

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

DIVISION OF WATER RIGHTS

ORDER WR 2010-0024-DWR

IN THE MATTER OF LICENSE 2840 (APPLICATION 10030)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 3,520 ACRE-FEET OF WATER
FROM TULE BASIN FARMS
TO EIGHT STATE WATER CONTRACTOR AGENCIES

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 14, 2010

Tule Basin Farms
c/o Marc Van Camp
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Tule Basin Farms' (TBF) petition requests the transfer of up to 3,520 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. 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. TBF proposes to transfer up to 3,520 af of water under License 2840 (Application 10030) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate this transfer, TBF will pump additional groundwater and reduce its direct diversion from the West Borrow Pit of the Sutter Bypass by 21 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional flow in the West Borrow Pit of the Sutter Bypass thence the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant or Barker Slough Pumping Plant and delivery to the Agencies. The petition requests that the change be effective from July 1 through September 30, 2010.

In the absence of the proposed change, TBF would divert the quantity of water proposed for transfer from the West Borrow Pit of the Sutter Bypass pursuant to License 2840.

1.2 Groundwater Substitution. TBF's petition states that detailed information relative to historical groundwater pumping, well characteristics, and associated maps has been submitted to the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) for review. DWR has entered into an agreement with TBF, titled *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Tule Basin Farms, LLC for the Storage and Conveyance of 2010 Transfer Water* (Agreement) for the conveyance of water pursuant to this temporary change. The Agreement includes a 12% (twelve percent) 'depletion loss' to protect the SWP and USBR's Central Valley Project (CVP) from injury associated with the transfer. TBF will only transfer 88% (eight-eight percent) of the total quantity of groundwater pumped. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within TBF. A copy of TBF's petition is posted with the copy of the notice for this transfer on the Division of Water Rights' website at:

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

1.3 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. State Water Board staff contacted DFG staff in June, 2010 to discuss the proposed temporary change and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

2.0 BACKGROUND

2.1 Substance of TBF's License. License 2840 (Application 10030) authorizes the direct diversion of up to 21.05 cfs of water per annum from the West Borrow Pit of Sutter Bypass between April 1 and November 1 of each year for irrigation purposes. The authorized point of diversion for License 2840 is located on the West Borrow Pit of the Sutter Bypass, North 950 feet and West 275 feet from the Southeast corner of Section 5, T14N, R2E, MDB&M. The authorized place of use consists of 842.13 acres within the North Basin Tract.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion to License 2840. The service area of the SWP would also be temporarily added to the place of use under License 2840. The SWP points of diversion and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Domestic, municipal and industrial, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under License 2840.

2.3 OCAP Biological Opinions. The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 13, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 15, 2010. The California Water Impact Network and AquAlliance (CWINA), the California Sportfishing Protection Alliance (CSPA), and the California Fisheries and Water Unlimited (CFWU) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that TBF address the portion of the comments regarding groundwater substitution. These comments, TBF's additional information, and the State Water Board's responses are briefly summarized below. The comments and TBF's additional information are also available for viewing online with this Order at:

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

3.1 Comments of the California Water Impact Network and AquAlliance. CWINA objects to the proposed temporary change based on the following concerns:

- a. TBF must demonstrate, not merely assert, that its transfer of surface water will have little to no impact on other parties within or downstream of its service area. CWINA states that since there is no approved groundwater management plan for TBF's service area, TBF must determine that the proposed groundwater substitution will not create or contribute to long-term overdraft in the affected groundwater basin. CWINA asserts that TBF has not provided sufficient analysis to make this determination. CWINA also notes that the proposed groundwater substitution may have third-party impacts.
- b. The petition does not provide an accounting of evaporative loss of water from TBF's service area from July through September, as well as how much additional groundwater will be pumped to 'make up' for these evaporative losses.
- c. CWINA notes that TBF petitioned for a similar temporary change in 2009. CWINA believes that TBF's one-year transfers in 2009 and 2010 are a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that the CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- d. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from TBF regarding the issue of groundwater substitution. TBF states that while Sutter County is in the process of preparing a groundwater management plan, it has yet to be completed due to funding issues. TBF states that it does not believe the proposed temporary transfer will result in an overdraft of the underlying basin. TBF presented information regarding historical groundwater elevations showing that 2007 groundwater elevations within the portion of Sutter County are approximately 10 feet above 1912-1913 groundwater elevations. Additionally, TBF submitted information regarding historic (1962-2010) groundwater elevations at a monitoring well within approximately 2 miles of TBF. This information shows that groundwater elevations near TBF have fluctuated on a seasonal basis with the fluctuations increasing during dry years, however, these groundwater elevations have remained relatively stable during this 49-year period. TBF states that this information shows

