

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

DIVISION OF WATER RIGHTS

CORRECTED ORDER WR 2009-0040-DWR

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH SUTTER WATER DISTRICT
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

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

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 14, 2009,

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. South Sutter Water District's (SSWD) petition requests the transfer of up to 10,000 acre-feet (af) of water to the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB) for use within the State Water Project (SWP) and Central Valley Project (CVP) service areas. 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. SSWD proposes to transfer up to 10,000 af of water under License 11118 (Application 14804) to the DWR 2009 DWB. To facilitate the transfer, SSWD proposes to release an additional 10,000 af of water currently stored in Camp Far West Reservoir and Camp Far West Diversion Dam into the Bear River, tributary to the Feather River, thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta. The water would be available for rediversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant; CVP's Jones Pumping Plant and the Contra Costa Canal.

The petition states that in the absence of this transfer, the subject 10,000 af of water would either remain in storage within Camp Far West Reservoir or be released for use within SSWD.

1.2 Groundwater Substitution. SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. SSWD anticipates that as a result of the proposed transfer, up to 10,000 additional af of groundwater pumping could occur. In 2008, SSWD received approval to transfer up to 10,000 af of water to several SWP contractors (see State Water Board [Corrected Order 2008-0034-DWR](#)). SSWD submitted information regarding the operations of Camp Far West Reservoir and its main canal deliveries to SSWD for the 2008 transfer. This information is included with the subject petition, posted online with the public notice for this petition 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 the United States Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers. Following this review, DWR entered into an agreement with SSWD, titled *Agreement Between the Department of Water Resources of the State of California and South Sutter Water District for Short-Term Purchase of Water for the 2009 Drought Water Bank* (Agreement) for the transfer of water pursuant to this temporary change. The Agreement includes a 6% 'depletion loss' to protect the SWP and CVP from injury associated with the transfer. Transfer releases are measured at the Camp Far West Diversion Dam. Pursuant to the Agreement, SSWD will release 10,000 af from Camp Far West Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. SSWD will receive credit from DWR for the release of 9,400 af of water. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within SSWD.

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 SSWD's License. License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per annum from the Bear River between October 1 and June 30. License 11118 also authorizes the direct diversion from the Bear River of up to 330 cubic feet per second (cfs) between May 1 and September 1 of each year. The point of diversion to storage for License 11118 is located at the Camp Far West Dam. Additionally, the Camp Far West Diversion Dam (located about one mile downstream of the Camp Far West Dam) is an authorized point of direct diversion and rediversion to storage.

The water is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net of 59,000 acres within a gross area of 65,796 acres within SSWD, a net of 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside its boundaries served under contract), and a power generation plant located on SSWD's conveyance canal.

In order to protect fish resources downstream of the Camp Far West Diversion Dam, SSWD is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 and March 31 of the succeeding year. Additionally, SSWD (with other parties within the Bear River watershed) has entered into an agreement (referred to as the Bear River Agreement) with DWR to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This agreement requires SSWD to make up to 4,400 af of water available to DWR during dry and critically dry water years. SSWD's petition states that the water intended for transfer is in addition to the water released to DWR pursuant to the Bear River Agreement. Additional information regarding the Bear River Agreement is on file with the State Water Board under Application 14804.

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 rediversion under License 11118. 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 11118. Municipal and industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 11118.

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/rediversion 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/rediversion 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/rediversion 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, rediversion 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 1, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 4, 2009. The California Water Impact Network (CWIN) and the California Sportfishing Protection Alliance (CSPA) 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 reservoir releases may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid 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. Information regarding the operations of Camp Far West Reservoir was included with the petition. This information indicates that the end-of season storage in Camp Far West Reservoir resulting from SSWD's 2008 transfer was the same as it would have been absent the transfer. Accordingly, temperature impacts resulting from the proposed temporary change should be minimal. 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 rediversion and

the addition of the SWP and CVP as places of use to License 11118. 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 ongoing operations of SSWD cause adverse impacts to instream resources. An average of 312,000 af of water each year is imported to the Bear River from the South Yuba watershed. The South Yuba River has been proposed for "303(d) listing" by the Central Valley Regional Water Quality Control Board. Temperature monitoring performed for the Upper Yuba River has shown that water temperatures in the South Yuba River routinely exceed cold water standards from just downstream of Lake Spaulding to Englebright Reservoir. SSWD claims that there will be no local impact to local groundwater elevations resulting from the sale of 10,000 af of water from storage on the lower Bear River. Thus, the State Water Board should consider finding the importation of water from the South Yuba watershed to be wasteful and an unreasonable use of water.
- f. Water in Camp Far West Reservoir is in part supplied by a Nevada Irrigation District (NID) diversion located on Coon Creek. Anadromous salmonids, including steelhead, have been "documented in Coon Creek", however no instream flow is required on Coon Creek downstream of NID's "Camp Far West diversion". The State Water Board should consider setting instream flow requirements to protect these valuable public trust fisheries.

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. Rediversion 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). Rediversion 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. Water Code section 1727 subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner’s permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727 subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not modify or amend SSWD’s license, or place conditions upon this temporary change to mitigate alleged affects of SSWD’s ongoing operations.
- f. See response given for item e., above.

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 released from Camp Far West Diversion Dam, 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 transfer proposal and associated groundwater pumping and determined that 6% of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 94% of the surface water released from Camp Far West Diversion Dam as a result of this transfer.

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 6% 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 Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within SSWD as a result of this transfer. 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 a point of redirection to License 11118. 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. Rediversion 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). Rediversion 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.

Rediversion 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

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 11118 (Application 14804) of the South Sutter Water District (SSWD) for the transfer of up to 10,000 acre-feet (af) of water is approved.

All existing terms and conditions of License 11118 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. Petitioner shall implement the monitoring and mitigation plans contained in Exhibit E of the *Agreement Between the Department of Water Resources of the State of California and South Sutter Water District for Short-Term Purchase of Water for the 2009 Drought Water Bank (Agreement)* as a condition of transferring water pursuant to this Order.
3. The petitioner shall release water from Camp Far West Reservoir and thence Camp Far West Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. The amount of water transferred pursuant to this Order shall not exceed 94% (ninety-four percent) of the rate of additional releases from Camp Far West Diversion Dam.
4. The place of use under License 11118 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, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of rediversion under License 11118.

Rediversion 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. Rediversion 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.

Rediversion 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 11118.
7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, SSWD 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 at the Camp Far West Diversion Dam pursuant to this Order; and
- c. Groundwater elevations within the vicinity of SSWD prior to the proposed transfer, as required by Exhibit E of the Agreement.

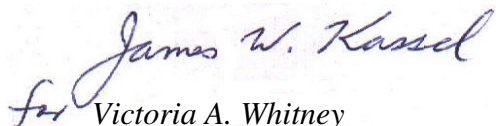
SSWD shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2010, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

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


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUL 03 2009**