STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000 - 10

In the Matter of
Implementation of Water Quality Objectives for the
San Francisco Bay/Sacramento-San Joaquin Delta Estuary;
A Petition to Change Place of Use, Point of Diversion, and Purpose of Use
of Water Right Licenses 11120 and 11118 of
South Sutter Water District
(issued on Water Right Applications 10221 and 14804)

SOURCE: Bear River, tributary to Feather River

COUNTY: Sutter

ORDER IMPLEMENTING FLOW OBJECTIVES FOR THE BAY-DELTA ESTUARY AND CONDITIONALLY APPROVING A PETITION TO CHANGE PLACE OF USE, POINT OF DIVERSION, AND PURPOSE OF USE UNDER WATER RIGHT LICENSES 11120 AND 11118 OF SOUTH SUTTER WATER DISTRICT

1.0 INTRODUCTION

In this order, the State Water Resources Control Board (SWRCB) approves, subject to terms and conditions, the petition filed by South Sutter Water District (SSWD) for changes in place of use, point of diversion, and purpose of use under Water Right Licenses 11120 and 11118. SSWD filed the petition under Water Code section 1700, et seq., including section 1707. In this order, the SWRCB also recognizes the joint proposal embodied in the agreement among the Department of Water Resources (DWR), SSWD, and Camp Far West Irrigation District (CFWID) to settle the responsibilities of SSWD, CFWID, and all other Bear River water rights, to implement the objectives in the Water Quality Control Plan for the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary, adopted May 22, 1995 (1995 Bay-Delta Plan). This order is consistent with the agreement.

This order is the result of a session of the Bay-Delta Water Rights Hearing conducted by the SWRCB on April 11 and 12, 2000, pursuant to the Supplement to Revised Notice of Public Hearing dated February 29, 2000. The Bay-Delta Water Rights Hearing commenced on July 1, 1998, and with the April 11-12 session, it has continued for 84 days. The hearing is an adjudicative proceeding, and is governed by statutes and regulations as provided at Title 23, California Code of Regulations, section 648. The SWRCB issued a Notice of Public Hearing for this proceeding on December 2, 1997, and subsequently issued a Revised Notice of Public Hearing on May 6, 1998. The revised notice divided the hearing into phases, designated as Phases 1 through 8. Prior to the April 11-12 session, the SWRCB completed Phases 1 through 7, including Phases 2A and 2B, and adopted Decision 1641, deciding issues addressed in those phases. The April 11-12 hearing session commenced Phase 8 of the Bay-Delta Water Rights Hearing. The administrative record of this order includes the entire hearing record of the Bay-Delta Water Rights Hearing through the April 11-12 session.

This order is part of the SWRCB's implementation of the 1995 Bay-Delta Plan. Because many of the objectives in the 1995 Bay-Delta Plan can best be implemented by changing the flow of water or the operation of facilities that move water, this order places terms and conditions on water rights under which water right holders are authorized to divert, redivert, and use water.

2.0 BACKGROUND

2.1 Procedural History

This order is the latest in a series of SWRCB actions intended to protect the beneficial uses of water in the Bay-Delta Estuary against the adverse effects of water diversions. The SWRCB's current practice in addressing the Bay-Delta issues is first to adopt water quality objectives that, when implemented, will protect the beneficial uses. The SWRCB then takes steps to implement the objectives through various means, including water right orders if appropriate and requests to other agencies to take actions including, in the example of Regional Water Quality Control Boards, water quality measures.

The current water quality objectives, to be implemented to the extent appropriate through the Bay-Delta Water Rights Hearing, are set forth in the 1995 Bay-Delta Plan. The current water right requirements to implement Bay-Delta objectives are in transition from SWRCB Decision 1485 (D-1485), adopted in 1978, which implements the objectives in the 1978 water quality control plan, to newer decisions and orders that will implement the 1995 Bay-Delta Plan. The SWRCB temporarily implemented parts of the 1995 Bay-Delta Plan in Orders WR 95-6 and 98-09. SWRCB Decision 1641 (D-1641), adopted December 29, 1999 and amended March 15, 2000, includes both long-term and temporary implementation requirements. The long-term requirements are based on geographic areas, and include the watersheds of the San Joaquin River upstream of Vernalis, the Mokelumne River, Putah Creek, Cache Creek, and the boundaries of the North Delta Water Agency. The SWRCB intends to leave the temporary implementation requirements in effect only until the SWRCB makes further decisions establishing the responsibilities of water right holders in the areas where the responsibilities have not yet been determined. This order determines the responsibilities in one of those geographic areas.

2.2 Physical Setting

The Bear River watershed, addressed in this order, is within the watershed of the Delta and is within the watershed of the Sacramento River. The Bear River is tributary to the Feather River, which is tributary to the Sacramento River.

The Bay-Delta Estuary includes the Sacramento-San Joaquin Delta, Suisun Marsh, and the embayments upstream of the Golden Gate. The Delta and Suisun Marsh are located where California's two major river systems, the Sacramento and San Joaquin rivers, converge to flow westward through San Francisco Bay. The watershed of the Bay-Delta Estuary is a source of water supplies for much of the state. The water is used for municipal, industrial, agricultural, and environmental purposes. The watershed is a source of drinking water for two-thirds of the state's population. The State Water Project (SWP), operated by the DWR, and the Central Valley Project (CVP), operated by the United States Bureau of Reclamation (USBR), release previously-stored water into the Delta where they redivert the stored water and also divert natural flow. The water diverted by the two projects in the Delta is exported to areas south and west of the Delta through a system of water conveyance facilities.

The waterways of the Bay-Delta Estuary and its tributaries also are used by fish and wildlife and have other public trust values. Some of the fish that reside in the estuary or migrate through it are protected under the state or federal Endangered Species Act. Additionally, migratory birds and other animals use the marshlands of the estuary for food and habitat.