that its groundwater basin is not in a state of overdraft. TBF also states that the proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with DWR. A similar plan was in place for TBF's previous water transfer, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin and thus is in conformance with the provisions of Water Code section 1745.10, subdivision (b). This Order requires TBF to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. The proposed temporary change involves the pumping of additional groundwater to make up for forgone surface water diversions. The proposed temporary change will not result in a change in cropping patterns or irrigation methods. Accordingly, evaporation from TBF's service area will not change as a result of the proposed temporary change.
- c. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption contained in the Governor's 2009 Drought Emergency Proclamation.
- d. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough 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 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.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that TBF received approval for a similar temporary change in 2009. CSPA states that TBF's one-year 2009 and 2010 transfers should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undertake a public trust analysis of License 2840.

- b. CSPA states that there is no adopted groundwater management plan for Sutter County. CSPA alleges that TBF has not shown that the groundwater substitution associated with the proposed temporary change will not contribute to conditions of groundwater overdraft. TBF should be required to provide an analysis that demonstrates that its proposed transfer would take place from a location where long-term groundwater overdraft does not exist.
- c. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, 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 undergo a public trust analysis to modify or amend TBF's license, or place conditions upon this temporary change to mitigate alleged affects of TBF's ongoing operations as a condition of approval of the subject petition.
- b. See the State Water Board response to CWINA in 3.1a., above.
- c. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will increase flow on the Sacramento River during this time period.

3.3 Comments of the California Fisheries and Water Unlimited. CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding consultation with DFG, compliance with federal and State Endangered Species Act requirements, and impacts related to the underlying operations of the SWP.

State Water Board Response: As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS

and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks Pumping Plant and Barker Slough 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 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.

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 the amount of water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% (twelve percent) of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% (eighty-eight percent 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 the 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 has reviewed the proposed transfer and determined that, with inclusion of the 12% (twelve percent) depletion factor described in Section 1.2 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 a monitoring and reporting plan to address the impacts of additional groundwater pumping within TBF as a result of this transfer. This Order requires compliance with this portion of the Agreement.

This Order also includes terms and conditions to ensure that other legal users of the 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 as a point of diversion to License 2840.

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 requires the water supplier determine that the transfer will not create, or contribute to, conditions of long-term 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).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion of water at the Banks 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 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.

Diversion of water at the Barker Slough Pumping Plant 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

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, points of diversion, and purpose of use under License 2840 (Application 10030) of Tule Basin Farms (TBF) for the transfer of up to 3,520 acre-feet of water is approved.

All existing terms and conditions of License 2840 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2010 and continuing through September 30, 2010.
2. TBF shall implement the monitoring and reporting plans contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Tule Basin Farms, LLC for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. TBF shall reduce its diversion rate at the original points of diversion authorized under License 2840 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. The rate of additional groundwater pumped in order to make water available for transfer shall not exceed 21 cubic feet per second.
4. The place of use under License 2840 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629. Water transferred pursuant to this Order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District, or any combination of the above.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of diversion under License 2840.

Diversion of water at the Banks 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 pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those 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.

Diversion of water at the Barker Slough Pumping Plant 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 and industrial, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under License 2840.

7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, TBF 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 was made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 2840 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the West Borrow Pit of the Sutter Bypass;
 - e. The daily average pumping rate of groundwater pumped by TBF in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of TBF prior to the proposed transfer, as required in Exhibit 1 of the Agreement.

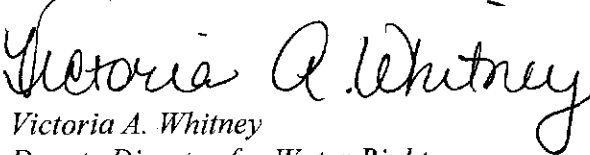
TBF shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2010, a map defining the groundwater elevations within the vicinity of TBF, until such time as these elevations correspond to pre-transfer levels.

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 take 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 petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary 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: **JUL 02 2010**