



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
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Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger
Governor

JUN 25 2009

River Garden Farms Company
c/o Maja K. Haium
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Dear Ms. Haium:

APPLICATION 575 - ORDER APPROVING PETITION FOR TEMPORARY CHANGE TO
AUTHORIZE THE TRANSFER OF UP TO 3,500 ACRE-FEET OF WATER TO THE 2009
DROUGHT WATER BANK

Enclosed is a copy of the Order approving your petition for temporary urgency change under
Water Code section 1725, et. seq, to authorize the transfer of up to 3,500 acre-feet of water to
the 2009 Drought Water Bank. This temporary change is effective July 1, 2009 and expires on
October 31, 2009.

If you have any questions, please contact me at (916) 341-5428.

Sincerely,

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosures

cc: Enclosed Mailing List

BOARD OF SUPERVISORS

2009 JUN 26 1 P 1:45

**Interested Party Mailing List for
Application 575 Order Approving
Temporary Transfer of 3,500 Acre-
Feet of Water**

Department of Fish and Game
Bay-Delta Region
7329 Silverado Trail
Napa, CA 94558

River Garden Farms Company
c/o Marty Stripling
41758 Road 112
Knights Landing, CA 95645

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Madera County Board of
Supervisors
209 West Yosemite Avenue
Madera, CA 93637

Stanislaus County Board of
Supervisors
1010 10th Street
Modesto, CA 95354

Board of Supervisors
COUNTY OF ORANGE
10 Civic Center Plaza
Santa Ana, CA 92666

Fresno County Board of
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2281 Tulare
Hall of Records, Room 301
Fresno, CA 93721-2198

Board of Supervisors
COUNTY OF YOLO
625 Court Street, Room 204
Woodland, CA 95695

Kings County Board of
Supervisors
c/o Ms. Alene Taylor
1400 West Lacey Boulevard
Hanford, CA 93230

Mariposa County Board of
Supervisors
5100 Bullion Street
Mariposa, CA 95338

Board of Supervisors
COUNTY OF SOLANO
601 West Texas Street
Fairfield, CA 94533

Board of Supervisors
COUNTY OF SUTTER
463 Second
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Supervisors
70 West Hedding Street
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Department of Fish and Game
Resources Management and
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c/o Paul Forsberg
830 S Street
Sacramento, CA 95811

Regional Water Quality
Control Board
Central Valley Region –
Sacramento Office
11020 Sun Center Drive, #200
Sacramento, CA 95670

Kern County Board of
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1115 Truxton Avenue
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Tulare County Board of
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2800 West Burrel
Visalia, CA 93291

Board of Supervisors
COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

Board of Supervisors
COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Board of Supervisors
COUNTY OF LOS ANGELES
320 W. Temple
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine
Contra Costa, CA 95932

Board of Supervisors
COUNTY OF SAN BERNARDINO
175 West Fifth
San Bernardino, CA 92401

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
San Diego, CA 92101

Board of Supervisors
COUNTY OF SACRAMENTO
700 H Street
Sacramento, CA 95814

Board of Supervisors
COUNTY OF SAN MATEO
Hall of Justice & Records
401 Marshall Street
Redwood City, CA 94063

Board of Supervisors
COUNTY OF SANTA BARBARA
105 East Anapamu
Santa Barbara, CA 93101

Board of Supervisors
COUNTY OF SAN LUIS OBISPO
Courthouse Annex, Room 202
San Luis Obispo, CA 93408

Board of Supervisors
COUNTY OF VENTURA
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Ventura, CA 93009

Teresa Geimer
Drought Water Bank Coordinator
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Board of Supervisors
COUNTY OF SANTA CRUZ
701 Ocean
Santa Cruz, CA 95060

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0038-DWR

IN THE MATTER OF LICENSE 1718 (APPLICATION 575)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 3,500 ACRE-FEET OF WATER
FROM RIVER GARDEN FARMS COMPANY
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 10, 2009,

River Garden Farms Company
c/o Maja K. Haium
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. River Garden Farms Company's (RGF) petition requests the transfer of up to 3,500 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. RGF proposes to transfer up to 3,500 af of water under License 1718 (Application 575) to DWR's 2009 DWB. To facilitate this transfer, RGF will pump additional groundwater and reduce its direct diversion (referred to as groundwater substitution) from the Sacramento River by 19 cfs between July and October. The petition states that the groundwater wells proposed for additional pumping meet criteria established by DWR for these types of transfers. At times when pumping capacity is available in the Delta, the additional 19 cfs of flow in the Sacramento River would be available for diversion/rediversion at the Banks Pumping Plant or the Jones Pumping Plant. Water would be used within the SWP and/or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. The petitioner submitted a copy of the *Groundwater Management Plan Reclamation District No. 787* (Plan) and correspondence with Yolo County regarding the groundwater substitution plan for this transfer. RGF is the major landowner in Reclamation District 787. The Plan

identifies an operational yield for the local groundwater basin and provides for groundwater substitution transfers. Based on this information, the petition states that the groundwater substitution associated with this transfer is consistent with the Plan. Additionally, the petitioner submitted a letter from the County of Yolo indicating that the proposed groundwater substitution will not cause adverse impact to the affected groundwater basin. This information is posted online with the public notice for this petition at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and the United States Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

2.0 BACKGROUND

2.1 Substance of RGF's License. License 1718 (Application 575) authorizes the direct diversion of up to 32 cfs of water from the Sacramento River between March 1 and October 31 of each year for irrigation purposes. Two authorized points of diversion for License 1718 are located near Knights Landing on the Sacramento River and the authorized place of use consists of 3,508.2 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the Banks Pumping Plant and the Jones Pumping Plant as points of diversion under License 1718. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 1718. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 1718.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the longer term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated March 26, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on March 27, 2009. No comments were received.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The additional groundwater pumping is consistent with the approved groundwater management plan for the affected area. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of diversion to License 1718. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires groundwater use that is part of a groundwater substitution transfer to be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 1718 (Application 575) for the transfer of up to 3,500 acre-feet of water is approved.

All existing terms and conditions of License 1718 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period from July 1, 2009 through October 31, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 1718 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping.
4. The place of use under License 1718 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The Banks Pumping Plant and the Jones Pumping Plant are temporarily added as authorized points of diversion under License 1718. The maximum additional combined rate of diversion (measured as a three-day average) at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this change is 19 cubic feet per second.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 1718.
7. Within 60 days of the completion of the transfer, but no later than December 30, 2009, RGF shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 1718 during the

- transfer period;
- d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - e. The daily average pumping rate of groundwater pumped by RGF in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of RGF prior to the proposed transfer.

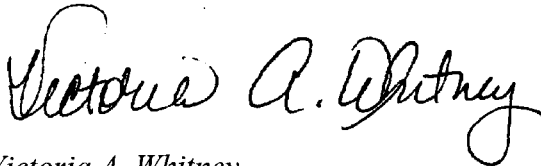
RGF shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of RGF, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 25 2009**



State Water Resources Control Board



Division of Water Rights

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BOARD OF SUPERVISORS

2009 JUL -21 P 2:14

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

JUL 01 2009

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

Dear Mr. Van Camp:

APPLICATION 14804 - ORDER APPROVING PETITION FOR TEMPORARY CHANGE TO
AUTHORIZE THE TRANSFER OF UP TO 10,000 ACRE-FEET OF WATER TO THE 2009
DROUGHT WATER BANK

Enclosed is a copy of the Order approving your petition for temporary urgency change under
Water Code section 1725, et. seq, to authorize the transfer of up to 3,500 acre-feet of water to
the 2009 Drought Water Bank. This temporary change is effective July 1, 2009 and expires on
September 30, 2009.

If you have any questions, please contact me at (916) 341-5428.