2.3 Parties

The DWR, SSWD, and CFWID jointly presented a case in chief, supporting the agreement and the petition for changes filed by SSWD. Their witnesses were cross-examined by representatives of Westlands Water District (WWD), Regional Council of Rural Counties, and the Central Delta Parties. WWD presented rebuttal. At the end of the session, the SWRCB heard oral closing statements. The SWRCB set May 12, 2000 as the deadline for submitting written briefs. The SWRCB received briefs from SSWD and CFWID jointly, DWR, WWD, and Central Delta Parties.

3.0 PROJECT DESCRIPTION

The project in the Bay-Delta Water Rights Hearing is to adopt water right decisions and orders to accomplish three goals. The goals are to: (1) determine the interim and long-term responsibilities of water right holders listed in the Revised Notice of Public Hearing to help meet the objectives set forth in the 1995 Bay-Delta Plan; (2) determine whether or not to approve, subject to terms and conditions, a joint petition of the DWR and the USBR to combine points of diversion for the SWP and the CVP in the southern Delta; and (3) determine whether or not to approve, subject to terms and conditions, a petition of the USBR to change the places and purposes of use in its water right permits for operationally integrated parts of the CVP. D-1641 accomplishes the second and third goals, and partially accomplishes the first goal. The remaining goal is to determine the as-yet-undetermined responsibilities of water right holders listed in the May 6, 1998 Revised Notice of Public Hearing to help meet the objectives set forth in the 1995 Bay-Delta Plan.

4.0 ISSUES CONSIDERED IN THIS ORDER

For the April 11-12 session of Phase 8, the SWRCB issued a Supplement to Revised Notice of Public Hearing. The purpose of the supplement to set forth was to notify the parties of the session, the issues under consideration, and to provide other pertinent information. The Supplement lists the following issues for the April 11-12 session.

1. Should the SWRCB determine that the terms of the agreement among the Department of Water Resources, South Sutter Water District, and Camp Far West Irrigation District satisfy the responsibilities of SSWD, CFWID and all other Bear River watershed water rights to meet the objectives in the 1995 Bay-Delta Plan? If so, should the SWRCB add water right terms and conditions to the water rights of the parties to the agreement or take other actions to implement the regulatory provisions of this agreement?

2. Would the petitioned changes operate to the injury of any legal user of the water involved?

3. If the SWRCB approves the petitioned changes, what terms and conditions will best develop, conserve and utilize, in the public interest, the water proposed to be used as part of the change?

5.0 DISCUSSION

5.1 The Bear River Agreement

The Bear River Agreement is an agreement among the DWR, the SSWD, and CFWID to jointly propose to the SWRCB a settlement of the responsibilities of SSWD, CFWID, and all other Bear River water right holders to implement the objectives in the 1995 Bay-Delta Plan. The parties to the agreement propose that, during the thirty-five year effective period of the agreement, the SWRCB establish the responsibilities of the Bear River parties in accordance with the agreement.

The purpose of the Bay-Delta Water Rights Hearing in Phase 8 is for the SWRCB to receive evidence that it can use to determine the responsibilities of water right holders in the watersheds of the Sacramento River, Calaveras River, and Cosumnes River to meet the objectives in the 1995 Bay-Delta Plan. Where parties seek, through an agreement such as the Bear River Agreement, to set the responsibilities of the parties without presenting adversary evidence from which the SWRCB can determine the responsibilities, the SWRCB must have adequate assurance that the appropriate amount of water will appear in the Bay-Delta Estuary to satisfy the responsibilities of SSWD, CFWID and all other Bear River watershed water right holders.

The Bear River Agreement, in section 4, provides that it will not become effective until the following occur:

a. The USBR and the DWR reach an agreement regarding the accounting of the water that SSWD will release pursuant to the Bear River Agreement.

b. The SSWD, as lead agency, will complete a document under the California Environmental Quality Act (CEQA). Any material changes in the project or in the Bear River Agreement that are required to comply with CEQA must be agreed to by SSWD, CFWID, and DWR.

c. The SWRCB adopts a decision or order that satisfies the conditions set forth in Article 3.b. of the Bear River Agreement. Article 3.b. provides that the parties to the Bear River Agreement will petition the SWRCB for an order finding that (1) during the effective period of the agreement, DWR will assume the responsibility of all Bear River water right holders to meet the objectives in the 1995 Bay-Delta Plan; (2) the Bear River water right holders will have no additional responsibility to meet the objectives during the term of the agreement; (3) the SWP's Delta diversion facilities and the SWP's authorized place of use are added to SSWD's water right licenses; and (4) the SWRCB will reopen the Bay-Delta Water Rights Hearing as appropriate to

allocate the responsibilities of the Bear River water right holders if the Bear River Agreement is terminated.

Item a in section 4 of the Bear River Agreement, providing that an accounting agreement must be reached between the DWR and the USBR, had not been satisfied at the time of the hearing. The DWR indicated that the agreement was imminent. Because the accounting agreement is for water that is subject to the petition for changes, it is discussed below, in Part 5.2 of this order. As discussed in part 5.2, the SWRCB can put conditions on its establishment of the responsibilities of the parties as set forth in the Bear River Agreement. This makes it unnecessary that the accounting agreement be executed before the SWRCB acts.

Regarding the other conditions in the Bear River Agreement, the SSWD has completed and has circulated its CEQA document, satisfying item b in section 4. This order substantially satisfies item c in section 4, in that it requires DWR to meet all the responsibilities of the Bear River water right holders to meet objectives in the 1995 Bay-Delta Plan during the term of the agreement; it does not assign responsibility to the Bear River water right holders other than SSWD, which is required to provide 4,400 acre-feet of water in accordance with the Bear River Agreement; it approves, subject to terms and conditions, the petitioned changes in SSWD's water right licenses; it provides that the SWRCB may, under appropriate circumstances, review the water rights of the Bear River water right holders if the Bear River Agreement is terminated.

