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

DIVISION OF WATER RIGHTS

In the Matter of

**MERCED IRRIGATION DISTRICT'S (MID)
PETITIONS TO
ADD EL NIDO IRRIGATION DISTRICT (ENID) TO MID'S PLACE OF USE
AND TO ADD A POINT OF REDIVERSION
UNDER
WATER RIGHT LICENSES 2685, 6047, AND 11395
(APPLICATIONS 1224, 10572, AND 16186, RESPECTIVELY)
OF
MERCED IRRIGATION DISTRICT**

ORDER ISSUING AMENDED LICENSES

SOURCE: MERCED RIVER

COUNTY: MARIPOSA and MERCED

WHEREAS:

1. The State Water Resources Control Board (SWRCB), Division of Water Rights (Division) issued Licenses 2685, 6047, and 11395 pursuant to permitted Applications 1224, 10572, and 16186 on August 11, 1944, July 11, 1960, and August 15, 1983, respectively, to the Merced Irrigation District (MID). The Division recorded the Licenses with the County Recorders of Merced County in accordance with Water Code section 1650.

2. Licenses 2685, 6047, and 11395 comprise MID's consumptive, post-1914 appropriative water rights. License 2685 authorizes the direct diversion of 1,500 cubic feet per second (cfs) of water and 266,400 acre-feet per annum (afa) of storage; License 6047 authorizes the direct diversion of 257 cfs of water; and License 11395 authorizes 605,000 afa of storage. The total maximum withdrawal from Lakes McClure and McSwain is limited to 516,110 afa.

3. MID diverts water from the Merced River to storage at Lake McClure and Lake McSwain. Water is rediverted from the Merced River at a point below Lake McSwain through a series of canals into Duck Slough, and from Duck Slough across MID's southern boundary through the El Nido canal to El Nido Irrigation District (ENID). Although MID has delivered water to ENID since the 1930's, ENID's service area is not

included in MID's place of use under Licenses 2685, 6047, and 11395. MID states that it has been able to supply water to ENID in all but extremely dry years.

4. On March 18, 1992, MID filed petitions to add the service area of ENID, which consists of approximately 9,400 acres, to MID's place of use under Licenses 2685, 6047, and 11395.

5. On March 18, 1992, MID also requested the addition of a point of rediversion on Duck Slough to each of Licenses 2685, 6047 and 11395. The proposed point of rediversion on Duck Slough (described in licensed Applications 8238 and 18774) is located within the SW1/4 of NW1/4 of Section 11, T8S, R14E, MDB&M.

6. In 1994, at the request of MID, the SWRCB postponed a scheduled hearing to allow MID and the California Department of Fish and Game (DFG) additional time to conclude protest negotiations over public trust issues.

7. MID and ENID are now pursuing consolidation of their districts, with MID being the surviving entity. On December 11, 1991, ENID's Board of Directors approved a resolution for consolidation with MID. In its petitions MID stated that the consolidation will not involve any new facilities or operational changes.

8. On March 18, 1992, MID also requested that ENID's three water right licenses be assigned to MID. ENID diverts water from Duck Slough through the El Nido canal for underground storage under Licenses 6032 and 9429 (Applications 8238 and 18774). ENID also diverts 3.8 cfs from November 1 to April 15 from Deadman Creek for domestic and irrigation purposes under License 5227 (Application 6807). The Division has changed its records to reflect MID as the new owner of Licenses 5227, 6032 and 9429.

9. In 1993, MID and ENID as Co-Lead Agencies for the project under the California Environmental Quality Act (CEQA) prepared and circulated for public review a Draft Negative Declaration and supporting Initial Study covering the proposed consolidation of the two districts. The Draft Negative Declaration/Initial Study was circulated through the State Clearinghouse (SCH) for public review on September 21, 1993, under SCH Identification Number 1993092077. Subsequently, a Notice of Determination covering the proposed consolidation of the two districts was filed with the State Clearinghouse on October 26, 2001 under SCH Identification Number 1993105682.

10. Due to the considerable time lapse since 1993 and the culmination of protest negotiations amongst the parties, a new Draft Initial Study and Negative Declaration covering the proposed consolidation with ENID was circulated through the State Clearinghouse for public review on November 30, 2001 under SCH Identification Number 201111180. The

new Draft Initial Study incorporated two agreements amongst the parties in the form of a Memorandum of Understanding (MOU) and the Merced River Adaptive Management Plan (MRAMP). A Notice of Determination covering the proposed consolidation of the two districts and the MOU and MRAMP agreements was filed with the State Clearinghouse on May 6, 2002 under SCH Identification Number 201111180.

11. The Delta Water Users Association, South Delta Water Agency, Lafayette Ranch, DFG, the California Sportfishing Protection Alliance (CSPA), and the National Marine Fisheries Service (NMFS) protested MID's petitions for change. The Delta Water Users Association's protest was based on injury to riparian and appropriative rights. DFG, CSPA, and NMFS filed protests on environmental grounds. NFMS's protest was subsequently dismissed in 1994.

12. On November 30, 2001, MID circulated a new Draft Initial Study and Negative Declaration. On February 7, 2002, and March 13, 2002, the SWRCB notified the outstanding protestants that the environmental document was available and asked the protestants to submit to the SWRCB either: 1) a letter of protest withdrawal, if the environmental document provided the protestants with information necessary to resolve their protests; or 2) a list of issues that the protestants believed were unresolved. The Delta Water Users Association et al, South Delta Water Agency, Lafayette Ranch and CSPA did not respond, and the Division dismissed their protests on July 9, 2002.

13. Following negotiations, DFG and MID signed an agreement that addresses DFG's concerns with the impact of the consolidation proposed in the petitions on fishery resources in the lower Merced River downstream from Lake McClure. On November 14, 2002, DFG formally withdrew its protest.

14. DFG's protest withdrawal followed the execution of the Merced River Adaptive Management Plan (MRAMP) and a Memorandum of Understanding (MOU) by representatives of MID, DFG, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the California Department of Water Resources. The terms and conditions of approval of the petitions presented in this order are consistent with the MOU protest dismissal clause under which DFG agreed to dismiss its protest pertaining to the MID-ENID consolidation.

15. The Division finds that the three petitions by MID to change Licenses 2685, 6047, and 11395 to add ENID to MID's place of use and to add a point of rediversion do not constitute the initiation of a new right nor operate to the injury of any other lawful water user because the petitions do not propose any increase in the quantity of diversion or place of use under the old licenses. In addition, each license contains a standard license term (the fourth license term that appears in italicized print), which provides that the

SWRCB has continuing authority to amend the licenses to ensure the protection of other legal users of water.

