englebright Reservoir for this transfer is 1,500 cfs and that the required minimum instream flows prescribed in SWRCB Decision 1644 (D-1644), measured at the USGS Marysville Gage (Station No. 11421000), will not be counted as transferred water.

YCWA's petition indicated that up to 85,000 af of the 150,000 af transfer total may consist of surface water made available through an increase in groundwater pumping (groundwater substitution). The YCWA contractors participating in the proposed groundwater substitution plan are Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Dry Creek Mutual Water Company, Hallwood Irrigation Company, Ramirez Water District, and South Yuba Water District. YCWA has submitted a report titled *"Analysis of the Groundwater Substitution Portion of the Yuba County Water Agency-CALFED Environmental Water Account/Department of Water Resources 2004 Transfer"*, which concluded that the proposed groundwater substitution program would not result in overdraft of the Yuba groundwater basin.

The remaining portion of the transfer total consists of water previously stored in New Bullards Bar Reservoir. YCWA's petition included an agreement with DWR intended to ensure that future refill of water transferred from storage (i.e., the transfer total minus the total excess groundwater pumped) in New Bullards Bar Reservoir does not adversely impact the SWP or CVP. These procedures provide for an accounting of refill of New Bullards Bar Reservoir resulting from the proposed transfer during balanced conditions in the Delta. Under these procedures, any refill occurring during balanced conditions in the Delta is subject to repayment to the CVP and SWP during subsequent balanced conditions.

2.0 BACKGROUND

2.1 Substance of YCWA's Permit Permit 15026 authorizes the storage of 490,000 af of water per year from the North Yuba River between October 1 and June 30 of the succeeding year. Permit 15026 also authorizes the direct diversion of up to a total of 1593 cfs from the North Yuba and Yuba Rivers between September 1 and June 30 of the succeeding year. The authorized points of diversion/rediversion under Permit 15026 are located at New Bullards Bar Dam and Daguerre Dam. The authorized purposes of use under Permit 15026 are irrigation, industrial, recreation, fish mitigation and enhancement and domestic purposes within the place of use shown on map EJ-05-08-R3 (on file with the SWRCB under Application 5632).

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

2.3 Points of Rediversion under the Proposed Transfer The proposed temporary change would add the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion under Permit 15026. Initially, YCWA's petition requested the addition of several other points of rediversion intended to serve CCWD. Since YCWA has indicated that CCWD will not be receiving water under this transfer, these additional points of rediversion will not be temporarily added to Permit 15026.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated January 30, 2004) was provided via regular mail to interested parties and by publication in the Fresno Bee on February 5, 2004. Timely comments regarding the proposed temporary change were received from the California Department of Fish and Game (DFG), DWR, and USBR. These comments and the SWRCB's responses are summarized below.

California Department of Fish and Game

DFG stated that the proposed temporary change would have adverse impacts on fish and wildlife unless appropriately conditioned. DFG noted that the proposed temporary change would increase the flows in the Yuba River downstream of the Marysville Gage during the transfer period (June through October). DFG asserted that these increased summer flows have the potential for the following adverse impacts:

Inducing the artificial downstream movement of juvenile salmonids due to increased flows during the transfer period,

Causing the introduction of non-native adult salmonid species to the Yuba and Feather River due to increased flows during the transfer period, and

Causing the stranding of juvenile salmonids after the transfer is concluded.

DFG proposed several terms to mitigate these impacts. One term was intended to require YCWA to maintain relatively high instream flows prior to the commencement of the transfer to avoid the artificial downstream movement and stranding of juvenile salmonids. DFG also proposed a term to require YCWA to continue ongoing monitoring during the transfer period to determine its effects on fish and wildlife. Finally, DFG proposed a term requiring YCWA to initiate discussions with DFG and other fishery agencies regarding the impacts of the proposed groundwater substitution plan on subterranean flows of surface streams and wetlands in the Yuba subbasin.

SWRCB Response Division staff reviewed the terms proposed by DFG and noted that the term requiring YCWA to maintain relatively high instream flows prior to the commencement of the transfer was vague and unenforceable as written. After Division staff contacted both DFG and YCWA, both parties agreed to discuss the issue and propose a more specific term. By email dated April 16, 2004, DFG and YCWA indicated their agreement to a term that required YCWA to maintain instream flow in the Yuba River (measured at the Marysville Gage) from May 1, 2004 through the beginning of the transfer at or above the maximum flows intended during the transfer period. Since both parties agreed to this term, a version of it (slightly modified for clarity and enforceability) is included in this order.

