

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

ORDER WR 2009-0033

In the Matter of Specified License and Permits¹ of the
STATE WATER PROJECT AND THE CENTRAL VALLEY PROJECT

ORDER APPROVING A CHANGE IN THE PLACE OF USE OF LICENSE AND PERMITS OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION IN RESPONSE TO DROUGHT CONDITIONS

BY THE BOARD:

1.0 INTRODUCTION

On March 20, 2009, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) (hereinafter Petitioners) filed a Petition for Change, pursuant to Water Code section 1700 et seq., to temporarily change the place of use of specified water rights of the State Water Project (SWP) and the Central Valley Project (CVP), which are collectively referred to as “the Projects.” By this order, the State Water Resources Control Board (State Water Board or Board) approves the change petition, subject to conditions.

It bears emphasis at the outset that, contrary to protestants’ assertions, this approval will not result in an increase in Project exports from the Sacramento-San Joaquin Delta Estuary (Delta). For this reason, and for the reasons explained more fully below, we conclude that approval of the petition will not injure any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses. In addition, approval of the petition is in the public interest because it will assist the Petitioners in their efforts to alleviate water supply shortages due to the ongoing

¹ The petition was filed for Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources’ State Water Project and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, and 15735 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316 and 19304, respectively) of the United States Bureau of Reclamation’s Central Valley Project.

drought. The majority of proposals that will be facilitated by the change petition involve transfers and exchanges between Project contractors south of the Delta. These transfers and exchanges will allow a redistribution of available supplies to areas with critical needs within the SWP and CVP service areas.

2.0 FACTUAL AND PROCEDURAL BACKGROUND

2.1 The Governor's Drought Proclamation

On February 27, 2009, citing three consecutive years of below-average precipitation and significant restrictions on diversions due to various factors, including federal court actions to protect fish species, Governor Schwarzenegger proclaimed a state of emergency to exist in California due to the statewide drought.² The Governor's Drought Emergency Proclamation directs the State Water Board, among other things, to expedite processing and consideration of this request by Petitioners for approval of the consolidation of the places of use of the SWP and CVP to facilitate water transfers and exchanges.

As indicated above, 2009 is the third consecutive dry or critically dry year. Despite a series of storms in February and March of this year, precipitation and the snow pack remain below average. In addition, the amount of water stored in Lake Shasta and Lake Oroville, the Projects' two major storage reservoirs, was approximately 1.7 million acre-feet below average as of the end of March. Similarly, storage in San Luis Reservoir, south of the Delta, was 53 percent of average, due to dry conditions earlier in the year and regulatory restrictions on Project exports from the Delta. (Reporter's Transcript, Vol. I (R.T.) at p. 49.) As a result of these conditions, allocations to SWP and CVP contractors are expected to remain at or near record lows. As of April, the estimated water allocation to SWP contractors was 30 percent of their contract supply, and the estimated allocation to CVP contractors south of the Delta was 10 percent for agricultural users and 60 percent for municipal and industrial users.

2.2 The Change Petition

In response to the Governor's Drought Emergency Proclamation, on March 20, 2009, DWR and Reclamation filed a joint petition to consolidate the places of use of the SWP and CVP. Specifically, the petition seeks (1) to expand the authorized place of use in certain water right

² We take official notice of the Governor's Drought Emergency Proclamation. Official notice is taken pursuant to California Code of Regulations, title 23, section 648.2 (authorizing the State Water Board to take official notice of matters that may be judicially noticed) and Evidence Code section 452, subdivision (c) (authorizing judicial notice of official acts of the legislative, executive, or judicial departments of the State).

permits held by DWR to include the CVP places of use south of the confluence of the Sacramento and Feather Rivers, and (2) to expand the authorized place of use in certain water right permits and a license held by Reclamation to include the SWP export delivery areas south of DWR's Barker Slough and Harvey O. Banks Pumping Plants. The purpose of the petition is to allow transfers and exchanges between the SWP and CVP.