16. The Division finds that the inclusion of the following license terms will adequately protect fish and wildlife: 1) License Term 1, which provides instream flows in October; 2) License Term 2, which provides spring pulse flows in consultation with DFG and other resource agencies; and 3) standard license terms addressing the state and federal Endangered Species Acts and the SWRCB's continuing authority to protect public trust resources.

17. The Division shall include in the amended licenses SWRCB standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for a DFG stream alteration agreement.

THEREFORE, IT IS ORDERED:

The attached Amended Licenses 2685, 6047 and 11395 are issued, superceding former Licenses 2685, 6047 and 11395 issued on August 11, 1944, July 11, 1960, and August 15, 1983, respectively. The priorities of Amended Licenses 2685, 6047 and 11395 are March 26, 1919, December 11, 1942, and December 23, 1954, respectively.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney

for *Edward C. Anton, Chief*
Division of Water Rights

Dated: JUN 2 0 2003

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

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 1224 PERMIT 914 LICENSE 2685

THIS IS TO CERTIFY, That

Merced Irrigation District
P.O. Box 759
Merced, CA

has the right to the use of the waters of **Merced River** in **Mariposa and Merced Counties**

tributary to **San Joaquin River**

for the purpose of **municipal, domestic and, irrigation uses.**

Amended License 2685 supersedes the license originally issued on **August 11, 1944**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (SWRCB), or its predecessor, and the terms of **Permit 914**. The priority of this right dates from **March 26, 1919**. Proof of maximum beneficial use of water under this license was made as of **June 18, 1943** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **fifteen hundred (1500) cubic feet per second (cfs) by direct diversion from about March 1 to about October 31 of each season and throughout the remainder of the year as required for domestic purposes, two hundred sixty six thousand, four hundred (266,400) acre-feet per annum (afa) by storage to be collected from about October 1 to about July 1 of each season in Lake McClure.**

In addition to the 1,500 cfs direct diversion from March 1 through October 31 of each year, the amount of water to which this right is entitled and hereby confirmed includes 5,000 afa of water at a rate not to exceed 7 cfs by direct diversion from November 1 of each year to February 29 of the following year for use in the Mariposa Town Planning Area, described below under the description of the lands or the place where such water is put to beneficial use. Storage under this license is reduced in the amount diverted to Mariposa Town Planning Area up to 1,667 afa. Combined maximum direct diversion and storage under this license shall not exceed 345,440 afa.

In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

This license is based on storage collected during the 1940-1941 season and use thereof, and also on use of water by direct diversion without storage during the year 1942 which was the year of maximum use by direct diversion within the three-year period immediately proceeding the date of inspection, namely June 18, 1943.

The combined storage under Application 1222, License 2684, and Application 1224, License 2685, shall not exceed two hundred seventy two thousand, eight hundred (272,800) afa.

Unless a change is approved by the SWRCB, water used under this license may be diverted, rediverted, stored and used only as specified below:

THE POINT OF DIVERSION, REDIVERSION, AND PLACE OF STORAGE OF SUCH WATER ARE LOCATED:

The point of diversion to storage of such water is located South thirty-eight degrees, no minutes West (S 38° 0' W) thirty eight hundred (3800) feet from the NE corner of Section 13, T4S, R15E, MBD&M, being within the NW ¼ of SE ¼ of said Section 13 in Mariposa County.

Point of direct diversion and rediversion of stored water from Merced River for Northside canal is located North sixty eight degrees, no minutes west (N 68° 0' W) twenty seven hundred fifty (2750) feet from the SE corner of Section 4, T5S, R15E, MDB&M., being within the SW ¼ of SE ¼ of Section 7 in Merced County.

Point of direct diversion and rediversion of stored water from Merced River for Main Canal is located North forty seven degrees, thirty minutes East (N 47° 30'E) twenty eight hundred thirty (2830) feet from the SW corner of Section 7, T5S, R15E, MDB&M, being within the NE ¼ of SW ¼ of said Section 7 in Merced County.

Point of direct diversion from Merced River for Mariposa Town Planning Area Main is located at a point North 48°34'35" West 1,113 feet from SE corner of Section 9, within the SE ¼ of the SE ¼ of Section 9, T4S, R18E, MDB&M in Merced County.

Point of rediversion located on Duck Slough at a point 100 feet North and 50 feet East of ¼ Cor. Sections 10 and 11, T8S, R14E, within the SW ¼ of the NW ¼ Section 11, T8S, R14E, MDB&M in Merced County. This point of rediversion is associated with the former place of use for El Nido Irrigation District described below and in Licenses 6032 and 9429 (Applications 8238 and 18774), formerly held by El Nido Irrigation District and hereby transferred to Merced Irrigation District.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

A description of the lands or the places where such water is put to beneficial use is as follows:

Domestic and irrigation purposes on 164,395 gross acreage within the boundaries of Merced Irrigation District as shown on map of District filed with the Division of Water Rights December 11,1942.

Municipal use to 1,900 acres known as the Mariposa Town Planning Area, located within portions of projected Sections 9, 10, 11, 14, 15, 16, 22, 23, 24, 25, 26, and 36, T5S, R18E, MDB&M, as shown on a map on file with the State Water Resources Control Board dated May 1, 1995 and prepared in accordance with the specifications contained in Title 23, Cal. Code of Regs., Div. 3, Ch. 2, Art. 7 (commencing with Section 715). Municipal use is confined to the Mariposa Town Planning Area, under Water Rights Decision WR 95-3 issued on February 16, 1995.

Irrigation purposes on 9,418.6 acres within the boundaries of El Nido Irrigation District as shown on map of District filed with the Division of Water Rights for Application 8238. El Nido Irrigation District has been consolidated with MID.

1. The Licensee will provide 12,500 acre-feet of additional water in the month of October in all years as measured above its current requirement of 2,350 acre-feet or 3,124 acre-feet defined in the Federal Energy Regulatory Commission (FERC) license for the Exchequer Merced River Project. The FERC license requires a minimum flow of 15 cfs at the Shaffer Bridge gage from Oct. 1 through Oct. 15 in "dry" years and 25 cfs in "normal" years and 60 cfs from Oct. 16 through Oct. 31 in "dry" years and 75 cfs in "normal" years. A "dry" year is defined as a year in which the forecasted April 1 through July 31 inflow to Lake McClure, as published in the May 1 California Department of Water Resources (CDWR) Bulletin 120 as the Merced River below Merced Falls Dam, is less than 450,000 acre-feet. A "normal" year is defined when the said forecast is equal to or greater than 450,000 acre-feet.

