

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

**DIVISION OF WATER RIGHTS**

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**In the Matter of Permit 15026  
(Application 5632)**

**Yuba County Water Agency**

**CORRECTED ORDER APPROVING PETITION FOR CHANGE ON  
LONG-TERM TRANSFER**

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SOURCE: North Yuba River and Yuba River

COUNTY: Yuba

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION FOR CHANGE**

On August 28, 2013, Yuba County Water Agency (YCWA) filed a Petition for Change with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of a change pursuant to California Code of Regulations section 791, et seq. The requested change is to add a point of rediversion (PORD) for YCWA's Permit 15026 (Application 5632) at the point of diversion (POD) for the Freeport Regional Water Project (FRWP). Addition of the PORD would enable delivery of up to 34,000 acre-feet per year of Yuba Accord transfer water to East Bay Municipal Utilities District (EBMUD) through December 31, 2025.

**1.1 BACKGROUND AND DESCRIPTION OF THE PETITION FOR CHANGE**

YCWA is currently authorized under Corrected Order WR 2008-0014 (Corrected Order) for Long-Term Transfer to transfer up to 200,000 acre-feet (af) per calendar year of water under Permit 15026 until December 31, 2025, subject to the terms and conditions established in the Order. The Corrected Order: (a) approved the inclusion of Yuba Accord streamflow requirements in the permit; (b) added the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, and 4 on file with Application 5629) and the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626) to the place of use in Permit 15026 for the duration of the long-term transfer; and (c) approved the addition of the Central Valley Project's (CVP) and the State Water Project's (SWP) (collectively, Projects) south Delta export diversion facilities as PORDs in Permit 15026 for the term of the Water Purchase Agreement, which ends on December 31, 2025.

YCWA has indicated that since the Yuba Accord Project was approved and the Corrected Order was issued by the State Water Board, requirements by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) that were based on biological opinions issued for coordinated SWP/CVP operations in 2008 and 2009 have constrained the Projects capacity to take delivery of Yuba Accord transfer water. As a result, the Projects are unable to take delivery of as much Yuba Accord transfer water as was projected in the YCWA's Final EIR for the Yuba Accord Project. YCWA has indicated that the Department of Water

Resources (DWR) has attempted to “back up” Yuba Accord transfer water for storage in Oroville Reservoir to the extent possible; however the Projects remain unable to take delivery of the transfer water for the following two reasons: (1) it is not always possible for DWR to modify Oroville Reservoir operations to “back up” the transfer water into storage; and (2) at times, DWR flood control releases are more difficult to manage with the “backed-up” transfer water in Oroville Reservoir.

Approval of YCWA’s change petition to add a PORD at Freeport would enable EBMUD to receive Yuba Accord transfer water. EBMUD is a member of FRWP and has a diversion intake on the Sacramento River at Freeport. EBMUD’s service area is already included in the place of use for YCWA’s long-term transfer under Permit 15026.

## **1.2 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

On January 28, 2014, YCWA adopted an addendum to the Yuba Accord Environmental Impact Report (EIR or EIR Addendum)) (SCH #2002032132, certified April 15, 2004) that evaluated the project associated with addition of the PORD at Freeport for Permit 15026. YCWA’s addendum evaluated the proposed project and documented that the proposed addition of the FRWP intake as a PORD for Yuba Accord transfer water will not result in: (a) new significant environmental impacts not analyzed in the Final EIR, (b) substantial increases in the severity of significant impacts analyzed in the Final EIR, or (c) in any other conditions or circumstances that would require preparation of a subsequent or supplemental EIR under Public Resources Code section 21166 and CEQA Guideline section 15162. The addendum did not identify any additional mitigation measures for inclusion in the permit; however, YCWA proposed permit conditions for inclusion in any order approving the change petition. The State Water Board has considered the environmental documentation and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The State Water Board will file a Notice of Determination within five days from the issuance of this Order.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board has considered the information in the Final EIR, the Addendum, and the ordering conditions below and determined that these items satisfy the State Water Board’s public trust responsibility.