The petition identifies and describes a number of transfers or exchanges that would be allowed if the petition is approved. What follows for illustrative purposes is a short description of several of the transfers and exchanges described in the petition. One category of transfers that would be affected by the petition is transfers to the 2009 Drought Water Bank under DWR's or Reclamation's water rights. Approval of the petition is not necessary in order for those transfers to take place, but it would allow water transferred under DWR's rights to be delivered to CVP contractors, and vice versa, which would allow DWR to allocate the water to buyers with the greatest need. The petition estimates that approximately 100,000 acre-feet of water will be transferred to the 2009 Drought Water Bank. Of that amount, DWR estimates that approximately 10,000 to 16,000 acre-feet of water would be transferred under DWR's and Reclamation's water rights.³ (R.T. at pp. 59, 66-67.)

The petition also describes an exchange of SWP and CVP water, which may be needed because Santa Clara Valley Water District (SCVWD) may be unable to obtain up to 50,000 acre-feet of its CVP entitlement through the San Felipe Division of the CVP during the summer due to low water levels in San Luis Reservoir. According to the petition, SCVWD has implemented mandatory rationing this year due to projected shortfalls in local surface and groundwater supplies, and SCVWD will need to satisfy more than half its demand with imported water supplies. If the petition is approved, SWP water could be delivered to SCVWD through the South Bay Aqueduct in exchange for SCVWD's CVP entitlement, which would be delivered to DWR at O'Neill Forebay.

A third category of exchanges described in the petition would allow CVP contractors within the Friant Division of the CVP (Eastside CVP) to transfer water to CVP contractors within the San Luis Division, Delta Mendota Canal Division, San Felipe Division, or Mendota Pool Division of the CVP (Westside CVP). The transfers would be accomplished via an exchange with SWP

³ Transfers to the 2009 Drought Water Bank under permitted or licensed water rights held by other parties will require separate State Water Board approval.

contractors, whereby Eastside CVP water would be delivered to SWP contractors through the Friant-Kern Canal, in exchange for SWP water, which would be made available to Westside CVP contractors at O'Neill Forebay. The Westside CVP contractors would return the water to the Eastside CVP contractors the following year through a similar exchange.

In addition to the transfers and exchanges specified in the petition, including the transfers and exchanges described above, the petition explains that additional transfers or exchanges could be identified in the future. The petition proposes that all transfers or exchanges, including any such future transfers or exchanges, be conducted in accordance with the following parameters:

1. For any transfer through the Delta, Petitioners will continue to operate the SWP and CVP in accordance with the 2008 Delta smelt biological opinion, which analyzed the effects of a maximum of 600,000 acre-feet of transfers exported only from July through September.
2. Carriage loss will be deducted from any water transferred through the Delta.
3. The total quantity of water delivered to SWP or CVP contractors as a result of the change will not exceed historic average deliveries.
4. No transfer or exchange will take place that results in the net loss of San Joaquin River or Sacramento River flow.
5. No transfer or exchange will take place that results in the net loss of any Eastside CVP water from the San Joaquin Valley.

In addition to those parameters, the Petitioners propose to develop a reporting plan that will account for all water transferred or exchanged under the provisions of any order approving the petition. The reporting plan would include the parties to the transfer or exchange, how much water is to be transferred, how the water will be made available, the facilities required to implement the transfer, any anticipated changes to streamflow or drainage resulting from the transfer, and how the transfer will affect the overall water supply of the agency receiving the transfer water.

The petition requests that the change in places of use be effective for two years in order to allow for exchanges to take place over a two-year period.

2.3 Notice of Petition and Hearing

Following the March 20, 2009 receipt of DWR and Reclamation's Petition for Change, the State Water Board issued a joint notice of the petition and notice of an evidentiary hearing to consider the petition. The notice set forth a deadline for protests and notices of intent to appear and participate in the hearing.