2. The Licensee is currently required, pursuant to D-1641 and the San Joaquin River Agreement (SJRA) to provide certain flows in the spring. In addition to its current obligation to provide such spring flows, the Licensee, in the event the SJRA is terminated, shall provide a volume of supplemental flow during a 31-day pulse flow period during the months of April and May. This period may be varied based on real-time monitoring. One pulse, or a number of separate pulses of combined duration equal to one pulse, should be scheduled to coincide with fish migration in San Joaquin River tributaries and the Delta. The DFG and MID will schedule the time period of the pulse or pulses and a daily flow schedule in consultation with the USFWS, the NMFS, the USBR and DWR. The schedule is subject to the approval of the Executive Director of the State Water Resources Control Board (SWRCB). In the event that a starting date is not defined by April 8 then a default starting date of April 15 shall be used. The volume of supplemental flow is defined as the difference between the Forecasted Existing Flow and the Target Flow Rate as defined in the following table.

Forecasted Existing Flow (cfs)	Target Flow Rate (cfs)
0 - 399	580
400 - 799	800
$\geq$ 800	existing

The Forecasted Existing Flow is defined as the average flow at the reference gage during the 31-day pulse flow period that would exist absent the Memorandum of Understanding (MOU) referenced in the Notice of determination Filed with the State Clearing House on May 6, 2002, under SCH Identification Number 201111180 or the SJRA. The Target Flow Rate represents an average flow at the reference gage during the 31-day pulse flow period. The Target Flow Rate shall be adjusted as follows for the defined hydrologic conditions. These conditions are dependent on the water year type defined by the San Joaquin Valley Water Year Hydrologic Classification as set forth in the SWRCB's May 22, 1995 Water Quality Control Plan, with a numerical adjunct, referred to herein as the 60-20-20 Indicator, being assigned to each of the water year types as shown in the following table.

San Joaquin Valley Water Year Hydrologic Classification	60-20-20 Indicator
Wet	5
Above Normal	4
Below Normal	3
Dry	2
Critical	1

If the sum of the 60-20-20 Indicators for the previous year and the current year is seven (7) or greater, the Target Flow Rate shall be 1,000 cfs. If the sum of the 60-20-20 Indicators for the previous two (2) years and the current year is four (4) or less, Merced shall not be required to provide any supplemental flow. If the preceding condition does not apply and the sum of the 60-20-20 Indicators for the previous year and the current year is two (2), the Target Flow Rate shall be 450 cfs. The 60-20-20 Indicator for the current year shall be based on the most current CDWR 90% probability of exceedence forecast of the San Joaquin Valley Water Year Hydrologic Classification as shown in the attached Figure 1. The reference gage for the flows shall be the Merced gage at Shaffer Bridge for flows less than or equal to 220 cfs and the DWR gage near Cressey for flows greater than 220 cfs.

3. The SWRCB reserves jurisdiction over the long-term changes authorized in this Order, to supervise the diversion, release, and use of water under this Order and to coordinate or modify terms and conditions, for fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant. The SWRCB delegates authority to the Executive Director of the SWRCB to take actions under this reservation of jurisdiction when the action is consistent with this Order.

4. Delivery of water for municipal use is limited to the Mariposa Town Planning Area. The Mariposa Town Planning Area is described on page 2 of this license and shown on a map on file with the State Water Resources Control Board dated May 1, 1995. Licensee shall divert no more than 5,000 afa of water at a rate not to exceed 7 cfs for use in the Mariposa Town Planning Area.

5. In addition to the 1,500 cfs direct diversion from March 1 through October 31 of each year, the licensee is entitled to 7 cfs of direct diversion from November 1 of each year to February 29 of the following year. Correspondingly, storage under this license is reduced in the amount diverted to Mariposa Town Planning Area up to 1,667 afa.

6. Combined maximum direct diversion and storage under this license shall not exceed 345,440 afa.

7. Licensee shall not exceed a total evapotranspiration of applied water (ETAW) of 37,900 acre-feet per calendar year on rice lands which shall occur only within the 13,452 acres identified on the map entitled Merced Irrigation District Map of Rice Lands on file with the State Water Resources Control Board dated June 1994. ETAW shall be calculated using Table 25, Estimated Evaportranspiration of Applied Water for Principal Crops – San Joaquin Valley, of CDWR Bulletin No. 113-3, "Vegetative Water Use in California, 1974". Other methods for calculating ETAW may be used upon written approval of the Chief, Division of Water Rights. Licensee shall monitor and record the annual total ETAW of the rice lands. This information shall be submitted triennially to

the Division of Water Rights with the Report of Licensee. If, in the future, licensee wishes to increase the ETAW on rice lands, licensee shall submit an alternate water savings analysis for the approval of the Chief of the Division of Water Rights demonstrating the availability of water to serve the Mariposa Town Planning Area.

8. For the protection of fish and wildlife habitat in Merced River between the point of diversion to Mariposa Town Planning Area and Lake McClure, Licensee shall, during the period from January 1 through December 31, bypass a minimum of 50 cubic feet per second in the Merced River at the point of diversion for water intended for delivery to Mariposa Town Planning Area. The total stream flow shall be bypassed whenever it is equal to or less than 50 cfs.

9. Under this license no water shall be: (a) diverted at the point of diversion for Mariposa Town Planning Area defined in the description of the lands or the place where such water is put to beneficial use, or (b) delivered to the Mariposa Town Planning Area, until the Mariposa Public Utility District has: (a) consulted with the Division of Water Rights and, (b) submitted to the SWRCB its Urban Water Management Plan as prepared and adopted in conformance with Section 10610, et seq. of the California Water Code, supplemented by any additional information that may be required by the SWRCB.

10. Nothing within this License is intended to alter any obligations that Merced Irrigation District (MID) has to the James J. Stevinson Corporation, Stevinson Water District, or the East Side Canal and Irrigation Company (collectively, "Stevinson) under the October 29, 1929 agreement between MID and Stevinson and under the December 1, 1943 Decision and Decree in Stevinson Water District v. East Side Canal and Irrigation Company (Case No. 13673, Merced County Superior Court), nor is this License intended to alter the relative priorities of MID's and Stevinson's vested water rights.

TEMPORARY TERMS

In accordance to SWRCB WR Decision 1641, this License is temporarily amended by adding the following conditions which shall expire on December 31, 2011, or at such time as the SJRA is terminated, whichever occurs first:

11. In addition to all other places of use authorized by this license, the reach of river between Licensee's point of diversion and Vernalis on the San Joaquin River is added as a place of use.