Additionally, a term requiring YCWA to implement its *2004 Yuba River Water Transfers Monitoring and Evaluation Program* (dated April 2004), which was approved by DFG, is included in this order. Since DFG's comments did not include a discussion of potential impacts of groundwater substitution on subterranean flows of surface streams and wetlands, its term regarding this issue is not included in this order.

Department of Water Resources

DWR stated its support for the proposed temporary change. DWR's comments identified potential adverse impacts of the proposed temporary change on water users located in the southern Delta area due to lowered water levels during increased pumping of water from the Clifton Court Forebay and the Tracy Pumping Plant. DWR noted that previous orders approving similar YCWA temporary changes were conditioned on compliance with an approved Water Level Response Plan (WLRP) as required in Condition 1.a.(3) on page 150 of SWRCB Revised Decision 1641. Since no WLRP is currently approved, DWR proposed the use of portable pumps to mitigate water level impacts of the proposed temporary change. DWR stated that it intended to install portable pumps at two locations (along Old River across from Coney Island and Tom Paine Slough) which had previously experienced water level impacts. Accordingly, DWR proposed language which would require the installation of portable pumps at these locations as a condition of diversion of water at Clifton Court Forebay and the Tracy Pumping Plant.

SWRCB Response Division staff contacted the South Delta Water Agency (SDWA) regarding use of the proposed term as mitigation for potential water level impacts of the proposed temporary change. SDWA stated that though it would not oppose DWR's term for this temporary change, SDWA does not support such measures as long-term mitigation for water level issues in the South Delta. Since SDWA does not oppose DWR's proposed term, it will be incorporated in this order to mitigate for impacts of the proposed temporary change on Southern Delta water users.

United States Bureau of Reclamation

USBR stated that the refill agreement between DWR and YCWA and the Groundwater Substitution Program included with the petition should prevent the proposed temporary change from adversely impacting the CVP. However, USBR stated that the refill agreement did not specifically indicate if it was intended to apply to water transferred to CCWD. Accordingly, USBR requested that the SWRCB condition the proposed temporary change with several terms intended to protect the CVP from adverse impacts due to the transfer of water to the CCWD.

SWRCB Response Upon receipt of USBR's comments, YCWA submitted an email correspondence dated March 8, 2004 stating that CCWD would not be receiving water under this transfer and amending its petition to transfer water only to DWR. Therefore, this order does not approve the transfer of water to CCWD, rendering USBR's proposed terms unnecessary. However, this order does require YCWA to adhere to the refill agreement and Groundwater Substitution Program submitted with the petition.

4.0 AVAILABILITY OF WATER FOR TRANSFER

Some or all of the water proposed for transfer was stored under provisions of Permit 15026. In the absence of this transfer, up to 150,000 af of water would remain in storage within the New Bullards Bar Reservoir. Additionally, YCWA has submitted a report indicating that its proposed Groundwater Substitution Program (which may increase groundwater pumping by up to 85,000 af) will not cause a state of overdraft in the Yuba groundwater basin. The maximum amount of water authorized for transfer under this order is 150,000 af. This order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential lowering of water levels in southern Delta Channels associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion to Permit 15026;
- b. Future refill of New Bullards Bar Reservoir resulting from this temporary change, and
- c. Impacts resulting from increased groundwater pumping resulting from this temporary change.

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

5.0 ENVIRONMENTAL CONSIDERATIONS

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

This order requires YCWA to maintain the instream flow requirements and provisions to reduce water temperature impacts required by D-1644 to ensure that there are no unreasonable effects on fish, wildlife or other instream beneficial uses within the Lower Yuba River. The required instream flows must be maintained in addition to flows released for this transfer. In addition to D-1644 requirements, this order further limits the change in instream flow rates due to the transfer as follows: the ramping rate shall not exceed 150 cfs in any four-hour period, provided that reasonable efforts are taken to maintain a maximum ramping rate of 100 cfs in any four-hour period, and shall not exceed 400 cfs in any one day.

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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 points of rediversion under Yuba County Water Agency's (YCWA) Permit 15026 (Application 5632) to facilitate the transfer of up to 150,000 af of water is approved.

All existing terms and conditions of Permit 15026 as modified by SWRCB Decision 1644 (D-1644) remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period from June 1 through October 31, 2004.
2. The place of use of Permit 15026 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).