Sincerely,

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosures

cc: Enclosed Mailing List

**Interested Party Mailing List for
Application 14804 Order Approving
Temporary Transfer of 10,000 Acre-Feet
of Water**

Department of Fish and Game
Bay-Delta Region
7329 Silverado Trail
Napa, CA 94558

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine Street
Martinez, CA 94553

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Madera County Board of
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209 West Yosemite Avenue
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Stanislaus County Board of
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Mariposa, CA 95338

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Fairfield, CA 94533

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463 Second
Yuba City, CA 95991

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Resources Management and
Policy Division
c/o Paul Forsberg
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Central Valley Region –
Sacramento Office
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COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

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COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Board of Supervisors
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320 W. Temple
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

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700 H Street
Sacramento, CA 95814

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COUNTY OF SAN BERNARDINO
175 West Fifth
San Bernardino, CA 92401

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
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Courthouse Annex, Room 202
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105 East Anapamu
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COUNTY OF SANTA CRUZ
701 Ocean
Santa Cruz, CA 95060

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Teresa Geimer
Drought Water Bank Coordinator
Department of Water Resources
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California Sportfishing Protection Alliance
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Bob Baiocchi
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California Sportfishing Protection Alliance
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San Joaquin County Flood Control
And Water Conservation District
1810 East Hazelton Avenue
Stockton, Ca 95205

2009 JUL -2 P 2 14

DIVISION OF WATER RIGHTS
ORDER WR 2009-0040-DWR

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH SUTTER WATER DISTRICT
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 14, 2009,

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. South Sutter Water District's (SSWD) petition requests the transfer of up to 10,000 acre-feet (af) of water to the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB) for use within the State Water Project (SWP) and Central Valley Project (CVP) service areas. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SSWD proposes to transfer up to 10,000 af of water under License 11118 (Application 14804) to the DWR 2009 DWB. To facilitate the transfer, SSWD proposes to release an additional 10,000 af of water currently stored in Camp Far West Reservoir and Camp Far West Diversion Dam into the Bear River, tributary to the Feather River, thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta. The water would be available for rediversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant; CVP's Jones Pumping Plant and the Contra Costa Canal.

The petition states that in the absence of this transfer, the subject 10,000 af of water would either remain in storage within Camp Far West Reservoir or be released for use within SSWD.

1.2 Groundwater Substitution. SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. SSWD anticipates that as a result of the proposed transfer, up to 10,000 additional af of groundwater pumping could occur. In 2008, SSWD transferred 10,000 af of water to several SWP contractors (see State Water Board Corrected Order 2008-0034-DWR). SSWD submitted information regarding the operations of Camp Far West Reservoir and its main canal deliveries to SSWD for the 2008 transfer. This information is included with the subject petition, posted online with the public notice for this petition at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and the United States Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of SSWD's License. License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per annum from the Bear River between October 1 and June 30. License 11118 also authorizes the direct diversion from the Bear River of up to 330 cubic feet per second (cfs) between May 1 and September 1 of each year. The point of diversion to storage for License 11118 is located at the Camp Far West Dam. Additionally, the Camp Far West Diversion Dam (located about one mile downstream of the Camp Far West Dam) is an authorized point of direct diversion and rediversion to storage.

The water is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net of 59,000 acres within a gross area of 65,796 acres within SSWD, a net of 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside its boundaries served under contract), and a power generation plant located on SSWD's conveyance canal.

In order to protect fish resources downstream of the Camp Far West Diversion Dam, SSWD is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 and March 31 of the succeeding year. Additionally, SSWD (with other parties within the Bear River watershed) has entered into an agreement (referred to as the Bear River Agreement) with DWR to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This agreement requires SSWD to make up to 4,400 af of water available to DWR during dry and critically dry water years. SSWD's petition states that the water intended for transfer is in addition to the water released to DWR pursuant to the Bear River Agreement. Additional information regarding the Bear River Agreement is on file with the State Water Board under Application 14804.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of rediversion under License 11118. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 11118. Municipal and industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 11118.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity,

however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, redirection of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 1, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 4, 2009. The California Water Impact Network (CWIN) and the California Sportfishing Protection Alliance (CSPA) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on reservoir releases may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. Information regarding the operations of Camp Far West Reservoir was included with the petition. This information indicates that the end-of season storage in Camp Far West Reservoir resulting

from SSWD's 2008 transfer was the same as it would have been absent the transfer. Accordingly, temperature impacts resulting from the proposed temporary change should be minimal. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 11118. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The ongoing operations of SSWD cause adverse impacts to instream resources. An average of 312,000 af of water each year is imported to the Bear River from the South Yuba watershed. The South Yuba River has been proposed for "303(d) listing" by the Central Valley Regional Water Quality Control Board. Temperature monitoring performed for the Upper Yuba River has shown that water temperatures in the South Yuba River routinely exceed cold water standards from just downstream of Lake Spaulding to Englebright Reservoir. SSWD claims that there will be no local impact to local groundwater elevations resulting from the sale of 10,000 af of water from storage on the lower Bear River. Thus, the State Water Board should consider finding the importation of water from the South Yuba watershed to be wasteful and an unreasonable use of water.
- f. Water in Camp Far West Reservoir is in part supplied by a Nevada Irrigation District (NID) diversion located on Coon Creek. Anadromous salmonids, including steelhead, have been "documented in Coon Creek", however no instream flow is required on Coon Creek downstream of NID's "Camp Far West diversion". The State Water Board should consider setting instream flow requirements to protect these valuable public trust fisheries.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code

section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.

- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. Water Code section 1727 subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727 subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not modify or amend SSWD's license, or place conditions upon this temporary change to mitigate alleged affects of SSWD's ongoing operations.
- f. See response given for item e., above.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of rediversion to License 11118. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 11118 (Application 14804) of the South Sutter Water District (SSWD) for the transfer of up to 10,000 acre-feet of water is approved.

All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall release water from Camp Far West Reservoir at a rate equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping.
4. The place of use under License 11118 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of rediversion under License 11118.

Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 11118.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, SSWD shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- General locations where the transferred water was used;
 - The daily average rate water is made available for transfer pursuant to this Order;
 - The daily average pumping rate of groundwater pumped by SSWD in excess of that which would have been pumped in the absence of this transfer; and
 - Groundwater elevations within the vicinity of SSWD prior to the proposed transfer.

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

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: **JUN 30 2009**



State Water Resources Control Board



Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ waterboards.ca.gov/waterrights

BOARD OF SUPERVISORS

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Linda S. Adams

Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

JUL 01 2009

Reclamation District No. 108
c/o Lewis Bair, General Manager
975 Wilson Bend Road
P.O. Box 50
Grimes, CA 95950-0050

Dear Mr. Bair:

APPLICATION 1589 - ORDER APPROVING PETITION FOR TEMPORARY CHANGE TO
AUTHORIZE THE TRANSFER OF UP TO 2,805 ACRE-FEET OF WATER TO THE 2009
DROUGHT WATER BANK

Enclosed is a copy of the Order approving your petition for temporary change under
Water Code section 1725, et. seq, to authorize the transfer of up to 2,805 acre-feet of water to
the 2009 Drought Water Bank. This temporary change is effective July 1, 2009 and expires on
September 30, 2009.

If you have any questions, please contact me at (916) 341-5428.

Sincerely,

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosure

cc: Enclosed Mailing List

**Interested Party Mailing List for
Application 1589 Order Approving
Temporary Transfer of 2,805 Acre-Feet
of Water**

Fresno County Board of
Supervisors
2281 Tulare
Hall of Records, Room 301
Fresno, CA 93721-2198

Department of Fish and Game
Resources Management and
Policy Division
c/o Paul Forsberg
830 S Street
Sacramento, CA 95811

Department of Fish and Game
Bay-Delta Region
7329 Silverado Trail
Napa, CA 94558

Board of Supervisors
COUNTY OF YOLO
625 Court Street, Room 204
Woodland, CA 95695

Regional Water Quality
Control Board
Central Valley Region –
Sacramento Office
11020 Sun Center Drive, #200
Sacramento, CA 95670

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine Street
Martinez, CA 94553

Kings County Board of
Supervisors
c/o Ms. Alene Taylor
1400 West Lacey Boulevard
Hanford, CA 93230

Kern County Board of
Supervisors
1115 Truxton Avenue
Bakersfield, CA 93301

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Mariposa County Board of
Supervisors
5100 Bullion Street
Mariposa, CA 95338