2.4 Protests

The following entities submitted protests based generally on environmental or public interest considerations: California Water Impact Network (C-WIN); California Sportfishing Protection Alliance (CSPA); California Salmon and Steelhead Association (CSSA); Public Trust Alliance (PTA); and Defenders of Wildlife (Defenders). South Delta Water Agency, Central Delta Water Agency, and Lafayette Ranch (South Delta) and the PTA also submitted protests based generally on injury to vested rights claims.

2.5 Pre-Hearing Conference

The State Water Board held a pre-hearing conference on April 16, 2009, to receive comments from the parties and other participants on the scope of the hearing, the status of any negotiations to resolve protests, and any other appropriate procedural issues. At the pre-hearing conference, the hearing officer determined that: (1) CSSA's request for accommodation to participate by telephonic conference line was approved; (2) Defenders' participation would be limited to cross-examination and presentation of an opening or closing statement; (3) South Delta's participation would be limited to cross examination, presentation of rebuttal testimony (based on service of subpoenas), and presentation of an opening or closing statement; and (4) PTA's participation would be limited to the submittal of a policy statement only.

2.6 Evidentiary Hearing

The State Water Board held a hearing on the petition on April 27 and 28, 2009.

The following persons and entities participated in the evidentiary portion of the hearing: DWR, Reclamation, C-WIN, CSPA, Defenders, South Delta, the San Luis and Delta-Mendota Water Authority, Westlands Water District, Santa Clara Valley Water District, County of San Joaquin, and San Joaquin County Flood Control and Water Conservation District. Two of the protestants listed above, CSSA and PTA, did not participate in the evidentiary portion of the hearing, but submitted policy statements. A number of other persons and entities also submitted policy statements.

3.0 LEGAL BACKGROUND

A water right applicant, permittee, or licensee may petition the State Water Board for approval of a change in the point of diversion, place of use, or purpose of use specified in the application, permit, or license pursuant to Water Code section 1701. A change petition filed pursuant to section 1701 must include certain information, including (1) all information available to the petitioner, or that can be obtained from the Department of Fish and Game (DFG), concerning the extent to which fish and wildlife would be affected by the change, and any measures proposed to be taken for the protection of fish and wildlife; and (2) sufficient information to demonstrate a reasonable likelihood that the proposed change will not injure any legal user of water. (Wat. § 1701.2, subs. (c) & (d); Cal. Code Regs., tit. 23, § 794, subd. (a)(8) & (9).)

The petitioner must provide notice of the petition as required by the State Water Board. (Wat. Code, § 1703; Cal. Code Regs., tit. 23, § 795, subd. (a).) In all cases, the petitioner must provide notice to DFG. (*Ibid.*) Any interested person may file a protest against the petition on the basis that the proposed change would injure a legal user of water, unreasonably affect fish, wildlife, or other instream beneficial uses, or be contrary to the public interest. (Wat. Code, §§ 1703.2, 1703.6, subs. (c) & (d); Cal. Code Regs., tit. 23, §§ 745, subs. (b) & (c), 796.) The State Water Board may approve the petition if the Board finds that the change will not injure any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1702.)⁴

⁴ Water Code section 1702 does not expressly require a finding that the change will not unreasonably affect fish, wildlife, or other instream beneficial uses, but the statutory provisions governing change petitions support the conclusion that the Board must consider the potential impacts to fish, wildlife, or other instream beneficial uses in determining whether and under what conditions to approve such a change petition. For example, the requirement that a change petition include information concerning the extent to which fish and wildlife would be affected by the change, and the requirement that the petitioner provide notice of the proposed change to DFG, demonstrate that potential impacts to fish and wildlife are relevant to the Board's decision.

Moreover, consideration of potential impacts to fish and wildlife is consistent with the State Water Board's continuing duty to consider the impacts of water diversions on public trust resources, including fish and wildlife habitat. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434-435, 446-447.) Similarly, the fact that Water Code section 1702 does not expressly require a finding that a change will be in the public interest does not preclude the Board from taking public interest considerations into account. (See State Water Board Order WR 95-9, p. 29; State Water Board Revised Decision 1641 (2000) pp. 117, 129 [reasoning that when reviewing a proposed change to a permit or license, the Board should consider the same factors that were considered when reviewing the underlying water right application, and therefore the Board should consider the public interest and effects on fish and wildlife].)

