

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Conditional Temporary )	ORDER: WR 88- 17
Urgency Change Order On Permits 15026 )	
15027 and 15030 issued pursuant to )	SOURCES: North Yuba, Yuba,
Applications 5632, 15204 and 15574 )	and Middle Yuba
)	Rivers and Oregon
YUBA COUNTY WATER AGENCY )	Creek
Permittee )	COUNTIES: Yuba, Nevada
)	Butte and Sutter
)	

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ORDER MODIFYING AND VALIDATING ISSUANCE OF  
CONDITIONAL TEMPORARY URGENCY CHANGE  
IN PURPOSE OF USE AND PLACE OF USE

BY THE BOARD:

The Yuba County Water Agency (YCWA) having filed a petition for a temporary Urgency Change in purpose of use and place of use pursuant to Chapter 6.6 (commencing with Section 1435), Part 2, Division 2 of the Water Code; the State Water Resources Control Board (Board) having consulted with the Department of Fish and Game (DFG) and the Department of Water Resources (DWR); Board Chairman Maughan having concluded from available information that YCWA qualifies for a Temporary Urgency Change and having issued a Conditional Temporary Urgency Change Order on August 19, 1988, subject to review and validation by the Board as provided by Water Code Section 1435(d); the Board finds as follows:

Substance of the Proposed Change

1. The August 19, 1988 petition requests temporary urgency changes in Permits 15026, 15027, and 15030 of YCWA. The changes would be in purpose of use and place of use of up to 12,000 acre-feet (af) of water stored in New

Bullards Bar Reservoir (Bullards Bar). The term of the temporary changes is from August 19, 1988 through September 15, 1988. Under the requested changes, the water would be sold to the DWR and used in the Sacramento-San Joaquin Delta to satisfy DWR's obligation to meet water quality and outflow standards in the Delta under Water Right Decision 1485. The effect of the Temporary changes will be to allow the State Water Project (SWP) to retain in carry-over storage up to an additional 12,000 af for use in 1989.

Reasons for Change

2. On July 6, 1988, Board Order WR 88-12 authorized a trial transfer from YCWA to DWR for up to 110,000 af of water. The transfer from YCWA to the DWR is being used to maintain Delta outflow and to allow retention of a equivalent amount of SWP water in storage for use in 1989.
3. The DWR has an urgent need for water in addition to the 110,000 af authorized by Order 88-12 this year to maintain Delta outflow and increase SWP carry-over storage for 1989. Thus, this change will further the constitutional policy that the water resources of the state be put to the fullest beneficial use. In this critically dry year an action such as this is particularly urgent.
4. Improved hydrologic conditions since the Board's hearing on May 28, 1988 on the trial transfer indicate that about 10% more water is available in Bullards Bar than had been previously believed.
5. Up to 12,000 af of additional water is available, this year from storage in Bullards Bar without impairing needed carry-over storage in Bullards Bar.

6. The existing agreement between YCWA and DWR covers payment for up to 135,000 of this year.

Notice and Responses

7. On August 19, 1988 a Notice of the petition for Temporary Urgency Change was provided by publication and by mail to interested parties. The period for submitting objections ended September 6, 1988.

Objections were received from the California Sportfishing Protection Alliance (CSPA) and the City of Yuba City.

- a. The objection of CSPA is based on allegations that approval of the petition would conflict with Order WR 88-12 and would not be in the public interest unless certain fishery protection measures are included in this order. CSPA alleges more specifically that YCWA may have lost its right to the water which is the subject of this order by nonuse; that the action herein is not exempt from CEQA; that this petition is not urgent; that certain studies should be performed before any further transfer is approved. CSPA also makes several statements, listed as objections 1 through 3 in its written objection, which cannot be characterized as objections to this petition, but rather as comments on Order WR 88-12 and on the existence of the petition herein. CSPA states that it would not object to approval of the petition if certain terms and conditions are included in this order as follows:

- (1) that YCWA and DWR perform the studies listed in paragraph 9.5 of Order WR 88-12 before any further water transfer are approved;

(2) that the Delta SWP service area be added as a place of use and that water quality be added as a purpose of use only under this temporary urgency change.

We find that CSPA's allegation that YCWA may have lost its water right is unfounded. We note that under Water Code Section 1241 a finding of reversion must be made by this Board after notice and a opportunity for hearing before a water right may revert, and that no such finding has been made.