San Joaquin County Board of
Supervisors
222 East Weber Avenue
Stockton, CA 95202

Madera County Board of
Supervisors
209 West Yosemite Avenue
Madera, CA 93637

Board of Supervisors
COUNTY OF SOLANO
601 West Texas Street
Fairfield, CA 94533

Tulare County Board of
Supervisors
2800 West Burrel
Visalia, CA 93291

Stanislaus County Board of
Supervisors
1010 10th Street
Modesto, CA 95354

Board of Supervisors
COUNTY OF SUTTER
463 Second
Yuba City, CA 95991

Board of Supervisors
COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

Board of Supervisors
COUNTY OF ORANGE
10 Civic Center Plaza
Santa Ana, CA 92666

Santa Clara County Board of
Supervisors
70 West Hedding Street
10th Floor
San Jose, CA 95110

Board of Supervisors
COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Board of Supervisors
COUNTY OF LOS ANGELES
320 W. Temple
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

Board of Supervisors
COUNTY OF SACRAMENTO
700 H Street
Sacramento, CA 95814

Board of Supervisors
COUNTY OF SAN BERNARDINO
175 West Fifth
San Bernardino, CA 92401

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
San Diego, CA 92101

Board of Supervisors
COUNTY OF SAN LUIS OBISPO
Courthouse Annex, Room 202
San Luis Obispo, CA 93408

Board of Supervisors
COUNTY OF SAN MATEO
Hall of Justice & Records
401 Marshall Street
Redwood City, CA 94063

Board of Supervisors
COUNTY OF SANTA BARBARA
105 East Anapamu
Santa Barbara, CA 93101

Board of Supervisors
COUNTY OF SANTA CRUZ
701 Ocean
Santa Cruz, CA 95060

Board of Supervisors
COUNTY OF VENTURA
800 S. Victoria Ave.
Ventura, CA 93009

Teresa Geimer
Drought Water Bank Coordinator
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DIVISION OF WATER RIGHTS

ORDER WR 2009-0042-DWR

**IN THE MATTER OF LICENSE 3067 (APPLICATION 1589)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 2,805 ACRE-FEET OF WATER
FROM RECLAMATION DISTRICT NO. 108
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 10, 2009,

Reclamation District No. 108
975 Wilson Bend Road
P.O. Box 50
Grimes, CA 95950-0050

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Reclamation District No. 108's (RD 108) petition requests the transfer of up to 4,331¹ acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. RD 108 proposes to transfer up to 2,805 af of water under License 3067 (Application 1589) to the DWB. Of the 2,805 af transfer total, 1,831 af will be made available by groundwater substitution and 974 af will be made available by crop idling. Groundwater substitution involves increased groundwater pumping to make a like amount of surface water available. Crop idling/shifting involves a reduction in consumptive use of surface water to make water available based on the evapotranspiration of applied water (ETAW) pattern for the idled crops. RD 108 plans to idle 161 acres previously planted with alfalfa. The combined groundwater substitution and crop idling will result in additional flow in the Sacramento River. At times when pumping capacity is available in the Delta, the additional flow in the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa

¹ The petition submitted by RD 108 requests the transfer of up to 4,331 af of water. After submitting the petition, it was determined that significantly less water would be available for the crop idling portion of this project. RD 108 reduced its request for crop idling water from 2,500 af to 974 af. The groundwater substitution portion of the transfer (1,831 af) remains unchanged.

Canal. The DWB will administer the delivery of water within the SWP or CVP service areas. The petition requests that the change be effective for up to one year from the date of approval.

In the absence of the proposed change, RD 108 would have planted crops and pumped groundwater similar to its 2008 patterns and diverted surface water pursuant to its water rights.

1.2 Additional Information. RD 108's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping and crop data, groundwater well characteristics, and associated maps. The DWB has submitted two agreements, both titled *Agreement Between the Department of Water Resources of the State of California and Reclamation District 108 for Short-Term Purchase of Water for the 2009 Drought Water Bank*, one for the groundwater substitution portion of the transfer and one for the crop idling portion of the transfer. The groundwater substitution agreement includes monitoring and mitigation measures to address potential impacts of the proposed groundwater substitution program. The crop idling agreement includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, and monitoring and verification procedures for the proposed crop shifting/idling program. This information is posted with the public notice for this petition on the Division of Water Rights' website at:

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

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at:

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

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The groundwater mitigation and monitoring plans for the subject transfer are contained in the groundwater substitution conveyance agreement described in Section 1.2 of this Order, above.

DWR and USBR have also reviewed all the proposals for DWB transfers, including the subject transfer, which include crop idling. Technical staff from DWR and USBR have reviewed each crop idling proposal to determine consistency with appropriate guidelines for calculating ETAW. Monitoring and verification procedures for the crop shifting/idling associated with the subject transfer is contained in the crop idling conveyance agreement described in Section 1.2 of this Order, above. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of RD 108's License. License 3067 (Application 1589) authorizes the direct diversion of up to 255.25 cfs of water per annum from the Sacramento River between May 1 and October 1 of each year for irrigation purposes. The authorized points of diversion for License 3067 are located at Wilkins Slough Plant, Steiner Bend North Plant, Steiner Bend South Plant, Boyers Bend Plant, Howells Landing Plant, Tyndall Mound Plant, and El Dorado Bend Plant, and the authorized place of use consists of 38,510 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 3067. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 3067. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 3067.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 3067. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution or crop idling may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions,

including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DWR and USBR have reviewed the proposed crop idling to determine consistency with appropriate guidelines for calculating ETAW. DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to “unreasonably damage and harm” anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.
- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves the idling of 161 acres previously planted with alfalfa. It is unclear how this idling would impact the "agricultural productivity of prime agricultural land".

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the State Water Board's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping and through crop idling. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In the absence of the proposed transfer, an additional 541 acres within RD 108's service area would be planted similar to its 2008 cropping patterns (alfalfa). The portion of the transfer total made available

though this idling is calculated using the appropriate ETAW for alfalfa.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of surface water made available through increased groundwater pumping and through crop idling. DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 1.2 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these plans.

In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. In the absence of the proposed transfer, an additional 541 acres within RD 108's service area would be planted similar to its 2008 cropping patterns (alfalfa). The portion of the transfer total made available though this idling is calculated using the appropriate ETAW for alfalfa. The crop idling conveyance agreement described in Section 1.2 of this Order includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, and monitoring and verification procedures for the proposed crop idling program. This Order requires compliance with these portions of the conveyance agreement.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 3067. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant

to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 3067 (Application 1589) of Reclamation District 108 (RD 108) for the transfer of up to 2,805 acre-feet (af) of water is approved.

All existing terms and conditions of License 3067 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Petitioner shall implement the crop idling, monitoring, mitigation, and verification provisions contained in the crop idling and groundwater substitution agreements, both titled *Agreement Between the Department of Water Resources of the State of California and Reclamation District 108 for Short-Term Purchase of Water for the 2009 Drought Water Bank*, as a condition of transferring water pursuant to this Order.
3. The portion of the transfer total to be made available by groundwater substitution is 1,831 af. For the groundwater substitution portion of the transfer, the petitioner shall reduce its diversion rate at the original points of diversion authorized under License 3067 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping.
4. The place of use under License 3067 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 3067.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 3067.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, RD 108 shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 3067 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - e. The daily average pumping rate of groundwater pumped by RD 108 in excess of that which would have been pumped in the absence of this transfer;
 - f. Groundwater elevations within the vicinity of RD 108 prior to the proposed transfer; and
 - g. A report of the crop idling within RD 108, including locations of affected fields, and frequency of field verification.

RD 108 shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of RD 108, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

James W. Kussel
for *Victoria A. Whitney*
Deputy Director for Water Rights

Dated: **JUN 30 2009**



State Water Resources Control Board



Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

BOARD OF SUPERVISORS

Arnold Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental Protection

2009 JUL -21 P 2:14

JUL 01 2009

Sacramento River Ranch, LLC
c/o Amy Steinfeld
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

Dear Ms. Steinfeld:

APPLICATION 4901 - ORDER APPROVING PETITION FOR TEMPORARY CHANGE TO
AUTHORIZE THE TRANSFER OF UP TO 2,752.59 ACRE-FEET OF WATER TO THE 2009
DROUGHT WATER BANK

Enclosed is a copy of the Order approving your petition for temporary change under
Water Code section 1725, et. seq, to authorize the transfer of up to 2,752.59 acre-feet of water
to the 2009 Drought Water Bank. This temporary change is effective July 1, 2009 and expires
on September 30, 2009.

If you have any questions, please contact me at (916) 341-5428.