4.0 DISCUSSION

4.1 Potential Impacts associated with Transfers through the Delta

Many of the protestants alleged that approval of the petition would allow an increase in the amount of water transferred from storage reservoirs or streams north of the Delta to areas south of the Delta, which would in turn have adverse environmental effects. For example, witnesses for C-WIN and CSPA testified that depletion of cold-water storage in Project reservoirs could adversely affect salmonids. In addition, South Delta alleged that an increase in pumping at the Projects' export pumps would injure legal users of water. Similarly, CSSA and CSPA alleged that increased pumping would adversely affect fishery resources. Protestants also raised concerns about potential impacts associated with crop idling or groundwater pumping in order to free up water for transfer to the Drought Water Bank. In particular, C-WIN and Defenders alleged that crop idling of rice fields in the Sacramento Valley would adversely affect the giant garter snake because it is dependent upon habitat provided by rice production. Protestants also alleged that groundwater substitution transfers would cause a decrease in groundwater levels, which would injure groundwater users and reduce flows in surface streams, thereby adversely affecting fishery resources.

All of these concerns are misplaced, however, because they are predicated on the assumption that approval of the petition will cause an increase in transfers through the Delta. To the contrary, undisputed evidence in the record establishes that approval of the petition will not cause an increase in through-Delta transfers, as explained below.

Maureen Sergent, an expert witness for DWR, testified that the only through-Delta transfers that would be affected by the State Water Board's approval of the petition are transfers to the Drought Water Bank under the Projects' water rights. (DWR Exhibit DWR-04, p. 2; R.T. at pp. 59-60.) The petition estimates that approximately 100,000 acre-feet of water will be transferred to the 2009 Drought Water Bank. Ms. Sergent estimated that, of that amount, only 10,000 to 16,000 acre-feet of water will be transferred under DWR's and Reclamation's water rights. (R.T. at pp. 59, 66-67.) Moreover, both Ms. Sergent and Ron Milligan, Reclamation's expert witness, testified that, in the absence of approval of the change petition, the same quantity of water would be transferred to the Drought Water Bank under the Projects' water rights because SWP contractors would buy any water transferred under DWR's water rights, and CVP contractors would buy any water transferred under Reclamation's water rights. (R.T. at pp. 66-68, 74-76.)

Based on this testimony, the only potential change that could occur if the petition is approved is a change in the end user of water transferred to the Drought Water Bank. Approval of the petition will allow water transferred to the Drought Water Bank under DWR's water rights to be delivered to a CVP contractor, and vice versa, which will facilitate the delivery of water to areas with the greatest need. To ensure that, consistent with the testimony described above, approval of the petition will not cause an increase in through-Delta transfers, we will impose a 16,000 acre-foot limit on the amount of water that Petitioners may transfer through the Delta under their water rights and deliver to the consolidated place of use pursuant to this approval.⁵

4.2 Potential Impacts associated with Transfers and Exchanges South of the Delta

The majority of the transfers or exchanges outlined in the petition are transfers and exchanges between Project contractors south of the Delta. These types of transfers do not present the same concerns as through-Delta transfers, but some hearing participants did express concerns about the potential impacts of delivering water for purposes of irrigation in the San Joaquin Valley. In particular, witnesses for C-WIN and CSPA testified that approval of the petition could result in water being delivered to drainage-impaired lands on the west side of the San Joaquin Valley, which could cause an increase in salinity and other constituents in the San Joaquin River and the southern Delta.