The Bear River Agreement contains provisions to ensure that the amount of water accountable to the Bear River watershed will be provided in the Estuary. It accomplishes this by shifting the responsibility for providing the water to the DWR, and leaves the determination of the exact amount to a future decision of the SWRCB, after the SWRCB completes receiving evidence in Phase 8. This has been referred to in this proceeding as a "backstop". Any water required from the watershed to meet the objectives will be provided, but not by the water right holders who otherwise would be responsible. In exchange, the DWR will be able to buy up to 4,400 acre-feet (AF) of water from SSWD during dry and critical water years for its use. With the backstop, the SWRCB finds that the responsibilities of the water right holders in the Bear River watershed will be met for the term of the agreement, and the overall quantity of water that must be provided by

the DWR for the Bear River watershed can be determined later in this proceeding without establishing individual responsibilities.[1]

This order includes water right terms and conditions on the water rights of the DWR and the SSWD to implement the regulatory provisions of the agreement. The obligations imposed to implement the Bear River Agreement will expire on December 31, 2035 unless the agreement is terminated earlier.

5.2 The Petition for Changes

In connection with the Bear River Agreement, the SSWD filed with the SWRCB a petition for change in place of use, point of diversion, and purpose of use of water right Licenses 11118 and 11120 (Applications 14804 and 10221). The petitioned changes apply to 4,400 AF of water or less that SSWD will release during dry and critical water years from Camp Far West Reservoir and transfer to DWR for DWR's use. SSWD petitions, with reference to the 4,400 AF, to add a point of rediversion of stored water at DWR's Harvey O. Banks Pumping Plant in the southern Delta; add the State Water Project service areas to SSWD's place of use; and add municipal, industrial, and environmental purposes of use to the licenses.

The SSWD filed the petition for change under Water Code section 1700, et seq. With respect to the petitioned use for environmental purposes, the provisions in section 1707 are applicable. The issues to be determined are whether the petitioned changes would operate to the injury of any legal user of the water involved, whether the change would increase the amount of water that SSWD is entitled to use, and what terms and conditions should be included in an approval of the petition. Additionally, because the petition involves a project that is subject to CEQA, the SWRCB must make the findings required under CEQA.

---

[1] The Central Delta Parties and the Regional Council of Rural Counties argued that the agreement should be rejected in favor of first establishing the responsibilities of the DWR and the USBR, before considering whether other water right holders have responsibilities. This argument disregards the issue before the SWRCB in this order, which is whether the SWRCB should act consistently with the Bear River Agreement.

In the notice of hearing issued on February 29, 2000, the SWRCB gave notice of the petition for change. The notice waives any requirement that persons or entities objecting to the petition for change file a protest. It does, however, require that any person or entity seeking to protest the petition or otherwise address the question of whether the petition should be approved must participate in this session of Phase 8 of the hearing.

Under the petitioned changes, SSWD would transfer up to 4,400 AF of stored water to DWR during dry and critical years, to be used for municipal, industrial, and environmental purposes that are within DWR's existing places of use. Because the petition was filed under Water Code section 1700, et seq., this order does not set an expiration date for the petitioned changes. This order does not mandate that the change be implemented in the absence of an agreement between the SSWD and the DWR, however. Accordingly, upon termination of the agreement, the SWRCB anticipates that SSWD might not continue to use water in the places, and for the purposes, approved by this order.

SSWD also filed the petition for changes under section 1707. The purpose of filing under section 1707 is to allow the water right holder to maintain control over, and to protect, the right to water that is released or bypassed for preservation or enhancement of wetlands, fish and wildlife resources, or recreation in or on the water. Among the proposed uses of water to be released by SSWD under the petition for changes is environmental use: This use could be accomplished through the flow of water in natural channels up to the added point of rediversion in the Delta. After serving environmental uses in the natural channels, the water could be used again for other purposes authorized under SSWD's water right licenses, within the added place of use. Section 1707 authorizes changes for the purpose of instream use or wetlands protection, pursuant to other Water Code sections authorizing changes in permitted or licensed rights, even if those sections would not otherwise apply because the proposed change involves a right not requiring a permit or license or the proposed use does not involve the diversion of water. Before approving a change pursuant to Water Code section 1707, the SWRCB must find that the proposed change will not increase the amount of water the person is entitled to use, will not unreasonably affect any legal user of water, and otherwise meets the requirements of Division 2 of the Water Code.

In the hearing, SSWD, CFWID, and DWR presented a joint case in chief, supporting the agreement and the change petition. Westlands Water District (WWD) opposed the change on the basis that the sharing agreement to be reached between the DWR and the USBR could result in a reduction in water delivered to Central Valley Project (CVP) water supply contractors. The Central Delta Parties opposed the change petition.

5.2.1 Effects on Water Supply Contractors of the CVP

Westlands Water District (WWD) argued that a potential exists for the accounting agreement between the DWR and the USBR to result in a reduction of water to CVP contractors such as WWD. WWD urges the SWRCB to condition its approval of the Bear River Agreement by requiring that the DWR and the USBR enter into an agreement acceptable to CVP contractors, including WWD, that describes the accounting principle to be used and ensures that there will be no effect on the accounting of water pursuant to section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA) (Pub. Law No. 102-575, 106 Stat. 4600). The Bear River Agreement requires only that there be an accounting agreement between the DWR and the USBR, but does not specify the assurances to CVP contractors that WWD requests. Thus, if the SWRCB included a term or condition in this order to implement WWD's request, the term would go beyond the measures agreed to by the parties to the agreement.