Sincerely,

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosure

cc: Enclosed Mailing List

**Interested Party Mailing List for
Application 4901 Order Approving
Temporary Transfer of 2,752.59 af of
Water**

Department of Fish and Game
Bay-Delta Region
7329 Silverado Trail
Napa, CA 94558

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine Street
Martinez, CA 94553

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Madera County Board of
Supervisors
209 West Yosemite Avenue
Madera, CA 93637

Stanislaus County Board of
Supervisors
1010 10th Street
Modesto, CA 95354

Board of Supervisors
COUNTY OF ORANGE
10 Civic Center Plaza
Santa Ana, CA 92666

Fresno County Board of
Supervisors
2281 Tulare
Hall of Records, Room 301
Fresno, CA 93721-2198

Board of Supervisors
COUNTY OF YOLO
625 Court Street, Room 204
Woodland, CA 95695

Kings County Board of
Supervisors
c/o Ms. Alene Taylor
1400 West Lacey Boulevard
Hanford, CA 93230

Mariposa County Board of
Supervisors
5100 Bullion Street
Mariposa, CA 95338

Board of Supervisors
COUNTY OF SOLANO
601 West Texas Street
Fairfield, CA 94533

Board of Supervisors
COUNTY OF SUTTER
463 Second
Yuba City, CA 95991

Santa Clara County Board of
Supervisors
70 West Hedding Street
10th Floor
San Jose, CA 95110

Department of Fish and Game
Resources Management and
Policy Division
c/o Paul Forsberg
830 S Street
Sacramento, CA 95811

Regional Water Quality
Control Board
Central Valley Region –
Sacramento Office
11020 Sun Center Drive, #200
Sacramento, CA 95670

Kern County Board of
Supervisors
1115 Truxton Avenue
Bakersfield, CA 93301

San Joaquin County Board of
Supervisors
222 East Weber Avenue
Stockton, CA 95202

Tulare County Board of
Supervisors
2800 West Burrel
Visalia, CA 93291

Board of Supervisors
COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

Board of Supervisors
COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Board of Supervisors
COUNTY OF LOS ANGELES
320 W. Temple
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

Board of Supervisors
COUNTY OF SACRAMENTO
700 H Street
Sacramento, CA 95814

Board of Supervisors
COUNTY OF SAN BERNARDINO
175 West Fifth
San Bernardino, CA 92401

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
San Diego, CA 92101

Board of Supervisors
COUNTY OF SAN LUIS OBISPO
Courthouse Annex, Room 202
San Luis Obispo, CA 93408

Board of Supervisors
COUNTY OF SAN MATEO
Hall of Justice & Records
401 Marshall Street
Redwood City, CA 94063

Board of Supervisors
COUNTY OF SANTA BARBARA
105 East Anapamu
Santa Barbara, CA 93101

Board of Supervisors
COUNTY OF SANTA CRUZ
701 Ocean
Santa Cruz, CA 95060

Board of Supervisors
COUNTY OF VENTURA
800 S. Victoria Ave.
Ventura, CA 93009

Teresa Geimer
Drought Water Bank Coordinator
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

California Sportfishing Protection Alliance
c/o Chris Shutes
1608 Francisco Street
Berkeley, CA 94703

California Sportfishing Protection Alliance
c/o Bill Jennings
3536 Rainer Avenue
Stockton, CA 95204

California Water Impact Network
P.O. Box 148
Quincy, CA 95971

Bob Baiocchi
Executive Director
California Salmon and Steelhead Association
P.O. Box 1790
Graeagle, CA 96103

California Sportfishing Protection Alliance
c/o Michael Jackson
P.O. Box 207
429 West Main Street
Quincy, CA 95971

San Joaquin County Flood Control
And Water Conservation District
1810 East Hazelton Avenue
Stockton, Ca 95205

DIVISION OF WATER RIGHTS

ORDER WR 2009-0046-DWR

**IN THE MATTER OF LICENSE 9995 (APPLICATION 4901)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 2,752.59 ACRE-FEET OF WATER
FROM SACRAMENTO RIVER RANCH, LLC AND SACRAMENTO RIVER RANCH II, LLC
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Sacramento River Ranch LLC and
Sacramento River Ranch II, LLC
c/o Amy Steinfeld
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. The Sacramento River Ranch, LLC and Sacramento River Ranch II, LLC (collectively referred to as SRR) petition requests the transfer of up to 2,752.59 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SRR proposes to transfer up to 2,752.59 af of water under License 9995 (Application 4901) to the DWB. Of the 2,752.59 af transfer total, 2,631 af of water will be made available by groundwater substitution and 121.59 af of water through crop idling. Groundwater substitution involves increased groundwater pumping to make a like amount of surface water available. Crop idling involves a reduction in consumptive use of surface water to make water available based on the evapotranspiration of applied water (ETAW) pattern for the idled crops. SRR plans to idle 120.4 acres previously planted with milo. The combined groundwater substitution and crop idling will result in additional flow in the Sacramento River. At times when pumping capacity is available in the Delta, the additional flow in the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. The DWB will administer the delivery of water within the SWP or CVP service areas. The petition requests that

the change be effective for up to one year from the date of approval.

In the absence of the proposed change, SRR would have planted crops and pumped groundwater similar to its 2008 patterns and diverted additional surface water pursuant to its water rights.

1.2 Additional Information. SRR's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping and crop data, groundwater well characteristics, and associated maps. The DWB has submitted two agreements, both titled *Agreement Between the Department of Water Resources of the State of California and Sacramento River Ranch, LLC for Short-Term Purchase of Water for the 2009 Drought Water Bank*, one for the groundwater substitution portion of the transfer and one for the crop idling portion of the transfer. The groundwater substitution agreement includes monitoring and mitigation measures to address potential impacts of the proposed groundwater substitution program. The crop idling agreement includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, and monitoring and verification procedures for the proposed crop idling program. This information is posted with the public notice for this petition on the Division of Water Rights' website at:

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

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at:

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

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The groundwater mitigation and monitoring plans for the subject transfer are contained in the groundwater substitution conveyance agreement described in Section 1.2 of this Order, above.

DWR and USBR have also reviewed all the proposals for DWB transfers, including the subject transfer, which include crop shifting or idling. Technical staff from DWR and USBR have reviewed each crop shifting or idling proposal and to determine consistency with appropriate guidelines. Monitoring and verification procedures for the crop idling associated with the subject transfer is contained in the crop idling conveyance agreement described in Section 1.2 of this Order, above. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of SRR's License. License 9995 (Application 4901) authorizes the direct diversion of up to 22 cfs of water per annum from the Sacramento River and Knights Landing Ridge Cut between April 1 and October 31 of each year for irrigation purposes. The authorized points of diversion for License 9995 are located on the Sacramento River between the limits as follows: (a) Keller Pumping Plant, (b) Hershey Pumping Plant, and (c) Knights Landing Outfall Gates. The authorized place of use consists of 1,893 acres net within a gross area of 4,331 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 9995. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 9995. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 9995.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry

conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 9995. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution or crop idling may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DWR and USBR have reviewed the proposed crop idling to determine consistency with appropriate guidelines. DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to “unreasonably damage and harm” anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.
- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for

those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.

- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the State Water Board's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping and through crop shifting/idling. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In the absence of the proposed transfer, an additional 120.4 acres within SRR's service area would be planted similar to its 2008 cropping patterns (milo). The portion of the transfer total made available through this idling is calculated using the appropriate ETAW for milo.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of surface water made available through increased groundwater pumping and through crop shifting/idling. DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 1.2 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these plans.

In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. In the absence of the proposed transfer, an additional 120.4 acres within SRR's service area would be planted similar to its 2008 cropping patterns (milo). The portion of the transfer total made available through this idling is calculated using the appropriate ETAW for milo. The crop idling/shifting conveyance agreement described in Section 1.2 of this Order includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, and monitoring and verification procedures for the proposed crop shifting/idling program. This Order requires compliance with these portions of the conveyance agreement.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 9995. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various

plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 9995 (Application 4901) of Sacramento River Ranch, LLC and Sacramento River Ranch II, LLC's (collectively referred to as SRR) for the transfer of up to 2,752.59 acre-feet (af) of water is approved.