3. The Clifton Court Forebay and the Tracy Pumping Plant are temporarily added as points of rediversion under Permit 15026. Rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators with the standards set forth in Tables 1, 2, and 3 on pages 181 to 187 of SWRCB Revised Decision 1641 (D-1641) and compliance with either an approved Water Level Response Plan as required on page 150 of D-1641 or the following term:

The Department of Water Resources shall install portable pumps in the following areas: (a) along Old River across from Coney Island for the diverters on Union Island prior to when the three agricultural temporary barriers become fully operational; and (b) at the Tom Paine Slough diversion structure, similar to the installations done in 2003. All portable pumps shall be installed in advance of when water level problems have historically occurred in these areas. Such installation shall be coordinated with and agreed to by the affected Union Island diverters and the operators of the Tom Paine Slough diversion structure. DWR shall also promptly address other water level problems that occur in the southern Delta during the period of the water transfer by installing additional temporary pumps at no cost to the local diverters.

4. Municipal, salinity control, and water quality are temporarily added as purposes of use under Permit 15026.
5. From May 1, 2004 through the commencement of the transfer, the minimum instream flow, measured at the Marysville Gage, shall not be less than the intended maximum instream flow during the transfer period (the transfer flow plus the instream flow required by D-1644).

If an emergency or other significant event occurs, or for study purposes, an alternate flow or ramping rate requirement may be set, provided that the California Department of Fish and Game (DFG), the United States Fish and Wildlife Service, and the National Oceanic Atmospheric Administration – Fisheries concur with the proposed alternate flow or ramping rate requirement, and provided that the applicable D-1644 requirements are maintained.

6. During the period of actual transfer of water approved under this order, YCWA shall specifically comply with the following requirements ordered by D-1644:
 - a. Maintain minimum instream flows at the USGS gaging installations at Marysville and Smartville as specified in D-1644, Term 1 for YCWA. The required instream flows must be maintained in addition to flows released for this transfer.
 - b. Minimize water temperature impacts on anadromous fish and other public trust resources as specified in D-1644, Term 2 for YCWA.
7. Permittee shall implement the *2004 Yuba River Water Transfers Monitoring and Evaluation Program* (dated April 2004) during the transfer period. This plan may be modified by YCWA only with the prior consent of DFG. YCWA shall immediately report to the Chief of the Division of Water Rights and to DFG any noncompliance or variation from the monitoring program.
8. Any change in flows due to the transfer shall be undertaken in a gradual manner, and shall not exceed 150 cfs in any four-hour period, provided that reasonable efforts are taken by YCWA to maintain a maximum ramping rate of 100 cfs in any four-hour period, and shall not exceed 400 cfs in any one day.
9. The criteria delineated in *New Bullards Bar Reservoir Refilling Conditions And Procedures For Water Transfer From Yuba To The Department* (Refill Agreement) that were submitted with the petition shall govern the conditions under which refill occurs for the transferred storage allowed in this order.
10. Permittee shall implement the *Groundwater Monitoring and Reporting Program* (Groundwater Monitoring Plan) submitted with the petition and shall prepare a monthly accounting of the actual groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer. Permittee shall provide to the Chief of the Division of Water Rights a map of the recent (circa spring 2004) groundwater levels in the North and South Yuba Groundwater Basins. An additional map shall be developed and submitted by June 1 of each year following the transfer defining the spring groundwater levels in the North and South Yuba Groundwater Basins until such time as groundwater levels correspond to the pre-transfer groundwater levels.
11. By June 1, 2005, YCWA shall provide to the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order and refill of storage resulting from this Order. The report shall include the following information:
 - a. General locations where the transferred water was used or stored;
 - b. The daily release rates of the transferred water from New Bullards Bar Reservoir;
 - c. The average daily streamflow measured at the USGS gaging stations located on the Yuba River at Marysville and Smartville;
 - d. The hourly temperature readings at the Smartville Gage, Daguerre Point Dam, and the Marysville Gage as required of YCWA in Term 2(d) of D-1644;
 - e. The daily values of the Transfer Amount Account, as defined in the Refill Agreement; and
 - f. The monthly amounts of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.

Should the amount of the Transfer Amount Account exceed zero at the time of this report, YCWA shall submit subsequent annual reports until the Transfer Amount Account reaches zero. These reports shall contain the daily values of the Transfer Amount Account.

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

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

13. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittee shall obtain authorization for an incidental take prior to commencing transfer of water. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
14. 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

ORIGINAL SIGNED BY

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

Dated: May 3, 2004