The record does not support a need for the measures requested by WWD. First, the Bear River Agreement will not go into effect until the accounting agreement is executed. (SSWD 2, Article 4.a., p. 9.) Second, the evidence shows that DWR is endeavoring to ensure that the Bear River Agreement will not deprive either the USBR or its contractors of any water that they otherwise would have. (DWR 44.) Third, no evidence in the record suggests that DWR intends either to transfer part of its backstop responsibility to the USBR or to give part of the water it receives from SSWD to the USBR. Fourth, there is no evidence that the USBR would enter into an accounting agreement with the DWR under which it would agree to provide CVP water to facilitate the Bear River Agreement. Finally, DWR and the USBR previously have reached agreements on the annual accounting of similar amounts of water purchased by DWR and

exported through the Delta, without depriving CVP contractors. (R.T. pp. 16946-16950.) No reason is apparent why they will not do so in this case.

The USBR is the water right holder that potentially could be injured by the Bear River Agreement. If the USBR, as the water right holder, agrees to the accounting method, which is necessary for the Bear River Agreement to go into effect, the USBR's water rights cannot be injured within the meaning of Water Code section 1702. It also will not be unreasonably affected within the meaning of section 1707. Further, in the event that the USBR makes a decision that interferes with its contracts with the CVP water supply contractors, the contractors can challenge the USBR's decision directly. They do not need to go through the SWRCB to reach the USBR. Based on the foregoing considerations, the SWRCB will not require the condition proposed by WWD. The SWRCB will, however, require that condition 4.a. of the Bear River Agreement requiring an accounting agreement be executed before water can be transferred under this approval.

5.2.2 Effects on Groundwater Supplies

The Negative Declaration for the proposed project assumes that the transfer of 4,400 AF of water to DWR during dry and critical years, reducing the supply of water to SSWD's customers, will result in an increase in groundwater pumping by SSWD's customers equal to the amount of water transferred. The Negative Declaration assesses the potential impact of this increase in groundwater pumping and concludes that any impact would be less than significant. (SSWD 4, p. 3-8.) The Central Delta Parties, however, argue that the anticipated groundwater pumping to replace the water sold to the DWR will add to the groundwater depression south of the Bear River and east of the Sacramento and American rivers. The Central Delta Parties further argue that, as the groundwater is depressed, "greater amounts from surface flows will be lost as flows to the underground." The evidence, however, does not support this conclusion.

The Negative Declaration for the project states that the DWR has done groundwater studies on the effect of additional pumping due to the proposed project. According to the Negative Declaration, the studies conclude that if the SSWD water users pump an additional 4,400 AF of groundwater to offset the proposed project, the effect on the water table will not be measurable.

(SSWD 4, p. 3-8.) The studies referenced in the Negative Declaration were not received in evidence, but the testimony of SSWD's expert witnesses supports this conclusion (SSWD 6, pp. 5-7; R.T. pp. 16827, 16833-16834) as does other evidence. The evidence includes reports that address groundwater status. Sutter County has not been identified as having a groundwater overdraft problem. DWR Bulletin 160-93 indicates that at the 1990 level of demand, the perennial yield of the groundwater basin in Sutter County exceeded the extraction rate by 5,000 acre-feet. (SWRCB 65, v. 1, p. 86.) DWR Bulletin 160-98 indicates that in 1995, overdraft conditions in the Sacramento Valley region were unchanged from 1990. (SWRCB 65a, v. 1, p. 3-50.) Through the year 2020, overdraft is predicted to increase only in Sacramento, Placer and El Dorado counties. (SWRCB 65a, v. 1, p. 3-51.) Thus, if SSWD's increased use of groundwater does not exceed 5,000 acre-feet on average, long-term groundwater level declines should not occur in Sutter County. The potential increase in groundwater use due to the proposed project will occur only in dry and critical years, and therefore should average substantially less that 5,000 afa. Because groundwater levels will be unaffected, stream flow also will be unaffected, and legal users of groundwater will not be injured.

Condition 7d of the settlement agreement allows the parties to renegotiate or terminate the agreement if the groundwater basin in the SSWD's service area experiences depletions or declines such that water quality is threatened or overdraft conditions are created. (SSWD 2, Article 7d.) The initial study states that:

> ". . . to ensure the groundwater is not negatively affected in any way, the Settlement Agreement in Article 7d will release SSWD from any obligation to make releases if the groundwater table experiences a decline such that overdraft and degraded water quality of the groundwater are created. Therefore, the quantity of groundwater resources would have a less than significant impact." (SSWD 4, p. 3-8.)

This provision further protects the groundwater from any potential impacts. It is included in the agreement notwithstanding the conclusion in the Negative Declaration that any effect on the groundwater would not be measurable. Further, SSWD has a groundwater management plan adopted pursuant to Water Code section 10750, et seq., under which it monitors the groundwater conditions in the basin. (R.T. p. 16753.) This order approving the petitioned changes is

conditioned on the continued absence of overdraft and degraded water quality in the groundwater basin underlying SSWD's service area.

The Central Delta Parties further argued that SSWD's transfer of 4,400 AF to DWR is in effect a transfer of groundwater prohibited by Water Code section 1220. This argument is based on the potential impact to groundwater identified in the Negative Declaration. Section 1220 regulates the pumping of groundwater for export from the combined Sacramento and Delta-Sierra Basins, and forbids such export except as provided. The proposed project, however, is not to pump and export groundwater, but to transfer surface water. While the potential that groundwater will be used as a substitute supply for the transferred surface water requires that impacts on groundwater be considered in applying the requirements of sections 1702 and 1707 of the Water Code, it does not convert the change petition into a petition to transfer groundwater. The transfer does not violate Water Code section 1220.

5.2.3 Other Findings

With respect to the export impacts alleged by Central Delta Parties, the environmental effects of the exports involved in the petitioned changes are discussed in Part 6 of this order, below. In addition to environmental effects, the Central Delta Parties claim that the export of a portion of the 4,400 acre-feet in dry and critical years will impact water levels in the southern Delta. Considering the quantity of water that could be exported, any effect of the petitioned changes on water levels is not likely to be measurable. Nevertheless, the Order herein requires the DWR to ensure that water levels in the southern Delta are at elevations adequate for diversion of water for agricultural uses when diverting water made available under this order.