All existing terms and conditions of License 9995 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Petitioner shall implement the crop idling, monitoring, mitigation, and verification provisions contained in the crop idling and groundwater substitution agreements, both titled *Agreement Between the Department of Water Resources of the State of California and Sacramento River Ranch for Short-Term Purchase of Water for the 2009 Drought Water Bank*, as a condition of transferring water pursuant to this Order.
3. The portion of the transfer total to be made available by groundwater substitution is 2,631 af. For the groundwater substitution portion of the transfer, the petitioner shall reduce its diversion rate at the original points of diversion authorized under License 9995 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 22 cubic feet per second.
4. The place of use under License 9995 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 9995.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 9995.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, SRR shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 9995 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - e. The daily average pumping rate of groundwater pumped by SRR in excess of that which would have been pumped in the absence of this transfer;
 - f. Groundwater elevations within the vicinity of SRR prior to the proposed transfer; and
 - g. A report of the crop idling within SRR, including locations of affected fields, and frequency of field verification.

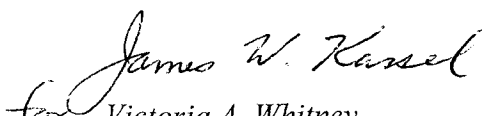
SRR shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of SRR, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**



State Water Resources Control Board



Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814-5800
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

BOARD OF SUPERVISORS

Arnold Schwarzenegger
Governor

2009 JUL -2 1 P 2:14

Linda S. Adams
Secretary for
Environmental Protection

JUL 01 2009

Reclamation District No. 1004, et al
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

Dear Mr. Cordova:

APPLICATIONS 27, ET AL - ORDERS APPROVING PETITIONS FOR TEMPORARY
CHANGE TO AUTHORIZE THE TRANSFER OF WATER TO THE 2009 DROUGHT WATER
BANK

Enclosed are copies of the Orders approving your petitions for temporary change under
Water Code section 1725, et. seq, to authorize the transfer of water to the 2009 Drought Water
Bank. This temporary change is effective July 1, 2009 and expires on September 30, 2009.

If you have any questions, please contact me at (916) 341-5428.

Sincerely,

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosures

cc: Enclosed Mailing List

**Interested Party Mailing List for
Applications 27, et al Orders Approving
Temporary Transfers of Water to the
2009 Drought Bank**

Fresno County Board of
Supervisors
2281 Tulare
Hall of Records, Room 301
Fresno, CA 93721-2198

Department of Fish and Game
Resources Management and
Policy Division
c/o Paul Forsberg
830 S Street
Sacramento, CA 95811

Department of Fish and Game
Bay-Delta Region
7329 Silverado Trail
Napa, CA 94558

Board of Supervisors
COUNTY OF YOLO
625 Court Street, Room 204
Woodland, CA 95695

Regional Water Quality
Control Board
Central Valley Region –
Sacramento Office
11020 Sun Center Drive, #200
Sacramento, CA 95670

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine Street
Martinez, CA 94553

Kings County Board of
Supervisors
c/o Ms. Alene Taylor
1400 West Lacey Boulevard
Hanford, CA 93230

Kern County Board of
Supervisors
1115 Truxton Avenue
Bakersfield, CA 93301

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Mariposa County Board of
Supervisors
5100 Bullion Street
Mariposa, CA 95338

San Joaquin County Board of
Supervisors
222 East Weber Avenue
Stockton, CA 95202

Madera County Board of
Supervisors
209 West Yosemite Avenue
Madera, CA 93637

Board of Supervisors
COUNTY OF SOLANO
601 West Texas Street
Fairfield, CA 94533

Tulare County Board of
Supervisors
2800 West Burrel
Visalia, CA 93291

Stanislaus County Board of
Supervisors
1010 10th Street
Modesto, CA 95354

Board of Supervisors
COUNTY OF SUTTER
463 Second
Yuba City, CA 95991

Board of Supervisors
COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

Board of Supervisors
COUNTY OF ORANGE
10 Civic Center Plaza
Santa Ana, CA 92666

Santa Clara County Board of
Supervisors
70 West Hedding Street
10th Floor
San Jose, CA 95110

Board of Supervisors
COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Board of Supervisors
COUNTY OF LOS ANGELES
320 W. Temple
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

Board of Supervisors
COUNTY OF SACRAMENTO
700 H Street
Sacramento, CA 95814

Board of Supervisors
COUNTY OF SAN BERNARDINO
175 West Fifth
San Bernardino, CA 92401

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
San Diego, CA 92101

Board of Supervisors
COUNTY OF SAN LUIS OBISPO
Courthouse Annex, Room 202
San Luis Obispo, CA 93408

Board of Supervisors
COUNTY OF SAN MATEO
Hall of Justice & Records
401 Marshall Street
Redwood City, CA 94063

Board of Supervisors
COUNTY OF SANTA BARBARA
105 East Anapamu
Santa Barbara, CA 93101

Board of Supervisors
COUNTY OF SANTA CRUZ
701 Ocean
Santa Cruz, CA 95060

Board of Supervisors
COUNTY OF VENTURA
800 S. Victoria Ave.
Ventura, CA 93009

Teresa Geimer
Drought Water Bank Coordinator
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

California Sportfishing Protection Alliance
c/o Chris Shutes
1608 Francisco Street
Berkeley, CA 94703

California Sportfishing Protection Alliance
c/o Bill Jennings
3536 Rainer Avenue
Stockton, CA 95204

California Water Impact Network
P.O. Box 148
Quincy, CA 95971

Bob Baiocchi
Executive Director
California Salmon and Steelhead Association
P.O. Box 1790
Graeagle, CA 96103

California Sportfishing Protection Alliance
c/o Michael Jackson
P.O. Box 207
429 West Main Street
Quincy, CA 95971

San Joaquin County Flood Control
And Water Conservation District
1810 East Hazelton Avenue
Stockton, Ca 95205

DIVISION OF WATER RIGHTS
ORDER WR 2009-0045-DWR

**IN THE MATTER OF LICENSE 3165 (APPLICATION 27)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 7,220 ACRE-FEET OF WATER
FROM RECLAMATION DISTRICT NO. 1004
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Reclamation District No. 1004
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Reclamation District No. 1004's (RD 1004) petition requests the transfer of up to 7,220 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. RD 1004 proposes to transfer up to 7,220 af of water under License 3165 (Application 27) to DWR's 2009 DWB through the CVP's and SWP's Pumping Plants. To facilitate this transfer, RD 1004 will pump additional groundwater and reduce its direct diversion from the Sacramento River by 130 cubic feet per second (cfs) if all wells proposed to participate in the DWB are operating simultaneously. At times when pumping capacity is available in the Delta, the additional 130 cfs in the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. RD 1004's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation

(USBR) for use in the DWB will be used for the proposed temporary transfer. RD 1004 is developing a groundwater management plan, which will include the wells and the overlying lands within the boundaries of RD 1004. RD 1004 submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at:

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

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at:

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

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of RD 1004's License. License 3165 (Application 27) authorizes the direct diversion of up to 166 cfs of water per annum from the Sacramento River between April 1 and October 15 of each year for irrigation purposes. The authorized points of diversion for License 3165 are located on the Sacramento River near Butte Slough Road. The authorized place of use consists of 22,838 acres, with the maximum area irrigated in any one year not to exceed 7,000 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 3165. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 3165. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 3165.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 3165. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.

- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to "unreasonably damage and harm" anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.

- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the State Water Board's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition

include the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 3165. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code

section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 3165 (Application 27) of the Reclamation District No. 1004 (RD 1004) for the transfer of up to 7,220 acre-feet of water is approved.

All existing terms and conditions of License 3165 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 3165 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 166 cubic feet per second.
4. The place of use under License 3165 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 3165.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 3165.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, RD 1004 shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 3165 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - e. The daily average pumping rate of groundwater pumped by RD 1004 in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of RD 1004 prior to the proposed transfer.

