

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

DIVISION OF WATER RIGHTS

In the Matter of Minor Change Request
Upper Swanston Ranch, Inc.

**ORDER APPROVING IN PART AND DENYING IN PART MINOR CHANGES TO
LICENSES 4505, 9076, 9077, 9078
(APPLICATIONS 9806, 19086, 19087, 20376) AND
PERMIT 20038 (APPLICATION 28453)**

SOURCES: Yolo Bypass, West Cut, Tule Canal, and Two Unnamed Drains

COUNTY: Yolo

WHEREAS:

1. Upper Swanston Ranch, Inc. (Swanston) filed Minor Change Requests with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on April 10, 2023. The Minor Changes requested adding a point of diversion to Licenses 9076 and 9078 (Applications 19086 and 20376) and to consolidate the place of use for Licenses 4505, 9076, 9077, 9078 (Applications 9806, 19086, 19087, 20376) and Permit 20038 (Application 28453).
2. Swanston requests to add a point of diversion to Licenses 9076 and 9078 to improve fish habitat and fish passage in the Yolo Bypass. This point is located by California Coordinate System of 1983, Zone 2, located North 1,973,071 feet and East 6,680,649 feet, being within the NE¼ of SE¼ of projected Section 36, Township 9 North, Range 3 East, Mount Diablo Base and Meridian (MDB&M.)
3. Upon review by Division staff, the point of diversion requested to be added to Licenses 9076 and 9078 did not match a point of diversion on License 4505 and Permit 20038 as indicated in the Minor Change Requests. The difference in location is due to the point being petitioned at different times on each right. As a result, Swanston requested that the applicable point of diversion in License 4505 and Permit 20038 be updated via minor change to North 1,973,071 feet and East 6,680,649 feet, being within the NE¼ of SE¼ of projected Section 36, Township 9 North, Range 3 East, MDB&M to be consistent with Licenses 9076 and 9078.

4. The Minor Changes also requested to combine the place of use of the above rights to a total of 3,440 acres within projected Section 3, Township 8 North, Range 3 East, MDB&M and projected Sections 14, 23, 24, 25, 26, 34, 35, and 36, Township 9 North, Range 4 East, MDB&M. The increased place of use is developed, and the water diversion and conveyance system is connected throughout the requested place of use.
5. The Minor Change requests were noticed on July 5, 2023 by posting on the Board's website and emailing to interested parties via the Division's email listserv for water right changes. The notice period ended on July 20, 2023 and no comments were received.
6. Pursuant to Water Code Section 1700.6, the State Water Board may make a minor change to a permit or license without requiring the filing of a petition for change if the Board finds all of the following:
 - a. The change involves a minor adjustment of the point of diversion, place of use, or purpose of use.
 - b. The change will not result in an increase in consumptive use.
 - c. The change does not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses.

As set forth in the relevant code, a "minor change" refers to a change in the permit or license that does not initiate a new appropriative right and meets the three requirements listed above. (Wat. Code, § 1700.6.)

7. The requested changes to add a point of diversion to Licenses 9076 and 9078, and to update a point of diversion on License 4505 and Permit 20038 meet the requirements provided by Water Code section 1700.6. These modifications involve a minor adjustment, will not result in an increase in consumptive use, and do not have the potential to adversely affect the water supply of other legal users of water or instream beneficial uses. There are no other water right holders between the currently authorized points of diversion and the proposed points of diversion. The proposed points of diversion are within 200 feet of currently authorized points of diversion and located on the Swanston project.
8. The requested changes to the place of use for Permit 20038 and Licenses 4505, 9076, 9077, 9078, do not meet the requirements provided by Water Code section 1700.6 and are not approved under this Order due to the complex potential effects that could result from consolidation of such widely varying places of use.

The permit and licenses listed above have adjacent places of use with partial

overlaps. These areas are covered under Swanston rights with different places of use, diversion seasons, and direct diversion rates. These differing places of use, seasons, and rates, if combined, could result in many new operational possibilities which could lead to increased consumptive use if the requested changes to the place of use were granted.

Furthermore, the requested increase in place of use to a combined acreage of 3,440 is not considered a minor adjustment to the Swanston rights. Permit 20038 allows 2,616 acres of irrigation within a gross of 3,257 acres. License 4505 allows irrigation of 1,558.8 acres, License 9076 allows 2,750 acres within 3,014 acres, License 9077 allows only 97 acres within 107.1 acres, and License 9078 allows 2,750 acres within 3,014 acres. Therefore, the Board cannot definitively find that this requested change to the place of use will not result in an increase in consumptive use.