The Central Delta Parties' opposition to the petitioned changes on the basis that real water will not be added to the system is part of the Central Delta Parties' argument that groundwater will be affected, and is discussed above in Part 5.2.2. The petitioned changes will result in SSWD foregoing, in some years, up to 4,400 AF of water that it otherwise would sell to its customers. Thus, real water will be provided to the DWR as a result of the changes.

As required by Water Code section 1702, the petitioned changes will not operate to the injury of any legal user of the water involved in the changes. As discussed in Part 5.2.1, above, this order requires that the DWR and the USBR execute an accounting agreement before the petitioned changes go into effect. With the accounting agreement in place, the SWRCB believes that the USBR will not suffer an actual reduction in its water supply due to the petitioned changes and the transfer of the water to DWR. By entering into the accounting agreement, the USBR, which holds the water rights that WWD alleges could be injured by approval of the petitioned changes, will agree to the one aspect of the proposed project that otherwise might cause the USBR's water rights injury within the meaning of section 1702. The execution of the accounting agreement will eliminate WWD's argument that it would suffer injury under section 1702, since the water WWD receives is appropriated by the USBR. As discussed in SWRCB Order WR 2000-02 at pages 17-21, section 1702 does not protect a water service contractor from water shortages resulting from an action requested or consented to by the contractor's water supplier who holds the water right. In the absence of any reduction due to the petitioned changes, this order also will have no effect on WWD's water supply.

As required by Water Code section 1707, the petitioned changes will not increase the amount of water that SSWD is entitled to use. To the extent that water use within SSWD's service area does not decrease at times when SSWD transfers water to the DWR, the water users within SSWD's service area, not SSWD, will take more water from groundwater under their own rights.

The SWRCB finds that approval of the petitioned changes, with the terms and conditions set forth in this order, is in the public interest. It is in the greater public interest to establish the responsibilities of the water right holders in the Bay-Delta Water Rights Hearing based on agreements among the primary affected parties, rather than based on evidence received in a hearing in which no agreements have been made. The SWRCB believes that parties who agree to accept a responsibility are more likely to be able to operate to meet the responsibility. This order approves an allocation of responsibility to meet the Bay-Delta objectives that is agreed to by all of the parties who will provide water to meet the responsibilities of the Bear River. The potential effects on other parties are mitigated through terms and conditions developed as a result of the hearing.

6.0 ENVIRONMENTAL CONSIDERATIONS

6.1 CEQA Compliance

Under CEQA (Pub. Resources Code §§ 21000 et seq.), SSWD is the lead agency for preparation of environmental documentation for the Bear River Agreement and the associated petition for change. SSWD prepared an initial study and Negative Declaration for the project. Based on the documents, SSWD found, as lead agency, that there is no substantial evidence that the proposed changes in operations related to the Bear River Agreement may have a significant effect on the environment. On March 21, 2000, SSWD's General Manager filed a Notice of Determination for the project. The Notice of Determination states that the SSWD has determined that the project will not have a significant effect on the environment; that no mitigation measures were required, that SSWD did not adopt a statement of overriding considerations for the project, and that SSWD made no findings under CEQA. SSWD included in the project description a measure to avoid significant impacts to fisheries due to rapid changes in flows. With this measure included in the project description, SSWD required no mitigation measures for the project. The SWRCB has considered the information in the CEQA documentation.

Because the Negative Declaration does not identify any significant adverse environmental effects of the project as described, this order does not contain any findings under sections 15091 and 15093 of the State EIR Guidelines (Cal. Code Regs, tit. 14, §§ 15091, 15093).

6.2 Effects of the Project on Environmental and Public Trust Values

6.2.1 Vegetation and Wildlife

The proposed project will have no direct effects on plant and wildlife species occurring in the Sacramento River basin and the Delta, including rare, threatened, and endangered species. The project involves no clearing, destruction, or development of terrestrial habitat. Changes in storage elevations proposed at Camp Far West Reservoir are within the normal operation of the reservoir, filling to capacity and draining to or near minimum pool in dry and critical years. Therefore, no impact to wetland habitat at the reservoir is expected. Minor changes in timing and volume of flows in the Sacramento, Feather, and Bear rivers and the Delta due to the project are not likely to have significant effects on habitat for plant or wildlife species.
(SSWD 4, pp. [3-20] – [3-25].)

6.2.2 Aquatic Resources

Camp Far West Reservoir supports several warm water fish species, including striped bass, largemouth and small mouth bass, sunfish, bluegill, crappie, bullhead, and catfish. (SSWD 4, p. [3-9].) Some species, such as largemouth and small mouth bass, spawn in the spring months (primarily April through July) in near-shore areas. Reservoir drawdowns in the spring months can potentially limit reproduction of species such as largemouth bass, by desiccating nests and eliminating cover for juvenile fish. (SWRCB 1e, pp. [VI-79]-[VI-81].)

The proposed project will not significantly change the pattern or magnitude of reservoir drawdown, and therefore is not expected to cause new impacts to Camp Far West Reservoir fisheries. (SSWD 4, p. [3-7].) The reservoir is currently filled to capacity, and then drained through the spring and summer months to supplement groundwater pumping by SSWD water users. Usually, the reservoir is drained to near minimum pool, especially during dry and critical years.

Habitat conditions in the Bear River below Camp Far West Reservoir currently are not favorable for natural production of resident rainbow trout or anadromous fish, including Chinook salmon, steelhead, or American shad. (SSWD 4, p. [3-10]; SWRCB 186, p. [VII-35]; R.T. pp. 16853-16855; R.T. p. 16859.) Salmonid reproduction is severely limited by silted spawning gravels, high winter flood flows, and high water temperatures. (R.T. pp. 16853-16855; R.T. p. 16859.) The proposed project will not worsen these conditions.