Notwithstanding C-WIN and CSPA's testimony, however, the record contains no evidence that approval of this petition will in fact cause water to be delivered to drainage-impaired lands, or cause an increase in agricultural discharges. (See R.T. at pp. 145, 296-297.) In addition, water will not be delivered to lands that have not been irrigated in the past, and any increase in agricultural drainage that might occur will not exceed the historic averages. The petition states that the quantity of water delivered to SWP and CVP contractors as a result of the change in place of use will not exceed historic average deliveries, and we will condition this approval accordingly. Because deliveries will not increase, Ms. Sergent and Mr. Milligan testified that drainage will not increase above historic averages. (R.T. at pp. 145-146.) In light of these facts and the low allocation to CVP contractors this year, we find that approval of the petition will not

⁵ By conditioning our approval in this manner, we do not intend to imply that water cannot be transferred through the Delta without unacceptable impacts, and we recognize that DWR has developed mitigation measures designed to ensure that transfers to the 2009 Drought Water Bank will not injure legal users of water or unreasonably affect fish and wildlife. The administrative record in this proceeding is insufficient, however, to support the development, evaluation and implementation of appropriate mitigation measures for any through-Delta transfers. For example, DWR has stated that carriage losses will be deducted from transfers through the Delta, but DWR has not specified how carriage losses will be calculated, or demonstrated that DWR's methodology for calculating carriage losses is adequate.

cause a significant impact to water quality as a result of increased agricultural drainage. Similarly, we find that any increase in agricultural drainage will not cause injury to any legal user of water, and any impacts to fish, wildlife, or other instream beneficial uses would not be unreasonable, particularly when taking into consideration the need for the petition to address the significant economic and other impacts of the drought.

4.3 Impacts associated with Potential Future Transfers

A number of hearing participants expressed concern regarding the unknown impacts of potential future transfers that are not specifically identified in the petition, including transfers or exchanges initiated in 2010, which might not be necessary to alleviate drought conditions.

To address the potential impacts of future transfers or exchanges, Petitioners propose to develop, in coordination with Board staff, a reporting plan that will account for all water transferred or exchanged under the provisions of this approval. The reporting plan will include the parties to the transfer or exchange, how much water is to be transferred, how the water will be made available, the facilities required to accomplish the transfer, any anticipated changes to streamflow or drainage resulting from the transfer, and how the transfer will affect the overall water supply of the agencies receiving transfer water.

With regard to the possibility of transfers or exchanges initiated in 2010, Ms. Sergent and Mr. Milligan clarified during cross-examination that the purpose of the two-year effective date of the petition was to allow exchanges to take place over a two-year period, and the Petitioners do not propose to initiate any transfers or exchanges in 2010 pursuant to the petition. (R.T. at pp.109-110, 154.) Mr. Milligan testified that Reclamation may need until the fall of 2010 to effectuate completion of two-year exchanges, particularly those involving the Friant Division. (R.T. at pp. 162-163.)

This order will impose the reporting requirement described above, for transfers and exchanges identified in the petition as well as potential future transfers or exchanges, and also require reporting to track the initial transfers made during 2009 in order to verify that transfers made during 2010 are only for the purpose of completing an exchange. Further, in order to observe and track any changes to streamflow or drainage resulting from the transfers, per the reporting plan described by Ms. Sergent, this order requires the development of a streamflow and salinity monitoring and reporting plan.

Finally, to ensure that this approval does not result in any unknown or unexpected impacts, we will limit this approval to: (1) transfers to the 2009 Drought Water Bank under the Projects' rights, not to exceed a cumulative total of 16,000 acre-feet, (2) the south-of-Delta transfers or exchanges that are identified in the petition, and (3) any future south-of-Delta transfers or exchanges that will be implemented in accordance with the conditions of this order, as verified by the State Water Board Deputy Director for Water Rights (Deputy Director). We find that approval of any potential future south-of-Delta transfers or exchanges will not injure any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses, provided that they are implemented in accordance with the parameters set forth in the change petition and included as conditions of this order.