Additionally, differing priority dates of the rights and the status of Permit 20038 as unlicensed requires a more complex analysis of use data than available under the Minor Change Request process.

Accordingly, the consolidation of the place of use of the subject permits and licenses is more appropriately addressed through the change provisions contained in Water Code section 1701 et seq. This would allow for more thorough analysis of the complex issues presented.

9. The request for the addition and update of the point of diversion described in Section 2 above will help facilitate the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation's Yolo Bypass Salmonid Habitat Restoration & Fish Passage project. DWR, as lead agency certified an Initial Study and Mitigated Negative Declaration (IS/MND), developed a Mitigation Monitoring and Reporting Program (MMRP), and filed a Notice of Determination for the Project on November 29, 2023 (SCH #2023090717), in compliance with the California Environmental Quality Act (CEQA). The Project has been developed to improve fish passage and increase floodplain fisheries rearing habitat in the Yolo Bypass and the lower Sacramento River basin.

As responsible agency under CEQA, State Water Board staff reviewed and considered the environmental effects described in DWR's IS/MND while developing this minor change order and agrees with the findings. Partial approval of this minor change request is conditioned on continued compliance with all water quality-related mitigation measures identified in DWR's IS/MND and all water quality-related monitoring and reporting requirements contained in DWR's MMRP. Accordingly, the Division will file a Notice of Determination with the State Clearinghouse within five days of issuance of this minor change order. (Cal. Code Regs., title 14, § 15075.)

10. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed change on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].) There is no evidence that the addition and updating of the points of diversion described above will have any adverse impacts on public trust resources.
11. Pursuant to Resolution No. 2012-0029, the State Water Board has delegated authority to the Deputy Director for Water Rights to issue change orders under specific circumstances. (Resolution No. 2012-0029, section 4.2.9.) Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated April 20, 2023.

THEREFORE, THE REQUESTS TO MAKE MINOR CHANGES TO POINTS OF DIVERSION ON PERMIT 20038 AND LICENSES 4505, 9076, 9078 ARE APPROVED AND THE RIGHTS ARE AMENDED AS FOLLOWS:

Current Water Right Conditions for License 4505:

Points of Diversion:

- 1) By California Coordinate System of 1983, Zone 2, North 1,988,006 feet, and East 6,673,448 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, Township 9 North, Range 3 East, MDB&M.
- 2) Moveable POD along the Tule Canal: By California Coordinate System of 1983, Zone 2, North 1,976,487 feet, and East 6,679,858 feet, being within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, to North 1,987,988 feet, and East 6,673,458 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, both within Township 9 North, Range 3 East, MDB&M.
- 3) By California Coordinate System of 1983, Zone 2, North 1,972,887 feet, and East 6,680,658 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

Purposes of use and Places of Use:

Irrigation use within 1558.8 acres within projected Sections 14, 23, 24, 25, 26, 35 and 36, Township 9 North, Range 3 East, MDB&M.

New Water Right Conditions for License 4505:

Updated Point of Diversion:

- 3) By California Coordinate System of 1983, Zone 2, located North 1,973,071 feet and East 6,680,649 feet, being within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

No changes to other Points of Diversion.

Purposes of use and Places of Use:

No changes.

Current Water Right Conditions for License 9076:

Points of Diversion:

- 1) By California Coordinate System of 1983, Zone 2, North 1,976,487 feet, and East 6,679,858 feet, being within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.
- 2) Moveable POD along the Tule Canal: By California Coordinate System of 1983, Zone 2, North 1,976,487 feet, and East 6,679,858 feet, being within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, to North 1,987,988 feet, and East 6,673,458 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, both within Township 9 North, Range 3 East, MDB&M.
- 3) By California Coordinate System of 1983, Zone 2, North 1,987,998 feet, and East 6,673,464 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, Township 9 North, Range 3 East, MDB&M.
- 4) By California Coordinate System of 1983, Zone 2, North 1,973,444 feet, and East 6,680,625 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

Point of Re-Diversion:

- 5) By California Coordinate System of 1983, Zone 2, North 1,970,687 feet, and East 6,673,024 feet, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 2, Township 8 North, Range 3 East, MDB&M.