SSWD currently is required, under its water rights, to maintain minimum instream flows in the Bear River below Camp Far West Diversion Dam of 25 cfs from April 1 through June 30 and 10 cfs from July 1 through March 31.

Under the proposed project, SSWD would increase the flow releases to the lower Bear River by up to 37 cfs in dry and critical years for sixty days in the July through September period. (SSWD 4, p. [3-7].) With the increase, the flows would remain in the low water channel and would be only slightly higher than the average flows during wet years in July through September. (SSWD 4, p. [3-7].) This flow increase is not likely to improve habitat for steelhead

rearing or holding of adult spring-run Chinook salmon. (SSWD 4, p. [3-15].) Also, distributing the flow increases over a sixty-day period as proposed minimizes the risk of attracting Chinook salmon into the lower river. (SSWD 4, p. [3-7]; R.T. pp. 16856-16857.) Nevertheless, to prevent anadromous fish from being stranded following the period of additional releases, SSWD will ramp down flows by no more than 25 cfs over a 24-hour period. (SSWD 4, p. [3-15].)

High water temperatures commonly occur in the lower Bear River in the summer months. The additional flow releases will not cause new impacts to water temperature in the lower river. (SSWD 4, p. [3-15].)

The proposed flow releases would result in insignificant increases in downstream flows in the Feather and Sacramento rivers. (SSWD 4, pp. [3-15]-[3-16].) The proposed flows would have little or no effect on habitat conditions in these rivers. Therefore, no significant impacts on aquatic resources in these rivers are expected as a result of the additional flow releases. (SSWD 4, pp. [3-15]-[3-16].)

The proposed project would slightly alter the timing and volume of Delta inflow and exports. SWP exports could increase by up to 3,520 AF from July through September of dry and critical years. This has the potential to increase entrainment of fish at the SWP facility, including delta smelt, American shad, striped bass, and Sacramento splittail. (SSWD 4, p. [3-16].)

SSWD assessed historical fish salvage at the SWP export facility to predict potential entrainment impacts on selected fish species during the potential export season of June through September. (SSWD 4, pp. [3-16]-[3-20].) Data for this period from 1979 through 1999 for dry and critical years show that entrainment of delta smelt, splittail, Chinook salmon, and steelhead generally is highest in June, and decreases over the June to September period. To minimize the potential for increased entrainment, the proposed project includes increased exports only in the July through September period. By avoiding increased exports in June, potential increases in entrainment will be less than estimated by SSWD for the June through September period. (R.T. pp. 16871-16872.) This limitation will reduce the potential export impacts of the proposed project to less

than significant levels. Accordingly, this order authorizes increased exports due to the petitioned change only in July through September.

7.0 CONCLUSIONS

1. With the backstop provided by DWR, the Bear River Agreement adequately ensures that any allocation to water right holders in the Bear River watershed of responsibility to meet Bay-Delta objectives will be satisfied.

2. As conditioned herein, the petitioned changes will not injure or unreasonably affect any legal user of water and will not increase the amount of water that SSWD is entitled to use.

3. The project as proposed would not have an adverse effect on the environment.

ORDER

IT IS HEREBY ORDERED that Licenses 11118 and 11120 (Applications 14804 and 10221) of South Sutter Water District shall be amended to authorize changes in the purpose of use, place of use, and point of rediversion of water during dry and critical years[2] up to a combined total of 4,400 acre-feet as follows:

1. The purpose of use of up to a combined total of 4,400 acre-feet of water per dry or critical year under Licenses 11118 and 11120 is identified as: Municipal, Industrial, Environmental, Irrigation, Domestic, and Incidental Power.

2. Up to a combined total of 4,400 acre-feet of water per dry or critical year under Licenses 11118 and 11120 may be used in the place of use of the State Water Project as shown on maps on file with the State Water Resources Control Board.

[2] Dry and critical years are defined, for purposes of this order, as set forth on page 23 of the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Adopted by the SWRCB in May, 1995), except that such years do not include a year in which water storage in Camp Far West Reservoir on April 1 is at or below 33,255 acre-feet ("extreme critical year").

3. A point of rediversion is added during the months of July through September in dry and critical years to redivert up to a combined total of 4,400 acre-feet of water under Licenses 11118 and 11120 at the Harvey O. Banks Pumping Plant at NW¼, SE¼, S20, T1S, R4E, MDB&M.

4. During releases of water in connection with the change of purpose of use and place of use of up to 4,400 acre-feet transferred to DWR during dry and critical years, Licensee shall increase flows in the lower Bear River by no more than 37 cubic feet per second from July through September. To avoid stranding impacts to anadromous fish in the Bear River below Camp Far West Reservoir, Licensee shall, by the end of a release period from the reservoir in connection with said change, ramp down flows from the reservoir at a rate not to exceed 25 cubic feet per second over a 24-hour period.

5. Licensee shall provide groundwater monitoring reports to the Chief, Division of Water Rights, by January 15 of each calendar year ending in a 5 or a 0. The reports shall document changes in the elevation of the water table and changes in water quality beneath the South Sutter Water District, in addition to any other information needed to determine whether or not overdraft conditions or threats to water quality exist in the groundwater basin as a result of the water transfer. The report shall include an analysis of the information provided and a determination of whether or not overdraft conditions or threats to water quality exist in the groundwater basin as a result of the changes in place of use, purpose of use, and point of rediversion approved in connection with the transfer of 4,400 acre-feet per annum to the Department of Water Resources during dry and critical years.

   If a groundwater monitoring report indicates that a threat to water quality or a threat of overdraft conditions exists in the groundwater basin beneath the South Sutter Water District, the Licensee shall cease the delivery of water to the added place of use. Before resuming delivery to the added place of use, Licensee shall provide to the Chief, Division of Water Rights, a plan to mitigate to less than significant levels, the identified impacts to groundwater resources. Upon approval of the plan by the Chief, Division of Water Rights,

and upon implementation of the plan, Licensee may resume delivery of water to the added place of use.

