



# State Water Resources Control Board



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Secretary for  
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**Division of Water Rights**  
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**Arnold Schwarzenegger**  
Governor

## **NOTICE OF STATE WATER RESOURCES CONTROL BOARD ORDER APPROVING A TEMPORARY URGENCY CHANGE PETITION AND A 1707 PETITION FOR DEDICATION OF WATER FOR INSTREAM USE BY MERCED IRRIGATION DISTRICT REGARDING LICENSE 11395 (APPLICATION 16186)**

On June 8, 2007, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued WR Order 2007-0021-DWR approving Merced Irrigation District's (District) June 8, 2007, Petition for a Temporary Urgency Change and Petition for Dedication of Water for Instream Use to License 11395 (Application 16186). The Order was approved prior to public notice of the project pursuant to California Water Code section 1438 (a), which allows the State Water Board to issue a temporary change order in advance of the public notice.

### BACKGROUND

On Thursday, May 31, 2007, the U.S. Bureau of Reclamation (Reclamation) announced, in coordination with the U.S. Fish and Wildlife Service, a plan for the immediate protection of Delta smelt at two major export pumps in the South Delta. The Delta smelt are identified as threatened under the California Endangered Species Act and the Federal Endangered Species Act. Under the plan, Reclamation reduced pumping at the C.W. "Bill" Jones Pumping Plant (Jones Pumping Plant) to 850 cubic feet per second (cfs), which is the minimum pumping rate necessary for providing municipal water supply to its contractor, the City of Tracy.

In order to continue supplying water for the City of Tracy, and in an effort to improve conditions for Delta smelt, Reclamation requested to purchase 15,000 acre-feet (af) of water from the District. The water delivered by the District will be used to mitigate for the diversions at the Jones Pumping Plant by Reclamation, and thereby provide protection for Delta smelt. Reclamation indicated that the need for this water is urgent as the other available surface water supplies are limited due to Central Valley Project water supply commitments and forthcoming summer/fall State Water Board instream flow and water quality requirements per State Water Board Decision 1641 (Decision 1641). Reclamation requested that the water releases from the District occur as soon as possible as it takes approximately three days for water released from Lake McClure to reach the Delta.

The District filed this petition for temporary urgency change to its License 11395 to enable the transfer of the necessary water to Reclamation.

### DISTRICT'S WATER RIGHT LICENSE 11395

On August 15, 1983, the District was issued License 11395, which authorizes diversion to storage of up to 605,000 acre-feet (af) of water per annum from the Merced River, tributary to the San Joaquin River, between October 1 through July 1. The District's two points of diversion under License 11395 are at New Exchequer Dam on Lake McClure and at McSwain Dam on Lake McSwain. The water is used for irrigation, domestic supply, recreation, fish culture, and

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wildlife enhancement purposes within the authorized place of use identified by the *Official Map of MID –1973* on file with the State Water Board. The District's maximum withdrawal from Lake McClure and Lake McSwain under License 11395, in combination with Licenses 2684, 2685, and 11396 (Applications 1222, 1224, and 16187) is 516,110 af per annum.

In Decision 1641, the State Water Board added the reach of river between the District's point of diversion at New Exchequer Dam and Vernalis on the San Joaquin River as an authorized place of use and fish and wildlife enhancement as an authorized purpose of use through the year 2011.

### WR ORDER 2007-0021-DWR

The Division approved the District's petition for temporary urgency change to License 11395 pursuant to Water Code sections 1435 and 1707 in WR Order 2007-0021-DWR (Order). The Order allows the increase in the District's licensed place of use to include the Merced River from New Exchequer Dam on Lake McClure to the confluence with the San Joaquin River, the San Joaquin River from the confluence of the Merced River to the San Joaquin River at Vernalis, and the San Joaquin River from Vernalis through the Delta. The purposes of use granted under the Order are water quality use and fish and wildlife enhancement. The additional places of use are identified by the *Map to Accompany Proposed Temporary Urgency Change Under License 11395*, dated June 13, 2007, on file with the State Water Board.

The Order allows 15,000 af of previously stored water under License 11395 to be released from Lake McClure for downstream uses at a maximum diversion rate of 850 cfs. This contribution by the District will facilitate Reclamation in the following areas: a) help meet instream flow and water quality objectives at Vernalis, as required by Decision 1641; b) help maintain the combined net positive flow requirement for Old and Middle Rivers for fish protection of Delta smelt; and c) enhance Reclamation's protective action for the benefit of Delta smelt in the central Delta.

Temporary urgency changes under Water Code section 1435 may be effective for a period of up to 180 days, however, assuming the District releases water at the maximum rate authorized by this Order, it will release the 15,000 af of water in about nine days.

### REFILL AGREEMENT REQUIREMENT

Prior to initiating the temporary urgency change, the District is required to enter into a Refill Agreement with Reclamation. The Refill Agreement dictates the conditions under which refill of water released from Lake McClure pursuant to the Order occurs. The Refill Agreement is also subject to Water Right Permit Terms 91 and 93, which pertain to diversion curtailments relative to the Delta.

### CEQA COMPLIANCE

On June 7, 2007, the District adopted a Resolution of Exemption pursuant to the provisions of the California Environmental Quality Act (CEQA) for the project covered by the Order. The District's Board adopted a finding pursuant to the California Code of Regulations section 15301(i), that the project is categorically exempt from CEQA, as the project is for the use of existing facilities, with negligible or no expansion of existing use, for the purpose of maintaining fish and wildlife habitat areas, maintaining stream flows, and protecting fish and wildlife resources.

On June 8, 2007, based on review of the District's notice of exemption and information contained in the petition, the State Water Board issued a Notice of Exemption pursuant to California Code of Regulations section 15301(i).

### STATE WATER BOARD'S STATUTORY PROVISIONS

Pursuant to Water Code section 1435, et seq., the State Water Board is authorized to issue temporary urgency change orders, allowing the change of a point of diversion, the place of use, purpose of use of the water, or change in the conditions of the license. The State Water Board may issue a conditional order after completing an initial evaluation sufficient to determine that the proposed temporary urgency changes comply with the following:

1. The licensee has an urgent need to make the proposed changes;
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, or other instream beneficial uses.

The State Water Board has retained jurisdiction to modify WR Order 2007-0021-DWR, and, in accordance with the provisions of Water Code section 1435, is seeking further information regarding the proposed temporary urgency change. Electronic copies of the long notice, the District's petition, and the Order can be viewed at <http://www.waterrights.ca.gov/application/tempurgnotices.htm>. Interested parties should review this material prior to submitting comments on this petition.

Any interested party may file an objection to the temporary urgency change. Since this change may only be effective for a short period of time, parties with objections to WR Order 2007-0021-DWR should file these objections as soon as possible. The State Water Board will give prompt consideration to any objections to this petition upon receipt, however all comments must be filed by June 29, 2007 for the State Water Board to consider them. Comments/objections and other items filed in response to this notice should focus on the issues that the State Water Board must evaluate, as set forth above, and shall be submitted to the persons listed below.

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Merced Irrigation District  
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Please direct questions about this notice and WR Order 2007-0021-DWR to Katherine Mrowka at (916) 341-5363. Questions regarding the petitioner should be addressed to Marc Van Camp at (916) 456-4400.

STEVEN HERRERA, Chief  
Water Rights Permitting Section

Dated: June 15, 2007