STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 13310 PERMIT 9366 LICENSE 7860

THIS IS TO CERTIFY, *That* Oakdale Irrigation District and
South San Joaquin Irrigation District
P. O. Box 188
Oakdale, California

have made proof as of October 23, 1959,

(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of Stanislaus River in Calaveras and Tuolumne Counties

tributary to San Joaquin River

for the purpose of power use *under Permit* 9366 *of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from* August 22, 1949, *and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed* one thousand five hundred (1500) cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year and eighty thousand (80,000) acre-feet per annum by storage to be collected from January 1 to December 31 of each year.

The maximum withdrawal from storage in any one year has been 80,000 acre-feet.

The amount of direct diversion covered by this license and under rights initiated by Applications 12614 and 12873 shall not exceed 1800 cubic feet per second at Tulloch Power Plant.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:
North thirty-eight degrees no minutes east (N38°00'E) two thousand six hundred fifty (2650) feet from SW corner of fractional Section 1, T1S, R12E, MDB&M, being within Lot 5 of said Section 1.

Water will be returned to Stanislaus River in Lot 5 of fractional Section 1, T1S, R12E, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:
Tulloch Powerhouse located within Lot 5 of fractional Section 1, T1S, R12E, MDB&M.

THIS LICENSE IS ISSUED SUBJECT TO THE FOLLOWING LIMITATIONS AND CONDITIONS:

1. Agreement between Oakdale Irrigation District, South San Joaquin Irrigation District and the Tuolumne County Water District No. 2 dated June 27, 1951.
2. Agreement between Oakdale Irrigation District, South San Joaquin Irrigation District and the County of Tuolumne dated June 27, 1951.
3. Agreement between Oakdale Irrigation District, South San Joaquin Irrigation District and the Calaveras County Water District dated July 3, 1951.
4. Resolution of the Board of Supervisors of the County of Calaveras dated July 2, 1951, whereby the County withdraws its protest against the applications of the Irrigation Districts.
5. The combined total diversions to storage under this right and the right initiated by Application 10872 shall not exceed 80,000 acre-feet in any one storage season.
6. The right to store and use water for power purposes acquired under this license shall not interfere with future appropriations of said water for domestic or irrigation use, provided however that nothing herein contained shall in any way affect any rights acquired by licensee under any other permit or license for irrigation purposes.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: AUG 3 1966

STATE WATER RIGHTS BOARD CALIFORNIA

L. K. Hill
L. K. Hill
Executive Officer

LICENSE 7860
STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

Oakdale Irrigation District and
ISSUED TO South San Joaquin Irrigation District
DATED AUG 3 1966

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APR 19 '66 M.J.B.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER AUTHORIZING TEMPORARY CHANGES IN PLACE OF USE AND PURPOSE OF USE

MERCED IRRIGATION DISTRICT, OAKDALE AND SOUTH SAN JOAQUIN IRRIGATION DISTRICTS, TURLOCK AND MODESTO IRRIGATION DISTRICTS, CENTRAL CALIFORNIA IRRIGATION DISTRICT, SAN LUIS CANAL COMPANY, FIREBAUGH CANAL WATER DISTRICT, AND COLUMBIA CANAL COMPANY, WATER RIGHT HOLDERS

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On December 10, 1998

San Joaquin River Group Authority
c/o Marc Van Camp
Murray, Burns and Kienlen
1616 29th Street, Suite 300
Sacramento, CA 95816

filed with the State Water Resources Control Board (SWRCB) Petitions for Temporary Change under Water Code sections 1707 and 1725 et seq. For these petitions, the San Joaquin River Group Authority (SJRGA) represents the following water right holders who are petitioners for temporary changes:

Water Right Holder	Application No.	License No.
Merced Irrigation District	16187, 16186, 10572, 1224 1222, 1221	11396, 11395, 6047, 2685 2684, 990
Oakdale and South San Joaquin Irrigation Districts	10872, 13310	7856, 7860
Turlock and Modesto Irrigation Districts	14127, 1233	11058, 5417
San Joaquin River Exchange Contractors: Central California Irrigation District San Luis Canal Company Firebaugh Canal Water District Columbia Canal Company	Pre-1914	