6. This approval shall not go into effect until the execution of an agreement between the USBR and the DWR establishing the accounting method for the water to be released by SSWD. A copy of the agreement shall be submitted to the Chief, Division of Water Rights.

7. Exports of water transferred to DWR as a result of the approval of Licensee's petition for changes shall occur only during the months of July, August, and September. No part of the up to 4,400 acre-feet of water transferred to DWR by Licensee shall be exported at times when water levels in the southern Delta are at elevations inadequate for diversion of water for agricultural uses. The Executive Director of the SWRCB is delegated authority to decide when and whether water may be exported under this condition.

8. Licensee shall notify the SWRCB immediately upon termination of the Bear River Agreement if the termination occurs before December 31, 2035.

9. The flows provided by the DWR pursuant to the Bear River Agreement and in accordance with its water right Permits 16478, 16479, 16481, and 16482 will satisfy any responsibility of Licensee SSWD, CFWID, and any other water right holders on the Bear River to meet the objectives in the 1995 Bay-Delta Plan until the Bear River Agreement is terminated.

10. When the Bear River Agreement is terminated, the SWRCB will give notice and will commence a proceeding to determine the responsibility of Licensee and other water right holders within the Bear River watershed to meet the objectives in the 1995 Bay-Delta Plan.

11. The continuing authority condition shall be updated to read as follows:

    Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, 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 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 Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of Licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the Licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

12. This license 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 water right, the licensee shall obtain authorization for an incidental take prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

13. The Board reserves jurisdiction over the changes authorized in this Order, to supervise the diversion, release, and use of water under this Order and to coordinate or modify terms and conditions, for the protection of other legal users of water, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant. The Board delegates authority to the Executive Director of the SWRCB to take actions under this reservation of jurisdiction when the action is consistent with this Order.

IT IS FURTHER ORDERED that Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, and 17512, respectively) of the DWR are amended by adding the following terms and conditions which shall expire on December 31, 2035, or at such time as the Bear River Agreement is terminated, whichever occurs first.

1. Permittee shall ensure that all water quality objectives for the Bay-Delta Estuary that the SWRCB may determine, as a result of the Bay-Delta Water Rights Hearing, are the responsibility of water right holders in the watershed of the Bear River, are met.

///

///

///

2. Permittee shall notify the SWRCB immediately upon termination of the Bear River Agreement if the termination occurs before December 31, 2035.

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 July 20, 2000.

AYE: Arthur G. Baggett, Jr.
Mary Jane Forster
John W. Brown
Peter S. Silva

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché
Administrative Assistant to the Board

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 10221 PERMIT 14871 LICENSE 11120

ORDER CORRECTING THE POINT OF DIVERSION,
POINT OF REDIVERSION, AND
AMENDING THE LICENSE

WHEREAS:

1. License 11120 was issued to South Sutter Water District and recorded with the County Recorder of Yuba County in Book 753, Page 157, on May 19, 1981, and with the County Recorder of Placer County in Volume 2391, Page 368, on May 20, 1981.

2. An order allowing change in purpose of use and place of use was granted on July 2, 1985 and has been recorded with the County Recorder of Yuba County on July 10, 1985, in Book 855, Page 608, and with the County Recorder of Placer County in Book 2834, Page 268, on July 11, 1985.

3. A review of the files and an inspection of the project on August 26, 1991 revealed that a diversion dam was not included in the original license.

4. The State Water Resources Control Board (State Water Board), has determined that said correction will not initiate a new right nor operate to the injury of any other lawful user of the water and that good and sufficient cause has been shown for said correction.

5. The license condition pertaining to the State Water Board's continuing authority should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The points of diversion and rediversion shall be described as follows:

   1. Point of Diversion:
      Camp Far West Dam: North 60° 30' West 4,450 feet from SE corner of Section 21, T14N, R6E, MDB&M, being within NE¼ of SW¼ of said Section 21 (California Coordinate System, Zone 2, N 504,600 and E 2,194,500); and

2. Direct Diversion and rediversion of releases from storage: Camp Far West Diversion Dam: South 400 feet and West 2,850 feet from the NE corner of Section 29, T14N, R6E, MDB&M, being within the NE¼ of NW¼ of said Section 29 (California Coordinate System, Zone 2, N 501,550 and E 2,189,600). (0000002)

2. The license condition pertaining to the State Water Board's continuing authority shall be amended to read:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, 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 Resources Control 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 Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

Dated: JULY 22 1993

ORIGINAL SIGNED
BY ROGER JOHNSON

for
Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 10221 PERMIT 14871 LICENSE 11120

ORDER ALLOWING CHANGE IN PURPOSE OF USE
AND PLACE OF USE

WHEREAS:

1. License 11120 was issued to South Sutter Water District and was recorded with the County Recorder of Yuba County on May 19, 1981 in Book 753, Page 157 and with the County Recorder of Placer County on May 20, 1981 in Volume 2391, Page 368.

2. A petition for change in purpose of use and place of use has been filed with the State Water Resources Control Board and said Board has determined that good cause for such change has been shown.

3. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

   Irrigation, Domestic and Incidental Power

2. The place of use under this license shall be as follows:

   Domestic use and irrigation of 59,000 acres within a gross area of 65,796 acres, within the boundaries of South Sutter Water District; and Irrigation of a net area of 4,180 acres (including 102 acres located outside District boundaries and served by contract) within Camp Far West Irrigation District, and a power plant located on the Conveyance Canal within the NW¼ of SW¼ of Section 1, T13N, R5E, MDB&M, as shown on map on file with State Water Resources Control Board.