12. In addition to all other purposes of use authorized by this license, the purposes of use shall include Wildlife Enhancement.

13. The flows provided by Licensee pursuant to the SJRA will satisfy any responsibility of Licensee to meet the objectives in Tables 1, 2, and 3 in WR Decision 1641. When the SJRA expires or is terminated, the SWRCB will give notice and will commence a proceeding to determine the responsibility of Licensee to meet the objectives.

14. Except as provided below, while the SJRA is in effect, Licensee shall meet the following target flows for the protection of fish and wildlife beneficial uses on the San Joaquin River at Airport

Way Bridge, Vernalis during the 31-day pulse flow period in April and May[90] of each year while the SJRA is in effect. The target flow shall be based on the existing flow, as defined below.

Existing Flow[91] (cfs)	Target Flow (cfs)
0-1999	2,000
2,000-3,199	3,200
3,200-4,449	4,450
4,450-5,699	5,700
5,700-6,999	7,000
7,000 or greater	Existing Flow

The total amount of water provided under licenses 990, 2684, 2685, 6047, 11395, 11396, 7856,7860, 5417, and 11058, together, to meet the target flows is not required to exceed 110,000 acre-feet annually. Water provided by the Licensee shall be measured at the Licensee's last point of control.

During years when the sum of the current year's 60-20-20[92] indicator and the previous year's 60-20-20 indicator is seven (7) or greater, target flows shall be one step higher than those required by the above table. The Licensee is not required to meet the target flow during years when the sum of the current year's 60-20-20 indicator and the previous two years' 60-20-20 indicator is four (4) or less, using the following table.

SJR Basin 60-20-20 Classification	60-20-20 Indicator
Wet	5
Above Normal	4
Below Normal	3
Dry	2
Critical	1

[90] The timing of the 31-day pulse flow is to be determined by the San Joaquin River Technical Committee (SJRTC). The SJRTC is composed of technical experts appointed by the parties to the SJRA to implement the VAMP experiment and other technical activities that its members deem appropriate to meet the goals of the SJRA.

[91] "Existing flows" will be determined by the SJRTC. Existing flow is defined as the forecasted flows in the San Joaquin River at Vernalis during the pulse flow period that would exist absent the SJRA or water acquisitions, including but not limited to the following:

1. Tributary minimum instream flows pursuant to Davis-Grunsky, Federal Energy Regulatory Commission, or other regulatory agency orders existing on the date of this agreement;
2. Water quality or scheduled fishery releases from New Melones Reservoir;
3. Flood control releases from any non-federal storage facility required to be made during the pulse flow period pursuant to its operating protocol with the U.S. Army Corps of Engineers in effect when the SJRA is executed;
4. Uncontrolled spills not otherwise recaptured pursuant to water right accretions (less natural depletions) to the system; and/or Local runoff.

[92] The computation method for the 60-20-20 indicator is provided in the attached Figure 1.

15. Licensee shall determine the 60-20-20 indicator for each year while the SJRA is in effect, using the second table in the preceding temporary term. The most current DWR forecast of the San Joaquin Valley water hydrologic classification will be used.

16. Licensee shall coordinate water release planning for the April-May pulse flow period with the DWR, the USBR, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Game.

17. Annually, Licensee shall submit an operations report to the Executive Director of the SWRCB by January 30 of the year following each year of operation under the SJRA. The report shall identify (a) the source and quantity of water released from storage, or storage and direct diversions foregone to meet the April-May pulse flow objective in the San Joaquin River at Airport Way Bridge in Vernalis; (b) the time period when this water was released from storage, or not diverted; (c) a monthly accounting of reservoir operations to refill reservoir storage; (d) the source and quantity of water transferred to the USBR pursuant to the terms of the SJRA; (e) the quantity, timing, and location of groundwater extractions made to maintain water supply deliveries due to the SJRA; (f) the time period in which water sold to the USBR was released from storage or not diverted; and (g) an analysis showing that all storage releases, storage and direct diversions foregone, and replenishment operations listed above were performed within the limits, terms and conditions of these licenses.

18. Licensee shall notify the Board immediately upon termination of the SJRA if such occurs in advance of December 31, 2011.

19. Licensee is authorized to provide 12,500 acre-feet of water above the existing flow delivered at the last point of control for release to the Merced River during October of all years.

20. If groundwater substitution is used in response to meeting flow obligations of Licensee under the SJRA, and the result is exacerbation of groundwater overdraft in the Merced Groundwater Basin, Licensee shall take measures to recharge the incremental increase in the amount of groundwater pumped as a result of the authorized change. Prior to pumping groundwater as a result of the authorized change, Licensee shall provide to the Executive Director of the SWRCB a recharge plan specifying the amount of groundwater to be pumped, the location of the pumping, and the location and method of recharge that will be undertaken to balance the groundwater pumping. The plan shall contain an analysis of how the recharge program will prevent overdraft or a decrease in flow in the Merced River due to the groundwater pumping. Upon approval of the plan by the Executive Director of the SWRCB, Licensee shall implement the plan.

21. At times when the USBR is releasing water from New Melones Reservoir for the purpose of meeting the Vernalis salinity objective, or when Standard Permit Term 93 is in effect, or when salinity objectives at Vernalis are not being met, Licensee shall not replenish (1) stored water or foregone diversions provided for the April-May pulse flow or the October target flow at Vernalis, or (2) water transferred to the USBR pursuant to the SJRA. The Executive Director of the SWRCB is delegated authority to ensure that this condition is not used by the USBR to increase the obligation of Licensee.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.

Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, 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 may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license 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 water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

Victoria A. Whitney

for *Edward C. Anton, Chief*
Division of Water Rights

Dated: JUN 2 0 2003

Figure 1
San Joaquin Valley Water Year Hydrologic Classification

Year classification shall be determined by computation of the following equation:

$$\textbf{INDEX} = 0.6 * X + 0.2 * Y + 0.2 * Z$$

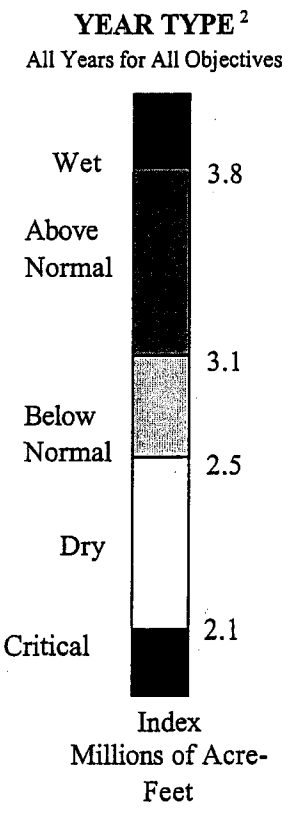
Where: X = Current year's April – July
San Joaquin Valley unimpaired runoff

Y = Current October – March
San Joaquin Valley unimpaired runoff

Z = Previous year's index[1]

The San Joaquin Valley unimpaired runoff for the current water year (October 1 of the preceding calendar year through September 30 of the current calendar year), as published in California Department of Water Resources Bulletin 120, is a forecast of the sum of the following locations: Stanislaus River, total flow to New Melones Reservoir; Tuolumne River, total inflow to Don Pedro Reservoir; Merced River, total flow to Exchequer Reservoir; San Joaquin River, total inflow to Millerton Lake. Preliminary determinations of year classification shall be made in February, March, and April with final determination in May. These preliminary determinations shall be based on the most current 90% exceedance probability forecast of the San Joaquin Valley water year hydrologic classification.

Classification	Index Millions of Acre-Feet (MAF)
Wet.....	Equal to or greater than 3.8
Above Normal.....	Greater than 3.1 and less than 3.8
Below Normal.....	Equal to or less than 3.1 and greater than 2.5
Dry.....	Equal to or less than 2.5 and greater than 2.1
Critical.....	Equal to or less than 2.1



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1 A cap of 4.5 MAF is put on the previous year's index (Z) to account for required flood control reservoir releases during wet years.

2 The year type for the preceding water year will remain in effect until the initial forecast of unimpaired runoff for the current water year is available.

L 2685

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER AUTHORIZING TEMPORARY CHANGES IN PLACE OF USE AND PURPOSE OF USE

MERCED IRRIGATION DISTRICT, OAKDALE AND SOUTH SAN JOAQUIN IRRIGATION DISTRICTS, TURLOCK AND MODESTO IRRIGATION DISTRICTS, CENTRAL CALIFORNIA IRRIGATION DISTRICT, SAN LUIS CANAL COMPANY, FIREBAUGH CANAL WATER DISTRICT, AND COLUMBIA CANAL COMPANY, WATER RIGHT HOLDERS

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On December 10, 1998

San Joaquin River Group Authority
c/o Marc Van Camp
Murray, Burns and Kienlen
1616 29th Street, Suite 300
Sacramento, CA 95816

filed with the State Water Resources Control Board (SWRCB) Petitions for Temporary Change under Water Code sections 1707 and 1725 et seq. For these petitions, the San Joaquin River Group Authority (SJRGA) represents the following water right holders who are petitioners for temporary changes:

Water Right Holder	Application No.	License No.
Merced Irrigation District	16187, 16186, 10572, 1224 1222, 1221	11396, 11395, 6047, 2685 2684, 990
Oakdale and South San Joaquin Irrigation Districts	10872, 13310	7856, 7860
Turlock and Modesto Irrigation Districts	14127, 1233	11058, 5417
San Joaquin River Exchange Contractors: Central California Irrigation District San Luis Canal Company Firebaugh Canal Water District Columbia Canal Company	Pre-1914	

The petitioners seek to temporarily add the San Joaquin River upstream of Vernalis and at Vernalis as a place of use under their water rights, and to add fish and wildlife enhancement as a purpose of use. Temporary changes may continue for a period of up to one year. The petitioners seek to begin the temporary water transfers in April 1999. The petition notice was mailed to 340 interested parties and downstream water users in the San Joaquin River watershed.

2.0 BACKGROUND

In 1995, the SWRCB adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay-Delta Plan) which includes flow objectives for the San Joaquin River at Vernalis. In the future, the SJRGA members propose to enter into the San Joaquin River Agreement (Agreement) with a number of other parties, including the U.S. Department of the Interior (DOI) and the California Department of Water Resources (DWR). The Agreement will, when executed, provide for the implementation of the Vernalis Adaptive Management Plan (VAMP), a 12-year experimental program that includes a spring pulse flow on the San Joaquin River at Vernalis during April and May. Existing flows will be augmented with water transferred to the DOI and DWR by the petitioners. The Agreement also will provide for additional water transfers from various individual SJRGA members to the DOI and the DWR at other times of the year.

The VAMP specifies flow levels at Vernalis and export limits at the State Water Project and Central Valley Project pumps that are different from those specified in the 1995 Bay-Delta Plan during the pulse flow period. The petitioners claim that the Agreement will provide environmental protection at a level equivalent to the 1995 Bay-Delta Plan and that it is consistent with existing biological opinions for endangered species.

The petitioners propose that this temporary transfer be used in 1999 to conduct the experiments proposed under the VAMP. Fishery experiments will be conducted during the pulse flow period to study the relative effects of Delta exports and San Joaquin River flows on survival of San Joaquin River salmon smolts migrating through the Delta. The petitioners propose to provide a level of flow in the coming year that will be consistent with the provisions of the Agreement. The SJRGA members will provide up to 110,000 acre-feet (AF) towards meeting the pulse flow targets in the Agreement during April and May. In addition, the Merced Irrigation District will supply 12,500 AF of water in October to attract adult salmon returning to spawn. Lastly, the Oakdale Irrigation District will sell to DOI 15,000 AF of Oakdale's entitlement from the New Melones Project plus any unused portion from its 11,000 AF maximum share of the spring pulse flow.

The proposed operation by the SJRGA members this year is described in a report, titled "Hydrologic Analysis of the San Joaquin River Agreement for 1999 Implementation",

prepared by Daniel Steiner for the U. S. Bureau of Reclamation (USBR)[1]. The actual operation may vary depending on hydrologic conditions. The following operating assumptions are included in that report.

Transferred water from Merced, and Modesto/Turlock Irrigation Districts will occur as increased stream releases from New Exchequer Dam and New Don Pedro Dam, respectively.

The flow below Goodwin Dam on the Stanislaus River is projected to be 1,500 cubic feet per second (cfs), which is the maximum flow the USBR will allow during April and May; therefore, water will not be released to the lower Stanislaus River by Oakdale and South San Joaquin Irrigation Districts. Oakdale/South San Joaquin Irrigation Districts will arrange for Modesto Irrigation District and Merced Irrigation District, respectively, to provide Oakdale/South San Joaquin Irrigation Districts' share of the VAMP pulse flow through storage releases from New Don Pedro Reservoir and Lake McClure. The remaining water to be purchased from Oakdale by DOI will be provided by reducing Oakdale's allocation from New Melones Reservoir[2]. This reduction will result in additional storage in New Melones Reservoir and will be reallocated among the other permitted uses of New Melones water.