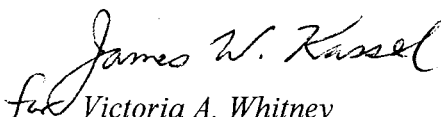
RD 1004 shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of RD 1004, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**

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

BOARD OF SUPERVISORS
2009 JUL -2 P 2 15

DIVISION OF WATER RIGHTS
ORDER WR 2009-0047-DWR

**IN THE MATTER OF LICENSES 6389A, 6389C, 11001, 7064A, AND 7064B
(APPLICATIONS 7641A, 7641C, 15606, 15856A, 15856B)
PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 7,300 ACRE-FEET OF WATER
FROM PLEASANT GROVE-VERONA MUTUAL WATER COMPANY
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Pleasant Grove-Verona Mutual Water Company
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) five Petitions for Temporary Change under Water Code section 1725, et seq. MBK Engineers filed the petitions on behalf of Pleasant Grove-Verona Mutual Water Company (PGV) which consists of five shareholders: Nicoli Nicholas (Nicholas), E.D. Willey, et al (Willey), Maria John Nicholas Kelly Ranch, LLC (Kelly Ranch LLC), Scheidel & Osterli, and River Ranch Partnership. The petitions request a combined total of up to 7,300¹ acre-feet (af) of water to be transferred for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. PGV proposes to transfer up to a total of 7,300 af of water under Licenses 6389A, 6389C, 11001, 7064A, and 7064B (Applications 7641A, 7641C, 15606, 15856A, and 15856B) to the DWB. The maximum quantity of water each Licensee intends to transfer is given in Table 1, located on page 2 of this Order. The sum of these amounts is higher than the combined transfer total to allow for flexibility amongst the Licensees in providing the 7,300 af transfer total. To facilitate this

¹ The petitions submitted by PGV request that water be made available through both groundwater substitution and crop shifting/idling. After submitting the petition, the crop idling portion of this transfer was withdrawn. The transfer total remains 7,300 af.

transfer, the Licensees will pump additional groundwater and reduce their direct diversion from the Sacramento River and the Natomas Cross Canal. Water would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

Table 1

Petitioner	Application No.	License No.	Transfer Amount (af)	Transfer Rate (cfs)	Transfer Type
Willey	7641A	6389A	2,445	17.8	Groundwater substitution
River Ranch Partnership	7641C	6389C	1,022	7.7	Groundwater substitution
Scheidel & Osterli	15606	11001	2,653	14.54	Groundwater substitution
Nicholas	15856A	7064A	2,148	11.77	Groundwater substitution
Kelly Ranch LLC	15856B	7064B	2,148	11.77	Groundwater substitution

1.2 Groundwater Substitution. PGV's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation (USBR) for use in the DWB will be used for the proposed temporary transfer. PGV is not a public entity; and therefore, is not authorized to prepare a groundwater management plan. PGV, on behalf of its shareholders, is participating in the development of a groundwater management plan being prepared by Sutter County, which will include the wells and the overlying lands within the boundaries of PGV. PGV submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace

transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts.”

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of PGV’s Licenses. License 6389A (Application 7641A) authorizes the direct diversion of up to 26.4 cfs of water from the Sacramento River between April 1 and September 30 of each year for irrigation purposes. License 6389C (Application 7641C) authorizes the direct diversion of up to 7.7 cfs of water from the Sacramento River between April 1 and September 30 of each year for irrigation purposes. License 7064A (Application 15856A) authorizes the direct diversion of up to 11.77 cfs of water each year from the Natomas Cross Canal tributary to the Sacramento River from March 15 to November 15 for irrigation purposes and from January 1 to December 31 for stockwatering purposes. License 7064B (Application 15856B) authorizes the direct diversion of up to 11.77 cfs of water each year from the Natomas Cross Canal tributary to the Sacramento River from March 15 to November 15 for irrigation purposes and from January 1 to December 31 for stockwatering purposes. License 11001 (Application 15606) authorizes the direct diversion of up to 14.54 cfs of water from the Natomas Cross Canal tributary to the Sacramento River between April 1 and September 30 of each year for irrigation purposes.

The authorized points of diversion/rediversion for Licenses 6389A, 6389C, 11001, 7064A, and 7064B are located northeast of the confluence of the Feather River and Sacramento River.

The authorized places of use for PGV are given in Table 2, below.

Table 2

Application	License	Authorized Place of Use
7641A	6389A	1,483 acres
7641C	6389C	519 acres
15606	11001	580 acres
15856A	7064A	776 acres
15856B	7064B	826 acres

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP’s Banks Pumping Plant and Barker Slough Pumping Plant, the CVP’s Jones Pumping Plant, and the Contra Costa Canal as points of diversion under Licenses 6389A, 6389C, 11001, 7064A, and 7064B. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of Licenses 6389A, 6389C, 11001, 7064A, and 7064B. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering (as necessary) would be temporarily added as purposes of use under Licenses 6389A, 6389C, 11001, 7064A, and 7064B.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to "unreasonably damage and harm" anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.

- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.
- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local ground water basins, local ground water users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with “the continuing failure of DWR and USBR to observe, and the State Water Board’s failure to enforce” the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include the following term:

“If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met.”

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to Licenses 6389A, 6389C, 11001, 7064A, and 7064B. Since the pumping associated with this transfer will not adversely affect

salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under Licenses 6389A, 6389C, 11001, 7064A, and 7064B (Applications 7641A, 7641C, 15606, 15856A, and 15856B) of E.D. Willey, et al, River Ranch Partnership, Scheidel & Osterli, Nicoli Nicholas, and Maria John Nicholas Kelly Ranch, LLC, respectively, for the transfer of up to 7,300 acre-feet (af) of water is approved.

All existing terms and conditions of Licenses 6389A, 6389C, 11001, 7064A, and 7064B remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under Licenses 6389A, 6389C, 11001, 7064A, and 7064B by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 72.18 cubic feet per second.
4. The place of use under Licenses 6389A, 6389C, 11001, 7064A, and 7064B is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under Licenses 6389A, 6389C, 11001, 7064A, and 7064B.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering (as necessary) are temporarily added as purposes of use under Licenses 6389A, 6389C, 11001, 7064A, and 7064B.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, Licensees shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- General locations where the transferred water was used;
 - The daily average rate water is made available for transfer pursuant to this Order;
 - The daily average diversion rate for water diverted pursuant to Licenses 6389A, 6389C, 11001, 7064A, and 7064B during the transfer period;
 - The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - The daily average pumping rate of groundwater pumped by Licensees in excess of that which would have been pumped in the absence of this transfer; and
 - Groundwater elevations within the vicinity of the Pleasant Grove-Verona Mutual Water Company (PGV) prior to the proposed transfer.

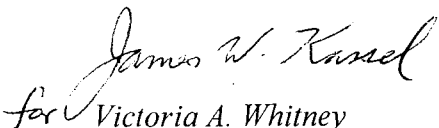
Licensees shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of PGV, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**

DIVISION OF WATER RIGHTS

ORDER WR 2009-0048-DWR

**IN THE MATTER OF LICENSE 8267 (APPLICATION 3206)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 672 ACRE-FEET OF WATER
FROM DL GOOSE FARMS, LLC
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

DL Goose Farms, LLC and
Teichert Aggregates
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. The petition submitted by DL Goose Farms, LLC (GF) and Teichert Aggregates petition initially requested the transfer of up to 4,783¹ acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. GF proposes to transfer up to 672 af of water under License 8267 (Application 3206) to the DWB made available through crop idling and shifting. GF proposes to make up to 672 af available from idling or shifting crops on 1,624.8 acres. Crops to be idled include tomatoes and safflower, and the shifting will be from corn to beans and vineseed. This idling/shifting will result in a reduction in consumptive use of surface water by GF from the consumptive use which would occur absent the proposed crop idling/shifting. The saved water will be made available on the same schedule that the

¹ The petition submitted by GF and Teichert Aggregates requests the transfer of up to 4,783 af of water. After submitting the petition, it was determined that significantly less water would be available for transfer pursuant to this project. Teichert Aggregates has withdrawn its portion of the proposed transfer total and GF has reduced its transfer total to 672 af.

water would have been consumptively used by the crops idled/shifted in accordance with the evapotranspiration of applied water (ETAW) pattern established by DWR. The petition requests that the change be effective for up to one year from the date of approval.