Dated: JULY 2 1985

Raymond Walsh

Raymond Walsh, Chief
Division of Water Rights

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

License for Diversion and Use of Water

APPLICATION 10221 PERMIT 14871 LICENSE 11120

THIS IS TO CERTIFY, *That* SOUTH SUTTER WATER DISTRICT
C/O MURRAY, BURNS AND KIENLEN,
1107 - 9TH STREET, ROOM 600, FORUM BUILDING, SACRAMENTO, CALIFORNIA 95814

HAS *made proof as of* DECEMBER 19, 1973 AND MARCH 8, 1980 *(the date of inspection)*
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of BEAR RIVER IN YUBA AND PLACER COUNTIES

tributary to FEATHER RIVER

for the purpose of IRRIGATION AND DOMESTIC USES
under Permit 14871 *of the Board and that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the Board and the permit terms; that the priority of this right dates from* JUNE 13, 1941 *and that the amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed* (A) TWO HUNDRED FIFTY (250) CUBIC FEET PER SECOND BY DIRECT DIVERSION, TO BE DIVERTED FROM MARCH 1 TO JUNE 30 AND SEPTEMBER 1 TO OCTOBER 31 OF EACH YEAR; AND (B) FORTY THOUSAND (40,000) ACRE-FEET PER ANNUM BY STORAGE, TO BE COLLECTED FROM OCTOBER 1 OF EACH YEAR TO JUNE 30 OF THE SUCCEEDING YEAR. THE EQUIVALENT OF SUCH CONTINUOUS FLOW ALLOWANCE FOR ANY 30-DAY PERIOD MAY BE DIVERTED IN A SHORTER TIME PROVIDED THERE BE NO INTERFERENCE WITH OTHER VESTED RIGHTS.

THE TOTAL AMOUNT OF WATER COLLECTED TO STORAGE UNDER THIS LICENSE, LICENSES 2266 AND 2740 (APPLICATIONS 2881 AND 10190) AND RIGHTS INITIATED UNDER PERMIT 11297 (APPLICATION 14804) SHALL NOT EXCEED 102,100 ACRE-FEET PER YEAR.

THE COMBINED AMOUNT OF WATER TAKEN FROM THE SOURCE (DIRECT DIVERSION PLUS COLLECTION TO STORAGE) UNDER THIS LICENSE TOGETHER WITH RIGHTS INITIATED UNDER PERMIT 11297 (APPLICATION 14804) SHALL NOT EXCEED 180,550 ACRE-FEET PER YEAR. THE COMBINED AMOUNT OF WATER TO BE PLACED TO BENEFICIAL USE (DIRECT DIVERSION PLUS WITHDRAWAL FROM STORAGE) UNDER THIS LICENSE TOGETHER WITH RIGHTS INITIATED UNDER PERMIT 11297 (APPLICATION 14804) SHALL NOT EXCEED 138,300 ACRE-FEET PER YEAR. THE MAXIMUM COMBINED RATE OF DIVERSION UNDER THIS LICENSE AND RIGHTS INITIATED UNDER PERMIT 11297 (APPLICATION 14804) SHALL NOT EXCEED 450 CUBIC FEET PER SECOND.

THIS LICENSE DOES NOT AUTHORIZE COLLECTION OF WATER TO STORAGE OUTSIDE OF THE SPECIFIED SEASON TO OFFSET EVAPORATION AND SEEPAGE LOSSES OR FOR ANY OTHER PURPOSE.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

CAMP FAR WEST DAM - NORTH 60°30' WEST 4,450 FEET FROM SE CORNER OF SECTION 21, T14N, R6E, MDB&M, BEING WITHIN NE1/4 OF SW1/4 OF SAID SECTION 21.

A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

DOMESTIC USE AND IRRIGATION OF 59,000 ACRES WITHIN A GROSS AREA OF 65,796 ACRES, WITHIN THE BOUNDARIES OF SOUTH SUTTER WATER DISTRICT; AND IRRIGATION OF A NET AREA OF 4,180 ACRES (INCLUDING 102 ACRES LOCATED OUTSIDE DISTRICT BOUNDARIES AND SERVED BY CONTRACT) WITHIN CAMP FAR WEST IRRIGATION DISTRICT, AS SHOWN ON MAPS FILED WITH STATE WATER RESOURCES CONTROL BOARD.

FOR THE PROTECTION OF FISH AND WILDLIFE, LICENSEE SHALL DURING THE PERIOD:
(A) FROM APRIL 1 THROUGH JUNE 30 BY-PASS A MINIMUM OF 25 CUBIC FEET PER SECOND,
(B) FROM JULY 1 THROUGH MARCH 31 BY-PASS A MINIMUM OF 10 CUBIC FEET PER SECOND.
THE TOTAL STREAMFLOW SHALL BE BYPASSED WHENEVER IT IS LESS THAN THE DESIGNATED AMOUNT FOR THAT PERIOD.

LICENSEE SHALL MAINTAIN AN OUTLET PIPE OF ADEQUATE CAPACITY IN HIS DAM AS NEAR AS PRACTICABLE TO THE BOTTOM OF THE NATURAL STREAM CHANNEL, OR PROVIDE OTHER MEANS SATISFACTORY TO THE STATE WATER RESOURCES CONTROL BOARD, IN ORDER THAT WATER ENTERING THE RESERVOIR WHICH IS NOT AUTHORIZED FOR APPROPRIATION UNDER THIS LICENSE MAY BE RELEASED.

BEFORE MAKING ANY CHANGE IN THE PROJECT DETERMINED BY THE STATE WATER RESOURCES CONTROL BOARD TO BE SUBSTANTIAL, LICENSEE SHALL SUBMIT SUCH CHANGE TO THE BOARD FOR ITS APPROVAL IN COMPLIANCE WITH WATER CODE SECTION 10504.5(A).

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to California Water Code Sections 100 and 275, 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 Resources Control 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to minimizing waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the 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: MAY 15 1981

STATE WATER RESOURCES CONTROL BOARD

Raymond Walsh

Chief, Division of Water Rights