The Exchange Contractor's share of the pulse flow will be provided from contractual water deliveries from the USBR[3]. The water will be exported from the Delta and released into the San Joaquin River.

The Agreement also calls for the construction of a fish barrier at the head of Old River during the spring pulse flow. The barrier is designed to keep salmon smolts in the mainstem of the San Joaquin River and eliminate their migration into Old River, where they are susceptible to entrainment at the export pumps. Under present conditions, a temporary barrier has to be constructed each year during the pulse flow period, but a permanent operable barrier may be constructed in the future. Due to high flow conditions this year, a barrier may not be constructed in the spring of 1999.

3.0 OBJECTIONS TO THE PETITIONS

The Division of Water Rights received objections from the following parties:

- South Delta Water Agency (SDWA);
- Central Delta Water Agency, Reclamation District 2072, and R.C. Farms, Inc. (CDWA);

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[1] This report is Attachment A to a March 30, 1999, Environmental Analysis/ Initial Study, titled "Additional Water Acquisition for Meeting VAMP Flow Objectives 1999". The report analyzes the potential transfer of up to 157,000 AF.

[2] This purchase does not involve a change in water rights. Oakdale will not take delivery under its contract, and the water will remain in storage in New Melones Reservoir under the USBR's rights.

[3] This operation does not involve a change in water rights. The Exchange Contractors will not take delivery under their contract, and the water will be exported from the Delta and released into the San Joaquin River under the USBR's rights.

- Pacific Gas and Electric Company (PG&E).

The SWRCB may approve petitions for temporary change pursuant to Water Code sections 1707 and 1725 provided that the proposed change:

1. Will not unreasonably affect, and will not injure, any legal user of water;
2. Will not increase the amount of water the person is entitled to use;
3. Will not have an unreasonable effect on fish, wildlife, or other instream beneficial uses of water;
4. Involves only water that would, in the absence of the temporary change, have been consumptively used or stored; and
5. Otherwise meets the requirements of Division 2 of the Water Code.

The SDWA objects to the proposed changes and argues that the proposed changes do not meet any of the requirements. In addition, SDWA states that (1) if the amount of water transferred under the petition exceeds the 1995 Bay-Delta Plan objectives, then there is no environmental evaluation of the effects; (2) uncertainties regarding installation of the Head of Old River barrier puts the VAMP experiment at risk; and (3) transferred water should not be considered abandoned until it has passed through the Delta so that it may not be exported. SDWA requests that the petitions be denied, or alternatively, that the SWRCB hold a hearing.

The CDWA also objects on all points. Further, the CDWA alleges that the proposed transfer of water is an unreasonable and wasteful use of water and is therefore prohibited under article X, section 2 of the California Constitution.

PG&E objected to the petition, stating that certain of its water rights and contractual rights on the Stanislaus River and the lower Merced River could be affected by the change.

4.0 WATER SUPPLY ISSUES

The licenses and pre-1914 water rights held by the petitioners authorize them to directly divert and store water in the San Joaquin River watershed. In the absence of the proposed temporary changes, the water proposed for transfer would be stored in the petitioners' reservoirs or would be put to consumptive beneficial uses on the land within the petitioners' authorized places of use.

4.1 No Injury to Any Legal User of Water Water Code section 1727(a)(1) requires the SWRCB, upon receipt of a temporary change petition, to evaluate whether such change will cause injury to any legal user of water through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water, reduction in return flows, or reduction in the availability of water within the watershed of the transferor. Water Code section1707(b)(2) requires that there be no unreasonable effect on any legal user of water. Both SDWA and CDWA argue that the transfer of water for

the April/May pulse flow will lead to reduced flows and degraded water quality conditions later in the summer.

The issue of primary concern to the SDWA and the CDWA is whether the change will adversely affect water quality at Vernalis during the irrigation season. An analysis of the potential impact of the transfer on flow and water quality at Vernalis was provided in Daniel Steiner's report cited above. Mr. Steiner's analysis covered the period from March 1999 through September 2000. In general, the report concludes that, although there might be some reductions in flow and increases in total dissolved solids compared to a base condition[4], water quality standards will be met in all months. This result is consistent with testimony received in the ongoing Bay-Delta hearing regarding for implementation of the 1995 Bay-Delta Plan. The testimony indicated that exceedances of water quality objectives will be slightly less under the VAMP than under the base condition (DOI Exhibit 105). Therefore, I conclude that the temporary change will not cause any injury to the SDWA or the CDWA during the term of the temporary change, or during the following year.

4.2 No Increase in the Amount of Water the Petitioners are Entitled to Use The SDWA and the CDWA allege that the transfer for the spring pulse produces storage space in upstream reservoirs, which can be refilled later in the year. SDWA and CDWA argue that the net effect of this operation is that each of the districts may capture and use more water than they would have been able to use in the absence of the transfer. In addition, the SDWA and the CDWA claim that there has been no showing that any of the sellers will decrease their consumptive use.

The issue here is whether the temporary change will increase the amount of water that the petitioners are entitled to use. (Water Code section 1707.) This order does not authorize an increase in water appropriation, including use by the petitioners. The water must come from available supplies within the petitioners' established water rights, and the petitioners' total use, including the transferred water, may not exceed the amount of use allowed in their water rights. The reservoir operators have adequate water rights to store the water proposed for transfer. Therefore, I conclude that there will be no increase in the amount of water the petitioners are entitled to use.

4.3 Involves Only Water that Would, in the Absence of the Temporary Change, have been Consumptively Used or Stored As mentioned above, the SDWA and the CDWA claim that there has been no showing that any of the sellers will decrease their consumptive use.

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[4]The base case condition assumes that New Melones Reservoir is operated in accordance with the Interim Plan of Operation, with a pulse flow released during the month of May. Allocation of annual water supplies to the uses of the instream fishery, Vernalis water quality, Bay-Delta biological opinions, and CVP contractors are dependent on New Melones inflow and storage. Allocations to Oakdale and South San Joaquin Irrigation Districts were assumed to be consistent with their 1988 agreement with the U. S. Bureau of Reclamation.