5.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

The Governor's Drought Emergency Proclamation provides that the emergency exemptions from California Environmental Quality Act (CEQA) requirements contained in Public Resources Code sections 21080, subdivision (b)(3), 21080, subdivision (b)(4) and 21172, and in California Code of Regulations, title 14, section 15269, subdivision (c) shall apply to all actions or efforts consistent with the Proclamation that are taken to mitigate or respond to the drought emergency. The Governor's Proclamation further provides that the Secretary for the California Environmental Protection Agency (Cal/EPA) and the Secretary for the California Natural Resources Agency (Natural Resources) shall determine which efforts fall within those exemptions, ensuring that the exemptions serve the purposes of the proclamation while protecting the public and the environment.

DWR has determined that the change petition is consistent with the Governor's Drought Emergency Proclamation and is being pursued in order to mitigate or respond to the drought emergency. Accordingly, DWR filed a Notice of Exemption (NOE) on April 27, 2009. In addition, DWR filed an application with Cal/EPA and Natural Resources for a Secretarial determination regarding the petition. On April 28, 2009, both the Secretary for Cal/EPA and the Secretary for Natural Resources signed DWR's application, indicating that they concurred with DWR's determination that the petition fell within the exemptions listed in the Governor's Drought Emergency Proclamation. Based on our review of the record and the proclamation itself, which directs DWR and the State Water Board to expedite the processing of a petition to consolidate the Projects' places of use, we likewise determine that the petition is consistent with the

proclamation and necessary to prevent or mitigate property damage and other impacts of the drought, and therefore CEQA emergency exemptions apply pursuant to the proclamation.

At the hearing officer's request, DWR submitted a copy of the CEQA documents described above to the State Water Board on April 28, 2009, even though the deadline to submit written exhibits had passed and the hearing had been adjourned. The hearing officer provided the other parties with an opportunity to comment on the CEQA documents or object to their admission into evidence. CSPA and C-WIN filed a joint objection to the admission of the documents on the basis that the documents contain false information that CSPA and C-WIN should have had the opportunity to rebut. As explained below, this objection lacks merit for several reasons.

First, CSPA and C-WIN have not identified what information they claim is false, or explained why that information is false, even though CSPA and C-WIN had an opportunity to comment on the CEQA documents. Second, with limited exceptions, the information contained in the CEQA documents already has been admitted into evidence. In large part, DWR's application to CalEPA and Natural Resources summarizes information contained in the change petition, DWR Exhibit DWR-8, and C-WIN Exhibit No. 1-R. Accordingly, in reaching the determination that the petition is exempt from CEQA requirements, we have not relied on any evidence that is not already part of the record, except to recognize the official acts of DWR, Cal/EPA, and Natural Resources in connection with their CEQA review of the petition, which may be officially noticed. (Cal. Code Regs., tit. 23, § 648.2; Evid. Code, § 452, subd. (c).)

CSSA and PTA also objected to the admission of the CEQA documents on the grounds that a drought emergency no longer exists due to recent precipitation. Notwithstanding CSSA's and PTA's assertions, however, the record contains substantial evidence that, even if California receives significant precipitation in May and June of this year, it will be insufficient to alleviate the current water supply shortage, and therefore a drought emergency still exists. (See, e.g., DWR Exhibit DWR-8, pp. 9-11; R.T. at pp. 74, 76.) For the foregoing reasons, CSPA's, C-WIN's, CSSA's and PTA's objections to the admission of the CEQA documents into evidence are overruled, and the CEQA documents are hereby admitted into evidence.