1.2 Crop Shifting/Idling. GF's proposal to participate in the DWB includes detailed information relative to its cropping patterns between 2005 and 2008 and a comparison of planned cropping patterns in 2009 with and without the proposed temporary change. The DWB has submitted an agreement titled *Agreement Between the Department of Water Resources of the State of California and Goose Club Farms for Short-Term Purchase of Water for the 2009 Drought Water Bank*. This agreement addresses the crop idling/shifting for the proposed temporary change and includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, monitoring and verification procedures for the proposed crop shifting/idling program, and provisions for environmental compliance. GF also submitted a map and environmental information regarding the petition for temporary change. This information is posted with the public notice for this petition on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and USBR have also reviewed all the proposals for DWB transfers, including the subject transfer, which include crop idling/shifting. Technical staff from DWR and USBR have reviewed each crop idling proposal to determine consistency with appropriate guidelines for calculating ETAW. Monitoring and verification procedures for the crop shifting/idling associated with the subject transfer is contained in the crop idling conveyance agreement described in Section 1.2 of this Order, above. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of GF's License. License 8267 (Application 3206) authorizes the direct diversion of up to 20.3 cfs of water per annum from the Feather River and Sacramento Slough between April 1 and October 15 of each year for irrigation purposes. The authorized points of diversion for License 8267 are located on the Feather River and Sacramento Slough. The authorized place of use consists of 3,029 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 8267. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 8267. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 8267.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), and the California Salmon and Steelhead Association (CSSA) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. The proposed temporary change does not involve groundwater substitution. DWR and USBR have reviewed the proposed crop idling/shifting to determine consistency with appropriate guidelines for calculating ETAW.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 8267. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.

- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed crop shifting/idling may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Feather River or Sacramento Slough.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed crop idling/shifting to determine consistency with appropriate guidelines for calculating ETAW. DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to "unreasonably damage and harm" anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.

- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local ground water basins, local ground water users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. The proposed temporary change does not involve groundwater substitution. DWR and USBR have reviewed the proposed crop idling to determine consistency with appropriate guidelines for calculating ETAW.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves crop idling or shifting on 1,624.8 acres. It is unclear how this idling/shifting would impact the "agricultural productivity of prime agricultural land".

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." GF proposes to make water available through

crop idling/shifting. In the absence of the proposed transfer, 1,624.8 acres within GF's service area would be planted similar to its 2008 cropping patterns. The transfer total is calculated using the appropriate ETAW for the idled/shifted crops.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. In the absence of the proposed transfer, 1,624.8 acres within GF's service area would be planted similar to its 2008 cropping patterns. The portion of the transfer total made available through this shifting/idling is calculated using the appropriate ETAW factors. The conveyance agreement described in Section 1.2 of this Order includes descriptions of the affected fields, the ETAW factors used to calculate consumptive use savings, and monitoring and verification procedures for the proposed crop idling/shifting program. This Order requires compliance with these portions of the conveyance agreement.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 8267. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. The conveyance agreement described in Section 1.2 of this Order includes provisions for environmental compliance for the proposed crop idling/shifting program. This Order requires compliance with those provisions.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

- 1. The proposed temporary change will not injure any legal user of the water.
- 2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
- 3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 8267 (Application 3206) of the DL Goose Farms, LLC (GF) for the transfer of up to 672 acre-feet (af) of water is approved.

All existing terms and conditions of License 8267 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. The petitioner shall comply with the monitoring, verification, and environmental compliance portions of the conveyance agreement titled *Agreement Between the Department of Water Resources of the State of California and Goose Club Farms for Short-Term Purchase of Water for the 2009 Drought Water Bank*, as a condition of transferring water pursuant to this Order.
3. The place of use under License 8267 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
4. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 8267.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

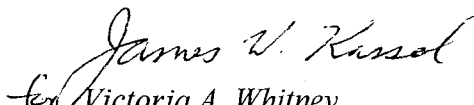
5. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 8267.
6. Within 60 days of the completion of the transfer, but no later than November 30, 2009, GF shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;

- c. The daily average diversion rate for water diverted pursuant to License 8267 during the transfer period; and
 - d. A report of the crop idling within GF, including locations of affected fields and frequency of field verification.
7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

8. This Order 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
9. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**

2009 JUL -21 P 2:15

DIVISION OF WATER RIGHTS

ORDER WR 2009-0041-DWR

**IN THE MATTER OF LICENSE 2033 (APPLICATION 1699)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 4,000 ACRE-FEET OF WATER
FROM GARDEN HIGHWAY MUTUAL WATER COMPANY
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Garden Highway Mutual Water Company
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Garden Highway Mutual Water Company's (GHMWC) petition requests the transfer of up to 4,000 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. GHMWC proposes to transfer up to 4,000 af of water under License 2033 (Application 1699) to DWR's 2009 DWB through the CVP's and SWP's Pumping Plants. To facilitate this transfer, GHMWC will pump additional groundwater and reduce its direct diversion from the Feather River by 34 cubic feet per second (cfs), which is the capacity of the five groundwater wells proposed for participation in the DWB. At times when pumping capacity is available in the Delta, the additional 34 cfs of flow in the Feather and Sacramento Rivers would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. GHMWC's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation (USBR) for use in the DWB will be used for the proposed temporary transfer. GHMWC is not a public entity; and therefore, is not authorized to prepare a groundwater management plan. GHMWC, on behalf of its shareholders, is participating in the development of a groundwater management plan being prepared by Sutter County, which will include the wells and the overlying lands within the boundaries of GHMWC. GHMWC submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at:

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

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at:

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

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of GHMWC's License. License 2033 (Application 1699) authorizes the direct diversion of up to 39 cfs of water per annum from the Feather River between April 15 and October 31 of each year for irrigation purposes. The authorized point of diversion for License 2033 is located on the Feather River, N 72° 00' E, 4,130 feet from the SW corner of Section 24, T13N, R3E, MDB&M. The authorized place of use consists of 3,708.45 acres net within a gross area of 3,765.45 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 2033. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 2033. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 2033.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 2033. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to

these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.

- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sutter Bypass and/or the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to “unreasonably damage and harm” anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.
- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local ground water basins, local ground water users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.

- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the State Water Board's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional

groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 2033. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 2033 (Application 1699) of the Garden Highway Mutual Water Company (GHMWC) for the transfer of up to 4,000 acre-feet of water is approved.

All existing terms and conditions of License 2033 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 2033 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping.
4. The place of use under License 2033 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 2033.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 2033.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, GHMWC shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 2033 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Feather River;
 - e. The daily average pumping rate of groundwater pumped by GHMWC in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of GHMWC prior to the proposed transfer.

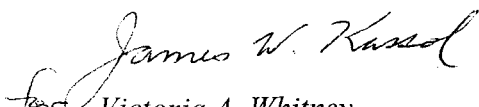
GHMWC shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of GHMWC, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**

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

BOARD OF SUPERVISORS
2009 JUL -21 P 2:15

DIVISION OF WATER RIGHTS

ORDER WR 2009-0043-DWR

IN THE MATTER OF LICENSE 2840 (APPLICATION 10030)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 3,765 ACRE-FEET OF WATER
FROM GREG AMARAL LTD. PENSION PLAN AND TRUST
AND TULE BASIN FARMS, LLC
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Greg Amaral Ltd. Pension Plan & Trust
and Tule Basin Farms, LLC (Giusti Ranch)
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Greg Amaral Ltd. Pension Plan & Trust and Tule Basin Farms, LLC (Giusti Ranch) petition requests the transfer of up to 3,765 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. Giusti Ranch proposes to transfer up to 3,765 af of water under License 2840 (Application 10030) to DWR's 2009 DWB through the CVP's and SWP's Pumping Plants. To facilitate this transfer, Giusti Ranch will pump additional groundwater and reduce its direct diversion from the West Borrow Pit of the Sutter Bypass by 19 cubic feet per second (cfs), which is the capacity of the three groundwater wells proposed for participation in the DWB. At times when pumping capacity is available in the Delta, the additional 19 cfs of flow in the West Borrow Pit of the Sutter Bypass would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. Giusti Ranch's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation (USBR) for use in the DWB will be used for the proposed temporary transfer. Giusti Ranch is not a public entity; and therefore, is not authorized to prepare a groundwater management plan. Giusti Ranch is participating in the development of a groundwater management plan being prepared by Sutter County, which will include the wells and the overlying lands within the boundaries of Giusti Ranch. Giusti Ranch submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

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

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 2840. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 2840. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 2840.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 2840. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to

these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.

- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to “unreasonably damage and harm” anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.
- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.

- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the State Water Board's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional

groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 2840. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 2840 (Application 10030) of Greg Amaral Ltd. Pension Plan & Trust and Tule Basin Farms, LLC (Giusti Ranch) for the transfer of up to 3,765 acre-feet of water is approved.

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

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 2840 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 21.05 cubic feet per second.
4. The place of use under License 2840 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 2840.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 2840.

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, Giusti Ranch shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- General locations where the transferred water was used;
 - The daily average rate water is made available for transfer pursuant to this Order;
 - The daily average diversion rate for water diverted pursuant to License 2840 during the transfer period;
 - The average daily streamflow measured at the nearest representative gaging station on the South Borrow Pit of the Sutter Bypass;
 - The daily average pumping rate of groundwater pumped by Giusti Ranch in excess of that which would have been pumped in the absence of this transfer; and
 - Groundwater elevations within the vicinity of Giusti Ranch prior to the proposed transfer.

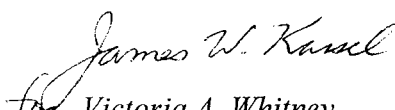
Giusti Ranch shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of Giusti Ranch, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**

DIVISION OF WATER RIGHTS
ORDER WR 2009-0044-DWR

**IN THE MATTER OF LICENSE 8547B (APPLICATION 12470B)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 1,750 ACRE-FEET OF WATER
FROM PELGER MUTUAL WATER COMPANY
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 16, 2009,

Pelger Mutual Water Company
c/o Darren Cordova
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Pelger Mutual Water Company's (PMWC) petition requests the transfer of up to 1,750 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. PMWC proposes to transfer up to 1,750 af of water under License 8547B (Application 12470B) to DWR's 2009 DWB through the CVP's and SWP's Pumping Plants. To facilitate this transfer, PMWC will pump additional groundwater and reduce its direct diversion from the Sacramento River by 25 cubic feet per second (cfs), which is the capacity of the five groundwater wells proposed for participation in the DWB. At times when pumping capacity is available in the Delta, the additional 25 cfs of flow in the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, or the Contra Costa Canal. Water would be used within the SWP or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. PMWC's proposal to participate in the DWB includes detailed information relative to historical groundwater pumping, groundwater well characteristics, and associated maps. Only wells which have been approved by DWR and the United States Bureau of Reclamation (USBR) for use in the DWB will be used for the proposed temporary transfer. PMWC is not a public entity;

and therefore, is not authorized to prepare a groundwater management plan. PMWC, on behalf of its shareholders, is participating in the development of a groundwater management plan being prepared by Sutter County, which will include the wells and the overlying lands within the boundaries of PMWC. PMWC submitted a map and environmental information regarding the petition for temporary transfer. This information is posted with the public notice for this petition on the Division of Water Rights' website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and USBR have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

"The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts."

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of PMWC's License. License 8547B (Application 12470B) authorizes the direct diversion of up to 53.5 cfs of water per annum from the Sacramento River between April 1 and November 1 of each year for irrigation purposes. The authorized point of diversion for License 8547B is located at the PMWC pump, South 2,800 feet and West 3,375 feet from the NE corner of Section 23, T13N, R1E, MDB&M. The authorized place of use consists of 2,086 acres net within a gross area of 2,900 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion under License 8547B. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 8547B. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 8547B.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion/rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 6, 2009. The California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), the California Salmon and Steelhead Association (CSSA), and the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District (County) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. Transfers relying on groundwater substitution may cumulatively impact water temperatures in tributaries to, and in wetlands located along, the Sacramento River, reducing salmonid and giant garter snake habitat at critical times.
- c. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.

State Water Board Responses:

- a. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption.
- b. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.
- c. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to License 8547B. The Water Code does not contain a provision requiring legislative approval for these additions.

3.2 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. Since the DWB exemption from the California Environmental Quality Act (CEQA) is based on a claim of temporary urgency due to these perennial conditions, it is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.

- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley chinook salmon (both spring- and winter-run) and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect the fishes listed previously through increased entrainment.
- e. The proposed groundwater substitution may have indirect or cumulative impact on instream habitat for salmonids and other fish, and for the "ESA-listed" giant garter snake, by reducing wetlands, floodplain habitat, and/or tributary inflow to the Sacramento River.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. The State Water Board is not relying on the DWB exemption or the supplemental Environmental Impact Statement/Environmental Impact Report for the Environmental Water Account.
- b. See the State Water Board response to CWIN in 3.1c., above.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- e. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. Additionally, DFG was forwarded a copy of the subject petition and did not submit comments regarding the temporary change.

3.3 Comments of the California Salmon and Steelhead Association. CSSA opposes the proposed temporary change and requests a hearing based on the following:

- a. The proposed water transfer will continue to "unreasonably damage and harm" anadromous fish species at the State Pumps from water being diverted by the proposed water transfer. Those fish species that have been harmed at the State Pumps are: spring-run Chinook salmon, steelhead trout, winter-run Chinook salmon, fall-run Chinook salmon, and striped bass. The State Water Board must mitigate these potential impacts.
- b. A biological opinion should be prepared and approved because of the effects to millions of striped bass; salmon; and steelhead trout harmed and lost at the State Pumps from the proposed diversion from the proposed water transfer.

- c. The State Water Board must evaluate and mitigate the potential impacts of the proposed temporary change on local groundwater basins, local groundwater users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on migratory fish species.
- e. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on established recreational, educational, and scientific uses of the Bay Delta Estuary.
- f. The State Water Board must evaluate and mitigate the impacts of the proposed temporary change on the agricultural productivity of prime agricultural land.

State Water Board Responses:

- a. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- b. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.
- c. DWR and USBR have reviewed the proposed transfer and determined that the 12% depletion factor and the mitigation and monitoring plans described in Section 1.3 of this Order will mitigate potential streamflow impacts resulting from the proposed additional groundwater pumping. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with the 12% depletion factor and the mitigation and monitoring plans to protect other legal users of water from impacts of the proposed temporary change on local ground water basins, local ground water users, underflow and surface flows, groundwater recharge, and local and regional groundwater sources.
- d. See response given for item a., above.
- e. This Order requires compliance with the various plans required under D-1641 as prerequisites for the use of JPOD by DWR and USBR.
- f. The proposed temporary change involves groundwater substitution and will not impact or alter cropping patterns.

3.4 Comments of the County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District. The County is concerned with "the continuing failure of DWR and USBR to observe, and the SWB's failure to enforce" the southern Delta salinity objectives. Since the proposed temporary changes will involve transfers through the Delta for delivery within the SWP and CVP places of use, any order granting approval of the proposed temporary change should be conditioned upon meeting the southern Delta salinity objectives. The County requests that any order approving this petition include

the following term:

"If the water quality objectives within the Southern Delta are violated, the transfers and/or exchanges under this order shall cease until such time as the water quality objectives are met."

State Water Board Response: See section 2.3 of this Order for a thorough discussion of water quality requirements. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as points of diversion to License 8547B. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code

section 1745.10 subdivision (b). That section requires groundwater use that is part of a groundwater substitution transfer in an area where a groundwater management plan has not been adopted pursuant to state law to be approved by the water supplier for the affected area and that the water supplier determines that the transfer will not create, or contribute to, long-term conditions of overdraft in the affected groundwater basin.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 8547B (Application 12470B) of the Pelger Mutual Water Company (PMWC) for the transfer of up to 1,750 acre-feet of water is approved.

All existing terms and conditions of License 8547B remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on July 1, 2009 and continuing through September 30, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 8547B by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping, and shall in no case exceed 53.5 cubic feet per second.
4. The place of use under License 8547B is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant and the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of diversion under License 8547B.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Diversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 8547B.
7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, PMWC shall

7. Within 60 days of the completion of the transfer, but no later than November 30, 2009, PMWC shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
- a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 8547B during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the Feather River;
 - e. The daily average pumping rate of groundwater pumped by PMWC in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of PMWC prior to the proposed transfer.

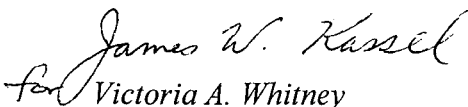
PMWC shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of PMWC, until such time as these elevations correspond to pre-transfer levels.

8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

9. This Order does not authorize any act which results in the 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 temporary transfer, the permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUN 30 2009**