Water Code section 1725 requires that water transferred pursuant to a temporary change must involve only water that would otherwise have been consumptively used or stored in the absence of the change. Mr. Steiner's hydrologic report states that the Merced Irrigation District and the Modesto/Turlock Irrigation Districts will provide the flows for the temporary change by releasing water from storage. In addition, these two districts will provide water on behalf of Oakdale/South San Joaquin Irrigation Districts during the pulse flow by making releases from storage. The hydrologic analysis indicates that New Don Pedro Reservoir storage at the end of the year will be reduced by an amount equal to the amount of water provided for transfer. The analysis for Lake McClure indicates that, under median hydrologic conditions, its storage at the end of the year will be approximately the same under the Agreement as under the base case. This results from Merced's summer discretionary hydropower releases being reduced by approximately the same amount as its increased spring releases under the temporary transfer. Presently, storage in New Don Pedro Reservoir and Lake McClure is below the minimum flood pool[5]; therefore, the petitioners would have reservoir storage space available to store the water to be released for the pulse flow in the absence of the transfer.

Based on the information above, I find that the transfer involves only water that would, in the absence of the temporary change, have been consumptively used or stored.

4.4 Otherwise Meets the Requirements of Division 2 of the Water Code The SDWA and the CDWA state that Merced Irrigation District received approvals from the SWRCB to transfer water under Water Code sections 1725 in 1993, 1994, 1996 and 1997. They urged the SWRCB not to approve this petition for temporary change until appropriate environmental review has been completed for a long-term change. Under Water Code section 1732, if the SWRCB concludes that the petitioner has not exercised due diligence in petitioning for a long-term change, the SWRCB must disapprove a temporary change.

The petitioners have submitted separate petitions for long-term change, pursuant to Water Code sections 1735 and 1707. Public notice of these petitions was sent to interested persons on December 10, 1998, and parties have until September 1, 1999, to file written protests. The SJRGA and the USBR have jointly prepared an EIR/EIS to support the long-term change petition. Under these facts, there is no current basis for finding that the petitioners have not exercised due diligence.

4.5 Other Issues Raised by the SDWA and the CDWA The SDWA also objected to the petition on the following grounds: (1) if the amount of water transferred under the petition exceeds the 1995 Bay-Delta Plan objectives, there is no environmental evaluation of the effects; (2) the uncertainty in installing the Head of Old River barrier puts the VAMP experiment at risk; and (3) transferred water should not be considered abandoned until it has passed through the Delta so that it may not be exported.

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[5] Data obtained from the U.S. Army Corps of Engineers internet site (http://www.spk-wc.usace.army.mil) indicates that on April 5, 1999, the storage in Don Pedro and Lake McClure was 44,314 AF and 58,088 AF, respectively, below conservation storage.

Regarding the first issue, temporary transfers of water under Water Code section 1725 et seq. are exempt from the California Environmental Quality Act (CEQA); hence, there is no requirement to prepare environmental documentation. In any event, the flow targets under the VAMP are generally similar to or less than the 1995 Bay-Delta Plan flow objectives. This year the VAMP flow targets are less the 1995 Bay-Delta Plan flow objectives as discussed below.

Regarding the second issue, installation of the Head of Old River barrier is required under the Agreement and highly desirable for the VAMP experiments. The parties have not yet executed the Agreement. However, the petitioners, the USBR, and the DWR plan to proceed with the fishery experiment this year even if the barrier is not installed. The data obtained will be useful regardless of the status of the barrier.

Regarding the third issue, the petitioners requested a place of use that extends only to Vernalis. The SWRCB is not in a position to grant authorization of a larger place of use than is requested. Under the petitions, the relationship between San Joaquin River flows and exports during the spring pulse flow would be defined by the VAMP. The only way to ensure that none of the pulse flow is exported is to shut down exports during the pulse flow period, which is not consistent with the experiment. Because the export levels allowed under the VAMP are less than the export levels allowed under the 1995 Bay-Delta Plan, the exports during the experiment should not have an adverse effect compared with operations in the absence of the temporary change.

The CDWA objected on the grounds that the transfer of water under this temporary change represents an unreasonable and wasteful use of water and is therefore prohibited under article X, section 2 of the California Constitution. VAMP flows for this year have been set at 7,000 cfs. The 1995 Bay-Delta Plan requires 7,020 cfs in an above normal water year when X2 is west of Chipps Island, the most likely circumstance for this year. If significant additional precipitation occurs this year and the water year classification becomes wet, the 1995 Bay-Delta Plan flow objective at Vernalis during the pulse period would become 8,620 cfs. In either case, 1995 Bay-Delta Plan flow objectives exceed SJRA target flows. The 1995 Bay-Delta Plan objectives are based on the reasonable protection of aquatic resources through the use of water. Thus, the amount of flow that would be present under the temporary changes would not represent an unreasonable or wasteful use of water.

4.6 Objections of Pacific Gas and Electric Company PG&E objected to the petitions for temporary change, saying that it has various water rights, and contractual rights, which could be affected by the proposed change. By letter dated April 2, 1999, PG&E informed the SWRCB that it had conferred with representatives of Oakdale, South San Joaquin and Merced irrigation districts and had agreed upon conditions for withdrawal of its objections.

On the Stanislaus River, PG&E has senior rights below Donnells and Beardsley reservoirs but upstream from New Melones which could be affected. As Donnells and

Beardsley will not be operated to meet VAMP flows, there will be no impact to PG&E's Stanislaus River rights.

On the Merced River, PG&E operates Merced Falls powerhouse, which is downstream of Lake McClure. Merced Irrigation District has agreed to compensate PG&E for any harm that may result as a result of the temporary change. Based on this agreement, PG&E has agreed to dismiss its objections to the petition of Merced Irrigation District.

5.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving the transfer of water that was previously stored, or would have been stored absent the transfer, are exempt from the requirements of CEQA (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(a)(2).

5.1 No Unreasonable Effect on Fish, Wildlife, or other Instream Beneficial Uses of Water The SDWA and the CDWA allege that the temporary change will harm fish and wildlife. SDWA claims that this petition will result in Stanislaus River water being transferred to the Tuolumne River, thus causing imprinting problems with juvenile anadromous fish. At one point, Oakdale was proposing to meet its share of the pulse flow by transferring water to Modesto Irrigation District in the Tuolumne River watershed in exchange for a release of an equivalent amount of water from New Don Pedro Reservoir. This transfer is no longer being proposed this year; therefore, the alleged effect on juvenile anadromous fish will not occur.