The petitioners seek to temporarily add the San Joaquin River upstream of Vernalis and at Vernalis as a place of use under their water rights, and to add fish and wildlife enhancement as a purpose of use. Temporary changes may continue for a period of up to one year. The petitioners seek to begin the temporary water transfers in April 1999. The petition notice was mailed to 340 interested parties and downstream water users in the San Joaquin River watershed.

2.0 BACKGROUND

In 1995, the SWRCB adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay-Delta Plan) which includes flow objectives for the San Joaquin River at Vernalis. In the future, the SJRGA members propose to enter into the San Joaquin River Agreement (Agreement) with a number of other parties, including the U.S. Department of the Interior (DOI) and the California Department of Water Resources (DWR). The Agreement will, when executed, provide for the implementation of the Vernalis Adaptive Management Plan (VAMP), a 12-year experimental program that includes a spring pulse flow on the San Joaquin River at Vernalis during April and May. Existing flows will be augmented with water transferred to the DOI and DWR by the petitioners. The Agreement also will provide for additional water transfers from various individual SJRGA members to the DOI and the DWR at other times of the year.

The VAMP specifies flow levels at Vernalis and export limits at the State Water Project and Central Valley Project pumps that are different from those specified in the 1995 Bay-Delta Plan during the pulse flow period. The petitioners claim that the Agreement will provide environmental protection at a level equivalent to the 1995 Bay-Delta Plan and that it is consistent with existing biological opinions for endangered species.

The petitioners propose that this temporary transfer be used in 1999 to conduct the experiments proposed under the VAMP. Fishery experiments will be conducted during the pulse flow period to study the relative effects of Delta exports and San Joaquin River flows on survival of San Joaquin River salmon smolts migrating through the Delta. The petitioners propose to provide a level of flow in the coming year that will be consistent with the provisions of the Agreement. The SJRGA members will provide up to 110,000 acre-feet (AF) towards meeting the pulse flow targets in the Agreement during April and May. In addition, the Merced Irrigation District will supply 12,500 AF of water in October to attract adult salmon returning to spawn. Lastly, the Oakdale Irrigation District will sell to DOI 15,000 AF of Oakdale's entitlement from the New Melones Project plus any unused portion from its 11,000 AF maximum share of the spring pulse flow.

The proposed operation by the SJRGA members this year is described in a report, titled "Hydrologic Analysis of the San Joaquin River Agreement for 1999 Implementation",

prepared by Daniel Steiner for the U. S. Bureau of Reclamation (USBR)[1]. The actual operation may vary depending on hydrologic conditions. The following operating assumptions are included in that report.

Transferred water from Merced, and Modesto/Turlock Irrigation Districts will occur as increased stream releases from New Exchequer Dam and New Don Pedro Dam, respectively.

The flow below Goodwin Dam on the Stanislaus River is projected to be 1,500 cubic feet per second (cfs), which is the maximum flow the USBR will allow during April and May; therefore, water will not be released to the lower Stanislaus River by Oakdale and South San Joaquin Irrigation Districts. Oakdale/South San Joaquin Irrigation Districts will arrange for Modesto Irrigation District and Merced Irrigation District, respectively, to provide Oakdale/South San Joaquin Irrigation Districts' share of the VAMP pulse flow through storage releases from New Don Pedro Reservoir and Lake McClure. The remaining water to be purchased from Oakdale by DOI will be provided by reducing Oakdale's allocation from New Melones Reservoir[2]. This reduction will result in additional storage in New Melones Reservoir and will be reallocated among the other permitted uses of New Melones water.

The Exchange Contractor's share of the pulse flow will be provided from contractual water deliveries from the USBR[3]. The water will be exported from the Delta and released into the San Joaquin River.