6.0 CONCLUSION

For the reasons explained above, we find that approval of the change petition, subject to appropriate conditions, will not injure any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses. In addition, approval of the petition is in the public interest because it will assist Petitioners in their efforts to alleviate the impacts of the drought. Accordingly, the petition should be approved.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT the State Water Resources Control Board approves the petition for change in place of use, subject to the following conditions:

1. The places of use for the subject water right permits and license are combined in accordance with the two maps dated April 21, 2009, and submitted with the subject petition for change.
2. Transfers under this order that take place on or after January 1, 2010 shall only be for the purpose of completing exchanges of water transferred prior to that date. Exchanges must be completed by October 31, 2010. By January 31, 2010, DWR and Reclamation shall provide a consolidated summary report to the Deputy Director of all transfers and exchanges completed under this order as of December 31, 2009. By December 1, 2010, DWR and Reclamation shall also provide a final consolidated summary report of all transfers and exchanges completed under this order. For each transfer or exchange, the summary report shall include the parties involved, the amount of water, the dates the transfer or exchange began and ended, the original point of diversion of the water, and the original and changed places of use. The report must be prepared in such a way as to clearly show the linkage between transfers that are part of an exchange.
3. DWR and Reclamation shall submit detailed monthly reports of all water transferred or exchanged under the provisions of this order in accordance with a reporting plan developed by DWR and Reclamation. The plan must be approved by the Deputy Director prior to initiating operations under this order. The report for each transfer or exchange shall include

the parties to the transfer or exchange, the amount and salinity of water transferred or exchanged, how the water was made available, the facilities required to implement the transfer or exchange, anticipated changes to streamflow or agricultural drainage from the transfer or exchange, and how the transfer or exchange affected the overall water supply of the agency receiving the transfer water.

4. This approval is limited to the transfers and exchanges identified and described in the subject petition and any south-of-Delta transfers or exchanges that meet the criteria set forth in conditions 2, 5, 6, 7, 8, and 9 of this order. In addition, this approval does not extend to any transfers to the 2009 Drought Water Bank under DWR's or Reclamation's water rights in excess of a total of 16,000 acre-feet. If a south-of-Delta transfer or exchange is not specifically identified and described in the petition, the transfer or exchange may occur only after the Deputy Director determines that the transfer or exchange will be implemented in accordance with the conditions of this order, including the time schedule in condition 2 and the criteria set forth in conditions 5 through 9. Requests for the Deputy Director's approval of these transfers or exchanges will only be accepted on Mondays and must be received by 4:00 p.m. Petitioners should anticipate a determination on the requests no sooner than the Friday of the same week at 12:00 noon. Requests should be submitted on the form entitled "Petition for Long Term Transfer of Water/Water Rights" available on the Division's website. Petitioners should annotate "Request per Consolidated Place of Use Order" at the top of the form.
5. DWR and Reclamation shall operate the SWP and CVP in accordance with the 2008 Delta smelt biological opinion, as may be affected by court order or subsequent biological opinion.
6. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this order.
7. The total quantity of water delivered to any SWP or CVP contractor under this order shall not exceed historic average deliveries to the contractor as stated in the attachments provided with the petition for change.

8. Transfers or exchanges under this order shall not result in the net decrease of San Joaquin River or Sacramento River flow over the period of the transfer.
9. Transfers or exchanges under this order shall not result in the net decrease of any Eastside CVP water from the San Joaquin Valley over the effective period of this order.
10. In order to facilitate monitoring of changes to streamflow and agricultural drainage per conditions 3 and 8 above, DWR and Reclamation must provide ongoing reporting of streamflow and salinity during the period of time this order is in effect. The monitoring plan must be approved by the Deputy Director prior to initiating operations under this order. DWR and Reclamation shall consult with Division of Water Rights staff to develop the plan, including selection of appropriate monitoring locations, reporting frequency and data reporting format.
11. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this change order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of 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 may also be exercised by imposing specific requirements over and above those contained in this order with a view to eliminating waste of water and to meeting the reasonable water requirements of permittees and licensees without unreasonable draft on the source.

12. This order does not authorize any act which results in the taking of a threatened, endangered or candidate 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 order, DWR and Reclamation shall obtain authorization for an incidental take prior to commencing the transfer or exchange of water. DWR and Reclamation shall be responsible for meeting all

requirements of the state and federal Endangered Species Acts for the transfers and exchanges authorized under this order.

CERTIFICATION

The undersigned Clerk 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 May 19, 2009.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board