Purposes of use and Places of Use:

Irrigation use on 2,750 acres net within a gross area of 3,014 acres within projected Sections 14, 23, 24, 25, 26, 34, 35 and 36, Township 9 North, Range 3 East, MDB&M

and projected Sections 30 and 31, Township 9 North, Range 4 East, MDB&M.

New Water Right Conditions for License 9076:

Add a Point of Diversion:

- 6) By California Coordinate System of 1983, Zone 2, located North 1,973,071 feet and East 6,680,649 feet, being within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

No changes to other Points of Diversion.

Purposes of use and Places of Use:

No changes.

License 9077, Application 19087
NO CHANGES

Current Water Right Conditions for License 9078:

Point of Diversion:

- 1) By California Coordinate System of 1983, Zone 2, North 1,972,887 feet, and East 6,680,758 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

Points of Diversion and Re-Diversion:

- 2) By California Coordinate System of 1983, Zone 2, North 1,976,487 feet, and East 6,679,858 feet, being within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.
- 3) Moveable POD and PORD along the Tule Canal: By California Coordinate System of 1983, Zone 2, North 1,976,487 feet, and East 6,679,858 feet, being within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, to North 1,988,372 feet, and East 6,673,591 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, both within Township 9 North, Range 3 East, MDB&M.
- 4) By California Coordinate System of 1983, Zone 2, North 1,988,109 feet, and East 6,673,611 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, Township 9 North, Range 3 East, MDB&M.
- 5) By California Coordinate System of 1983, Zone 2, North 1,970,699 feet, and East 6,673,017 feet, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 2, Township 9 North, Range 3 East, MDB&M.

Purposes of use and Places of Use:

Irrigation use on 2,750 acres net within a gross area of 3,014 acres within projected Sections 14, 23, 24, 25, 26, 34, 35 and 36, Township 9 North, Range 3 East, MDB&M and projected Sections 30 and 31, Township 9 North, Range 4 East, MDB&M.

New Water Right Conditions for License 9078:

Add a Point of Diversion:

- 6) By California Coordinate System of 1983, Zone 2, located North 1,973,071 feet and East 6,680,649 feet, being within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

No changes to other Points of Diversion.

Purposes of use and Places of Use:

No changes.

Current Water Right Conditions for Permit 20038:

Point of Diversion and Re-diversion:

- 1) By California Coordinate System of 1983, Zone 2, North 1,976,443 feet, and East 6,679,966 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 25, Township 9 North, Range 3 East, MDB&M.
- 2) Moveable POD and PORD along the Tule Canal: By California Coordinate System of 1983, Zone 2, North 1,976,387 feet, and East 6,679,958 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 25, to North 1,988,088 feet, and East 6,673,658 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, both within Township 9 North, Range 3 East, MDB&M.
- 3) By California Coordinate System of 1983, Zone 2, North 1,988,088 feet, and East 6,673,658 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 14, Township 9 North, Range 3 East, MDB&M.
- 4) By California Coordinate System of 1983, Zone 2, North 1,970,688 feet, and East 6,673,058 feet, being within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 2, Township 8 North, Range 3 East, MDB&M.
- 5) By California Coordinate System of 1983, Zone 2, North 1,971,438 feet, and East 6,667,308 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 34, Township 9 North, Range 3 East, MDB&M.
- 6) By California Coordinate System of 1983, Zone 2, North 1,972,887 feet, and East 6,680,658 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

Purposes of use and Places of Use:

Irrigation use on 2,616 acres net within a gross area of 3,257 acres within projected Section 3, Township 8 North, Range 3 East, MDB&M, projected Sections 14, 23, 24, 25, 34, 35 and 36, Township 9 North, Range 3 East, MDB&M and projected Sections 30 and 31, Township 9 North, Range 4 East, MDB&M.

New Water Right Conditions for Permit 20038:

Updated Point of Diversion:

- 6) By California Coordinate System of 1983, Zone 2, located North 1,973,071 feet and East 6,680,649 feet, being within the NE¼ of SE¼ of projected Section 36, Township 9 North, Range 3 East, MDB&M.

No changes to other Points of Diversion.

Purposes of use and Places of Use: No changes.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
SAMUEL BOLAND-BRIEN, FOR

Erik Ekdahl, Deputy Director Division of Water Rights
Dated: December 20, 2023