The Agreement also calls for the construction of a fish barrier at the head of Old River during the spring pulse flow. The barrier is designed to keep salmon smolts in the mainstem of the San Joaquin River and eliminate their migration into Old River, where they are susceptible to entrainment at the export pumps. Under present conditions, a temporary barrier has to be constructed each year during the pulse flow period, but a permanent operable barrier may be constructed in the future. Due to high flow conditions this year, a barrier may not be constructed in the spring of 1999.

3.0 OBJECTIONS TO THE PETITIONS

The Division of Water Rights received objections from the following parties:

- South Delta Water Agency (SDWA);
- Central Delta Water Agency, Reclamation District 2072, and R.C. Farms, Inc. (CDWA);

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[1] This report is Attachment A to a March 30, 1999, Environmental Analysis/ Initial Study, titled "Additional Water Acquisition for Meeting VAMP Flow Objectives 1999". The report analyzes the potential transfer of up to 157,000 AF.

[2] This purchase does not involve a change in water rights. Oakdale will not take delivery under its contract, and the water will remain in storage in New Melones Reservoir under the USBR's rights.

[3] This operation does not involve a change in water rights. The Exchange Contractors will not take delivery under their contract, and the water will be exported from the Delta and released into the San Joaquin River under the USBR's rights.

- Pacific Gas and Electric Company (PG&E).

The SWRCB may approve petitions for temporary change pursuant to Water Code sections 1707 and 1725 provided that the proposed change:

1. Will not unreasonably affect, and will not injure, any legal user of water;
2. Will not increase the amount of water the person is entitled to use;
3. Will not have an unreasonable effect on fish, wildlife, or other instream beneficial uses of water;
4. Involves only water that would, in the absence of the temporary change, have been consumptively used or stored; and
5. Otherwise meets the requirements of Division 2 of the Water Code.

The SDWA objects to the proposed changes and argues that the proposed changes do not meet any of the requirements. In addition, SDWA states that (1) if the amount of water transferred under the petition exceeds the 1995 Bay-Delta Plan objectives, then there is no environmental evaluation of the effects; (2) uncertainties regarding installation of the Head of Old River barrier puts the VAMP experiment at risk; and (3) transferred water should not be considered abandoned until it has passed through the Delta so that it may not be exported. SDWA requests that the petitions be denied, or alternatively, that the SWRCB hold a hearing.

The CDWA also objects on all points. Further, the CDWA alleges that the proposed transfer of water is an unreasonable and wasteful use of water and is therefore prohibited under article X, section 2 of the California Constitution.

PG&E objected to the petition, stating that certain of its water rights and contractual rights on the Stanislaus River and the lower Merced River could be affected by the change.

4.0 WATER SUPPLY ISSUES

The licenses and pre-1914 water rights held by the petitioners authorize them to directly divert and store water in the San Joaquin River watershed. In the absence of the proposed temporary changes, the water proposed for transfer would be stored in the petitioners' reservoirs or would be put to consumptive beneficial uses on the land within the petitioners' authorized places of use.

4.1 No Injury to Any Legal User of Water Water Code section 1727(a)(1) requires the SWRCB, upon receipt of a temporary change petition, to evaluate whether such change will cause injury to any legal user of water through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water, reduction in return flows, or reduction in the availability of water within the watershed of the transferor. Water Code section1707(b)(2) requires that there be no unreasonable effect on any legal user of water. Both SDWA and CDWA argue that the transfer of water for

the April/May pulse flow will lead to reduced flows and degraded water quality conditions later in the summer.

The issue of primary concern to the SDWA and the CDWA is whether the change will adversely affect water quality at Vernalis during the irrigation season. An analysis of the potential impact of the transfer on flow and water quality at Vernalis was provided in Daniel Steiner's report cited above. Mr. Steiner's analysis covered the period from March 1999 through September 2000. In general, the report concludes that, although there might be some reductions in flow and increases in total dissolved solids compared to a base condition[4], water quality standards will be met in all months. This result is consistent with testimony received in the ongoing Bay-Delta hearing regarding for implementation of the 1995 Bay-Delta Plan. The testimony indicated that exceedances of water quality objectives will be slightly less under the VAMP than under the base condition (DOI Exhibit 105). Therefore, I conclude that the temporary change will not cause any injury to the SDWA or the CDWA during the term of the temporary change, or during the following year.