The CDWA states that temperature is critical to the survival of salmon and steelhead and that lower instream flows may have an effect on temperature conditions. As described above, the tributary flows are lower in some months under the proposed temporary change than under the base condition. However, the flows at all times will either meet or exceed the required tributary flows. The important issue with respect to temperature control is the amount of carryover storage in New Don Pedro Reservoir and Lake McClure. Over the period analyzed, the reservoirs remain sufficiently full to maintain the cold water pools. Because New Melones, New Don Pedro, and Exchequer dams are equipped with low level outlets, temperature should not become a problem during the term of the transfer, or during the following year.

Both SDWA and CDWA raise the issue of potential impacts to steelhead. The release of water pursuant to the VAMP is designed to be beneficial to anadromous fish such as steelhead. No adverse effects on steelhead related to the VAMP have been alleged in the Bay-Delta water rights hearing during the course of testimony by the various resource agencies. Testimony in the Bay-Delta water right hearing by California Department of Fish and Game and U. S. Fish and Wildlife Service biologists has supported the VAMP and the Agreement. The Division of Water Rights received no objections to the petitions from the fishery resource agencies. Accordingly, there is no basis for finding that steelhead would be harmed by the temporary change.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On January 23, 1997, the SWRCB adopted Resolution 97-06, delegating authority to approve petitions for temporary changes to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code sections 1707 and 1727 et seq.; and therefore I find as follows:

1. The petitioner has requested approval of the change in place of use and purpose of use in order to allow for the temporary transfer of water to enhance fish and wildlife in the San Joaquin River upstream of Vernalis.

2. Pursuant to Water Code section 1707, I conclude based on the available evidence that the proposed water transfer:

   - Will not increase the amount of water the petitioners are entitled to use;
   - Will not unreasonably affect any legal user of water; and
   - Otherwise meets the requirements of Division 2 of the Water Code.

3. Pursuant to Water Code sections 1725 et seq., I conclude based on the available evidence that the proposed temporary change:

   - Would not increase the amount of water the permittee or licensee is entitled to use;
   - Involves only water that would otherwise have been consumptively used or stored by permittee or licensee;
   - Would not injure any other legal user of the water; and
   - Would not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition to temporarily change the place of use and purpose of use of water, by adding fish and wildlife enhancement use and adding a place of use in the San Joaquin River downstream to Vernalis under the water right Licenses 11395, 11396, 6047, 2684, 2685, and 990 of Merced Irrigation District, and water right Licenses 5417, and 11058 of Modesto and Turlock Irrigation Districts, is approved; subject to the following terms and conditions:

1. The petitioners may transfer up to 110,000 acre-feet in April and May 1999. Merced Irrigation District may transfer up to 12,500 acre-feet in October 1999.

2. The temporary changes authorized herein may commence five days after the date of this order, and shall remain in effect through October 31, 1999. All existing terms

and conditions of the subject licenses rights shall remain in effect, except as temporarily amended by this order.

3. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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.

4. 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 requirements for reasonable use of water without unreasonable draft on the source.

5. 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.

6. This temporary transfer 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. section 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

Harry M. Schueller
Chief of the Division of Water Rights

Dated: APR 0 9 1999

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

LICENSE 2685 PERMIT 914 APPLICATION 1224

THIS IS TO CERTIFY, *That* **Merced Irrigation District
Merced, California**

has made proof as of **June 18, 1943**
(the date of inspection) to the satisfaction of the State Engineer of California of a right to the use of the waters of

Merced River in Mariposa and Merced Counties

tributary to **San Joaquin River**

for the purpose of **irrigation and domestic uses**
under Permit **914** *of the Department of Public Works and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Department of Public Works and the terms of the said permit; that the priority of the right herein confirmed dates from* **March 26, 1919**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **fifteen hundred (1500) cubic feet per second by direct diversion from about March 1 to about October 31 of each season and throughout the remainder of the year as required for domestic purposes, and two hundred sixty six thousand, four hundred (266,400) acre feet per annum by storage to be collected from about October 1 to about July 1 of each season in Lake McClure.**

In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

This license is based on storage collected during the 1940-1941 season and use thereof; and also on use of water by direct diversion without storage during the year 1942 which was the year of maximum use by direct diversion within the three year period immediately preceding the date of inspection, namely June 18, 1943.

The combined storage under Application 1222, License 2684, and Application 1224, License 2685, shall not exceed two hundred seventy two thousand eight hundred (272,800) acre feet per annum.

The point of diversion to storage of such water is located South thirty-eight degrees, no minutes West (S. 38° 00'W) thirty eight hundred (3800) feet from the NE corner of Sec. 13, T 4 S, R 15 E, M.D.B. & M.,being within the NW¼ of SE¼ of said Section 13, in Mariposa County.

Point of direct diversion and rediversion of stored water from Merced River for Northside canal is located North sixty eight degrees, no minutes West (N 68° 00' W) twenty seven hundred fifty (2750) feet from the SE corner of Sec. 4, T 5 S, R 15 E., M.D.B.& M., being within the SW¼ of SE¼ of said Section 4 in Merced County.

Point of direct diversion and rediversion of stored water from Merced River for Main canal is located North forty seven degrees, thirty minutes East (N 47° 30' E.) twenty eight hundred thirty (2830) feet from the SW corner of Sec. 7, T 5 S, R 15 E, M.D.B. & M., being within the NE¼ of SW¼ of said Section 7 in Merced County.

A description of the lands or the place where such water is put to beneficial use is as follows: Irrigation and domestic purposes on 164,395 gross acreage within the boundaries of Merced Irrigation District as shown on map of the District filed with the Division of Water Resources December 11, 1942.

time to time by the State Engineer.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

1

FORM 64

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

LICENSE 2685 PERMIT 914 APPLICATION 1224

THIS IS TO CERTIFY, *That* **Merced Irrigation District
Merced, California**

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tributary to **San Joaquin River**

for the purpose of **irrigation and domestic uses**
under Permit **914** *of the Department of Public Works and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Department of Public Works and the terms of the said permit; that the priority of the right herein confirmed dates from* **March 26, 1919**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **fifteen hundred (1500) cubic feet per second by direct diversion from about March 1 to about October 31 of each season and throughout the remainder of the year as required for domestic purposes, and two hundred sixty six thousand, four hundred (266,400) acre feet per annum by storage to be collected from about October 1 to about July 1 of each season in Lake McClure.**

In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Engineer.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

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This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Department.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivison of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Witness my hand and the seal of the Department of Public Works of the State of California, this **11th** *day of* **August**, *19* 44

[SEAL]

EDWARD HYATT, *State Engineer*

By Harold Conkling
Deputy State Engineer

LICENSE 2685

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

LICENSE
TO APPROPRIATE WATER

ISSUED TO Merced Irrigation District

DATED August 11, 1944

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