## **2.0 CRITERIA FOR APPROVING THE PETITION FOR CHANGE**

Pursuant to California Code of Regulations section 795, the State Water Board will not ordinarily require that notice be given or published in cases where the proposed change does not have the potential to impair the water supply of other legal users of water or instream beneficial uses. In this case, the petition to add a new PORD will not have the potential to affect other legal users of water or instream beneficial uses. The proposed project change would not alter any of YCWA’s releases of water from its facilities, YCWA’s compliance with Corrected Order WR 2008-0014, or YCWA’s implementation of the Yuba Accord conjunctive use program under its Lower Yuba River Accord Agreements for the Conjunctive Use of Surface and Groundwater Supplies with its member units. The EIR Addendum analyzed the potential for the proposed change to have surface water supply and management impacts, impacts to fisheries and aquatic resources (including impacts at and downstream of the FRWP intake as well as in the Mokelumne River watershed due to revisions to EBMUD’s operations), and impacts to surface water quality. No significant impacts were identified.

In the petition and the EIR Addendum, YCWA has shown that addition of the PORD with the conditions noted in the order below: (a) will not operate to the injury of any lawful user of water; (b) good cause has been shown for the change; and (c) the change petition does not constitute the initiation of new rights.

### **3.0 GOVERNOR'S 2014 DROUGHT STATE OF EMERGENCY PROCLAMATION**

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmer's long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

#### **ORDER**

**NOW, THEREFORE, IT IS ORDERED THAT:** YCWA's Petition for Change on the Long-Term Transfer for Permit 15026 is approved.

All existing terms and conditions of the subject permit remain in effect, as modified by the State Water Board's Revised Decision 1644 (RD-1644) and Corrected Order WR 2008-0014, except as temporarily amended by the following provisions:

1. A PORD is added at FRWP on the Sacramento River. The location of the PORD is: NAD 83, Zone 2, North 1,934,251 feet and East 6,702,930 feet, being within the NE¼ of SE¼ of Section 11, T7N, R 4E, MDB&M.
2. The total quantity of water to be rediverted at the PORD shall not exceed 34,000 af per year and is also limited to 9,600 af per month.
3. Diversion of Yuba River Accord transfer water at the FRWP PORD is subject to compliance with the conditions for FRWP diversions that are established in the following documents:
  - a. California Endangered Species Act Incidental Take Permit No. 2081-2010-031-03, including Term 9.1 of the permit, which limits total FRWP diversions to 185 million gallons per day or 286 cubic feet per second with an annual volume of 147,000 af.
  - b. Department of Fish and Wildlife Lake and Streambed Alteration Agreement No. 1600-2006-0321-R2.
  - c. All biological opinions issued by the USFW or NMFS that apply to the FRWP diversion.
4. YCWA shall comply with all applicable requirements of the State Water Board's Revised Decision 1644, as amended by the Corrected Order. All of the instantaneous and annual limits on pages 59-60 of the Corrected Order shall apply to the total of all rediversion under Permit 15026 at the FRWP PORD, Clifton Court Forebay, and Jones Pumping Plant.

5. YCWA shall provide, with the annual electronic report of water diversion and use, a report describing rediversion of water at the FRWP PORD. This report shall be submitted in addition to the report required by Term 6 on page 61 of the Corrected Order and shall include the following information:
  - a. The average and daily rates of rediversion of water at the FRWP PORD under Permit 15026; and
  - b. The daily and monthly volumes of water rediverted at the FRWP PORD under Permit 15026.

In addition, YCWA shall document that water made available at the FRWP PORD under Permit 15026 was water made available by New Bullards Bar Reservoir releases for transfer under Corrected Order WR 2008-0014 and this Order (Orders) minus any diversion limitations based on Item 3 above and any other limitations from the Orders. Transfer water does not include water delivered to YCWA member units.

6. This Order does not authorize any act that results in the taking of a candidate, threatened or endangered species, or any act that 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 Order, the permittee shall ensure authorization for an incidental take permit is obtained prior to operation of the project.
7. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An "urban water supplier" means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

Agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An "agricultural water supplier" means a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.
8. Only Released Transfer Water, as defined in Exhibit 1 (Scheduling and Accounting Principles) to Exhibit YCWA-11a, as submitted during the State Water Board's 2007 hearing that led to Corrected Order WR 2008-0014, may be transferred through the FRWP PORD under this permit.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: JUN 09 2014