4.2 No Increase in the Amount of Water the Petitioners are Entitled to Use The SDWA and the CDWA allege that the transfer for the spring pulse produces storage space in upstream reservoirs, which can be refilled later in the year. SDWA and CDWA argue that the net effect of this operation is that each of the districts may capture and use more water than they would have been able to use in the absence of the transfer. In addition, the SDWA and the CDWA claim that there has been no showing that any of the sellers will decrease their consumptive use.

The issue here is whether the temporary change will increase the amount of water that the petitioners are entitled to use. (Water Code section 1707.) This order does not authorize an increase in water appropriation, including use by the petitioners. The water must come from available supplies within the petitioners' established water rights, and the petitioners' total use, including the transferred water, may not exceed the amount of use allowed in their water rights. The reservoir operators have adequate water rights to store the water proposed for transfer. Therefore, I conclude that there will be no increase in the amount of water the petitioners are entitled to use.

4.3 Involves Only Water that Would, in the Absence of the Temporary Change, have been Consumptively Used or Stored As mentioned above, the SDWA and the CDWA claim that there has been no showing that any of the sellers will decrease their consumptive use.

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[4]The base case condition assumes that New Melones Reservoir is operated in accordance with the Interim Plan of Operation, with a pulse flow released during the month of May. Allocation of annual water supplies to the uses of the instream fishery, Vernalis water quality, Bay-Delta biological opinions, and CVP contractors are dependent on New Melones inflow and storage. Allocations to Oakdale and South San Joaquin Irrigation Districts were assumed to be consistent with their 1988 agreement with the U. S. Bureau of Reclamation.

Water Code section 1725 requires that water transferred pursuant to a temporary change must involve only water that would otherwise have been consumptively used or stored in the absence of the change. Mr. Steiner's hydrologic report states that the Merced Irrigation District and the Modesto/Turlock Irrigation Districts will provide the flows for the temporary change by releasing water from storage. In addition, these two districts will provide water on behalf of Oakdale/South San Joaquin Irrigation Districts during the pulse flow by making releases from storage. The hydrologic analysis indicates that New Don Pedro Reservoir storage at the end of the year will be reduced by an amount equal to the amount of water provided for transfer. The analysis for Lake McClure indicates that, under median hydrologic conditions, its storage at the end of the year will be approximately the same under the Agreement as under the base case. This results from Merced's summer discretionary hydropower releases being reduced by approximately the same amount as its increased spring releases under the temporary transfer. Presently, storage in New Don Pedro Reservoir and Lake McClure is below the minimum flood pool[5]; therefore, the petitioners would have reservoir storage space available to store the water to be released for the pulse flow in the absence of the transfer.

Based on the information above, I find that the transfer involves only water that would, in the absence of the temporary change, have been consumptively used or stored.

4.4 Otherwise Meets the Requirements of Division 2 of the Water Code The SDWA and the CDWA state that Merced Irrigation District received approvals from the SWRCB to transfer water under Water Code sections 1725 in 1993, 1994, 1996 and 1997. They urged the SWRCB not to approve this petition for temporary change until appropriate environmental review has been completed for a long-term change. Under Water Code section 1732, if the SWRCB concludes that the petitioner has not exercised due diligence in petitioning for a long-term change, the SWRCB must disapprove a temporary change.

The petitioners have submitted separate petitions for long-term change, pursuant to Water Code sections 1735 and 1707. Public notice of these petitions was sent to interested persons on December 10, 1998, and parties have until September 1, 1999, to file written protests. The SJRGA and the USBR have jointly prepared an EIR/EIS to support the long-term change petition. Under these facts, there is no current basis for finding that the petitioners have not exercised due diligence.