We agree with CSPA's allegation that the action validated herein is not exempt from CEQA. Although a finding of exemption was erroneously placed in the order allowing' the change validated herein, this action is covered by the negative declaration considered in Order WR 88-12 and the August 19, 1988 addendum thereto prepared by DWR. The negative declaration and addendum were considered when the change validated herein was authorized. A finding regarding the effect of this change on the environment is set forth below.

We find the CSPA's allegation that no urgency exists for this petition is unfounded. The action validated herein meets the definition of "urgent need" under Water Code Section 1435(c). See finding 3 above.

CSPA alleges that studies listed in Order WR 88-12 should be performed before any further transfer is approved. Similarly to our finding in Order WR 88-12, the studies are more closely applicable to a long-term transfer, not to this temporary urgency change. Consequently, we will not require them as a part of this validating order.

Regarding CSPA's request that the Delta SWP service area be made a place of use and water quality be added as a purpose of use only under this temporary urgency change, we find that water quality has been temporarily added, and under Water Code Section 1440 the addition may remain in effect only for the term of the change approved herein. Likewise, the Delta is temporarily added as a place of use; however, the permittee has not requested that the entire SWP service area be added, and consequently we cannot add it.

b. The objection of the City of Yuba City is that the temporary urgency change could cause the water level in the Feather River to fall below the City's intake structure, which requires a water elevation of 35.0 feet. Because of a condition in Order WR 88-12 which also is a condition herein, the flows in the Feather River at Gridley may not be significantly less than 2,140 cubic feet per second (cfs). We find that a flow of 2,000 cfs or more should maintain a water elevation at or above 35.0 feet at Yuba City's intake. According to the addendum to the negative declaration, flow in the Feather River upstream from the confluence with the Yuba River would not be reduced below the rates discussed in the Initial Study for the Negative Declaration, and storage in Oroville Reservoir would not be changed by this temporary change; rather, additional water will be released from Oroville Reservoir for transfer to carry-over storage in San Luis Reservoir. To ensure that Yuba City's ability to divert water is not impaired, we will condition this validating order on the maintenance of a water elevation of at least 35.0 feet at Yuba City's intake structure.

### Additional Findings

8. The proposed use of water is beneficial and the Temporary Urgency Change is in the public interest, does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water and will not unreasonably affect fish, wildlife or other **instream** beneficial uses.
9. The DWR has adopted an addendum to the Negative Declaration we considered in adopting Order WR 88-12. We have considered the Negative Declaration and its addendum, and we find that the temporary urgency change approved herein together with the trial transfer approved by Order WR 88-12 will not have a significant environmental impact. Accordingly, the Chief of the Division of Water Rights is authorized to file a Notice of Determination pursuant to Section 15096 of the State of California Environmental Quality Act (CEQA) Guidelines.

### Action by Board Chairman Maughan

10. In accordance with the delegation of authority in Water Code Section 1435(d), and the Board's adoption of Resolution 84-2, Board Chairman Maughan issued a Conditional Temporary Urgency Change Order on August 19, 1988 allowing a temporary change to add the Delta to the place of use for up to 12,000 af of water and to add water quality to the purpose of use under the three permits listed above, subject to several specified conditions.

ORDER

IT IS HEREBY ORDERED THAT:

1. The issuance of the August 19, 1988 order by Board Chairman Maughan allowing a Conditional Temporary Urgency Change in the place of use and purpose of use under Permits 15026, 15027 and 15030 is validated subject to the terms and conditions specified in the Order.
2. Feather River flows at the intake structure of the City of Yuba City shall be maintained at an elevation of 35.0 feet or above during the term of this temporary change.

CERTIFICATION

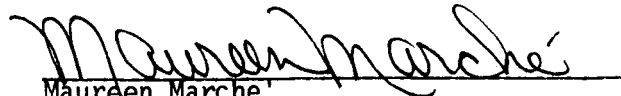
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 7, 1988.

AYE:           W. Don Maughan                   Eliseo M. Samaniego                   Danny Walsh

NO:           None

ABSENT:       Darlene E. Ruiz                   Edwin H. Finster

ABSTAIN:     None

  
Maureen Marche  
Administrative Assistant to the Board