4.5 Other Issues Raised by the SDWA and the CDWA The SDWA also objected to the petition on the following grounds: (1) if the amount of water transferred under the petition exceeds the 1995 Bay-Delta Plan objectives, there is no environmental evaluation of the effects; (2) the uncertainty in installing the Head of Old River barrier puts the VAMP experiment at risk; and (3) transferred water should not be considered abandoned until it has passed through the Delta so that it may not be exported.

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[5] Data obtained from the U.S. Army Corps of Engineers internet site (http://www.spk-wc.usacc.army.mil) indicates that on April 5, 1999, the storage in Don Pedro and Lake McClure was 44,314 AF and 58,088 AF, respectively, below conservation storage.

Regarding the first issue, temporary transfers of water under Water Code section 1725 et seq. are exempt from the California Environmental Quality Act (CEQA); hence, there is no requirement to prepare environmental documentation. In any event, the flow targets under the VAMP are generally similar to or less than the 1995 Bay-Delta Plan flow objectives. This year the VAMP flow targets are less the 1995 Bay-Delta Plan flow objectives as discussed below.

Regarding the second issue, installation of the Head of Old River barrier is required under the Agreement and highly desirable for the VAMP experiments. The parties have not yet executed the Agreement. However, the petitioners, the USBR, and the DWR plan to proceed with the fishery experiment this year even if the barrier is not installed. The data obtained will be useful regardless of the status of the barrier.

Regarding the third issue, the petitioners requested a place of use that extends only to Vernalis. The SWRCB is not in a position to grant authorization of a larger place of use than is requested. Under the petitions, the relationship between San Joaquin River flows and exports during the spring pulse flow would be defined by the VAMP. The only way to ensure that none of the pulse flow is exported is to shut down exports during the pulse flow period, which is not consistent with the experiment. Because the export levels allowed under the VAMP are less than the export levels allowed under the 1995 Bay-Delta Plan, the exports during the experiment should not have an adverse effect compared with operations in the absence of the temporary change.

The CDWA objected on the grounds that the transfer of water under this temporary change represents an unreasonable and wasteful use of water and is therefore prohibited under article X, section 2 of the California Constitution. VAMP flows for this year have been set at 7,000 cfs. The 1995 Bay-Delta Plan requires 7,020 cfs in an above normal water year when X2 is west of Chipps Island, the most likely circumstance for this year. If significant additional precipitation occurs this year and the water year classification becomes wet, the 1995 Bay-Delta Plan flow objective at Vernalis during the pulse period would become 8,620 cfs. In either case, 1995 Bay-Delta Plan flow objectives exceed SJRA target flows. The 1995 Bay-Delta Plan objectives are based on the reasonable protection of aquatic resources through the use of water. Thus, the amount of flow that would be present under the temporary changes would not represent an unreasonable or wasteful use of water.

4.6 Objections of Pacific Gas and Electric Company PG&E objected to the petitions for temporary change, saying that it has various water rights, and contractual rights, which could be affected by the proposed change. By letter dated April 2, 1999, PG&E informed the SWRCB that it had conferred with representatives of Oakdale, South San Joaquin and Merced irrigation districts and had agreed upon conditions for withdrawal of its objections.

On the Stanislaus River, PG&E has senior rights below Donnells and Beardsley reservoirs but upstream from New Melones which could be affected. As Donnells and

Beardsley will not be operated to meet VAMP flows, there will be no impact to PG&E's Stanislaus River rights.

On the Merced River, PG&E operates Merced Falls powerhouse, which is downstream of Lake McClure. Merced Irrigation District has agreed to compensate PG&E for any harm that may result as a result of the temporary change. Based on this agreement, PG&E has agreed to dismiss its objections to the petition of Merced Irrigation District.

5.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving the transfer of water that was previously stored, or would have been stored absent the transfer, are exempt from the requirements of CEQA (Public Resources Code section 21000 et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(a)(2).

5.1 No Unreasonable Effect on Fish, Wildlife, or other Instream Beneficial Uses of Water The SDWA and the CDWA allege that the temporary change will harm fish and wildlife. SDWA claims that this petition will result in Stanislaus River water being transferred to the Tuolumne River, thus causing imprinting problems with juvenile anadromous fish. At one point, Oakdale was proposing to meet its share of the pulse flow by transferring water to Modesto Irrigation District in the Tuolumne River watershed in exchange for a release of an equivalent amount of water from New Don Pedro Reservoir. This transfer is no longer being proposed this year; therefore, the alleged effect on juvenile anadromous fish will not occur.

The CDWA states that temperature is critical to the survival of salmon and steelhead and that lower instream flows may have an effect on temperature conditions. As described above, the tributary flows are lower in some months under the proposed temporary change than under the base condition. However, the flows at all times will either meet or exceed the required tributary flows. The important issue with respect to temperature control is the amount of carryover storage in New Don Pedro Reservoir and Lake McClure. Over the period analyzed, the reservoirs remain sufficiently full to maintain the cold water pools. Because New Melones, New Don Pedro, and Exchequer dams are equipped with low level outlets, temperature should not become a problem during the term of the transfer, or during the following year.

Both SDWA and CDWA raise the issue of potential impacts to steelhead. The release of water pursuant to the VAMP is designed to be beneficial to anadromous fish such as steelhead. No adverse effects on steelhead related to the VAMP have been alleged in the Bay-Delta water rights hearing during the course of testimony by the various resource agencies. Testimony in the Bay-Delta water right hearing by California Department of Fish and Game and U. S. Fish and Wildlife Service biologists has supported the VAMP and the Agreement. The Division of Water Rights received no objections to the petitions from the fishery resource agencies. Accordingly, there is no basis for finding that steelhead would be harmed by the temporary change.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On January 23, 1997, the SWRCB adopted Resolution 97-06, delegating authority to approve petitions for temporary changes to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

7.0 CONCLUSIONS

The SWRCB has adequate information in its files to make the evaluation required by Water Code sections 1707 and 1727 et seq.; and therefore I find as follows:

1. The petitioner has requested approval of the change in place of use and purpose of use in order to allow for the temporary transfer of water to enhance fish and wildlife in the San Joaquin River upstream of Vernalis.

2. Pursuant to Water Code section 1707, I conclude based on the available evidence that the proposed water transfer:

   - Will not increase the amount of water the petitioners are entitled to use;
   - Will not unreasonably affect any legal user of water; and
   - Otherwise meets the requirements of Division 2 of the Water Code.

3. Pursuant to Water Code sections 1725 et seq., I conclude based on the available evidence that the proposed temporary change:

   - Would not increase the amount of water the permittee or licensee is entitled to use;
   - Involves only water that would otherwise have been consumptively used or stored by permittee or licensee;
   - Would not injure any other legal user of the water; and
   - Would not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition to temporarily change the place of use and purpose of use of water, by adding fish and wildlife enhancement use and adding a place of use in the San Joaquin River downstream to Vernalis under the water right Licenses 11395, 11396, 6047, 2684, 2685, and 990 of Merced Irrigation District, and water right Licenses 5417, and 11058 of Modesto and Turlock Irrigation Districts, is approved; subject to the following terms and conditions:

1. The petitioners may transfer up to 110,000 acre-feet in April and May 1999. Merced Irrigation District may transfer up to 12,500 acre-feet in October 1999.

2. The temporary changes authorized herein may commence five days after the date of this order, and shall remain in effect through October 31, 1999. All existing terms

and conditions of the subject licenses rights shall remain in effect, except as temporarily amended by this order.

3. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB 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.

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

5. 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.

6. This temporary transfer 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. section 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

Harry M. Schueller
Chief of the Division of Water Rights

Dated: APR 0 9 1999