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

DIVISION OF WATER RIGHTS

In the Matter of Permits 1267, 1268, 1271 and 2492
(Applications 1651, 2142, 2979 and 2778, respectively)

South Feather Water and Power Agency

ORDER DENYING PETITIONS FOR EXTENSION OF TIME

SOURCE: South Fork Feather River, Slate Creek and Lost Creek

COUNTY: Butte, Yuba

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued the permits listed below to Oroville-Wyandotte Irrigation District (OWID). In 2003, OWID changed its name to the South Feather Water and Power Agency (Permittee):

   - Permit 1267 (Application 1651) issued on January 5, 1923. The permit authorizes collection to storage of 109,012 acre-feet per annum (afa) in Little Grass Valley Reservoir from South Fork Feather River.

   - Permit 1268 (Application 2142) issued on January 5, 1923. The permit authorizes collection to storage of 5,000 af in Lost Creek Reservoir from Lost Creek.

   - Permit 1271 (Application 2979) issued on January 5, 1923. The permit authorizes direct diversion of 185 cubic feet per second (cfs) from Lost Creek.

   - Permit 2492 (Application 2778) issued on May 17, 1926. The permit authorizes direct diversion of 50 cfs from Lost Creek.

2. Permits 1267, 1268 and 1271 require that construction work be completed by January 1, 1923, and that the water be applied to the authorized use by November 1, 1928.

3. Permit 2492 required that construction work be completed and water be applied to the authorized use by December 1, 1940.

4. Permittee requested, and on March 12, 1929, the Division granted an extension for Permits 1267, 1268 and 1271 to November 1, 1932 to complete construction and December 31, 1940 to complete full beneficial use of water.

5. Permittee requested, and on May 12, 1933, the Division granted an extension of time for Permits 1267, 1268 and 1271 to December 1, 1936 to complete construction.

6. Permittee requested, and on February 20, 1937, the Division granted an extension for Permits 1267, 1268 and 1271 to December 1, 1940 to complete construction.

7. Permittee requested, and on May 4, 1959, the Division granted an extension for all four permits to complete construction and full beneficial use by December 1, 1961. All subsequent extensions were obtained for the four permits identified in this order.

8. The Division inspected the project on October 27 and 28, 1964 and found that 4,500 acres of land were irrigated and there were over 6,000 domestic services. The domestic services were metered. Irrigation use had been stable for many years, but domestic use was increasing.

9. Permittee requested, and on April 28, 1965 the Division granted, an extension of time to December 1, 1967 to complete construction work and apply the water to full beneficial use.

10. Permittee requested, and on April 23, 1968 the Division granted, an extension of time to December 1, 1975 to apply water to full beneficial use.

11. The Division inspected the project on June 28 and 29, 1976 and found that 4,500 acres of land were irrigated and there were about 4,000 domestic services. Most of the delivered water was metered. Water served a population of 17,100 persons.

12. Permittee requested, and on July 25, 1985 the Division granted, an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1990, and that water be fully used by December 1, 2004.

13. In Order WRO 2004-0029 (Order), the State Water Board evaluated development and use under the Permittee's water rights. At issue in the proceeding was whether to grant extensions of time on Permits 11516 and 11518, which were jointly held rights of Permittee and Yuba County Water District and changes on Permits 1267, 1268, 1271, 2492, 11516 and 11518. The Permittee had requested an extension of time on Permits 11516 and 11518 until December 1, 2004, which is the same completion date as Permits 1267, 1268, 1271 and 2492. The State Water Board found that the Permittee had not constructed any diversion or storage facilities since the 1960s under any of its permits. The Permittee considered its construction to be complete. (Order, p. 19.)

    The Order considered whether there was diligence over the past 40 years in putting water to beneficial use. The Order finds that Permittee, under all six permits combined, at best has diverted approximately 27,000 afa of water during the past four decades. (Order, pp. 21, 22.)

    Permittee's average annual diversion of approximately 27,000 afa of water is comprised of 6,000 afa used for domestic purposes and after conveyance losses of approximately 80 percent, 4,200 afa used for irrigation. (Order, p. 24.) Permittee could not identify how much water it will consumptively use at full development, but the Oroville area historically has grown at a one percent rate. Even if Permittee's growth rate increased, its diversions would need to increase by about ten times to reach the 275,000 afa allowed under Permits 1267, 1268, 1271 and 2492. There is no evidence that such extraordinary growth would occur. (Order, p. 24.)

    The State Water Board found that it was in the public interest to allow Permittee to file petitions for an extension of time under Permits 11516 and 11518 for the sole purpose of demonstrating

that it satisfied the requirements for an extension of time to put 51,250 afa of water to beneficial use. If Permittee chose to file a petition for a time extension, the Order cautioned that Permittee must meet the requirements for approval of the requested extension for the amount it proposed to put to beneficial use; otherwise, the State Water Board may approve a time extension to apply a lesser amount of water to beneficial use or may deny the time extension in full. (Order, p. 28.) To pursue a time extension, Permittee was required to meet the requirements of the Order, including information demonstrating that the water necessary to accommodate Permittee's growth and development will be credited to Permits 11516 and 11518 and not to its senior permits. (Order, pp. 28 & 33.) The State Water Board found that it was in the public interest to allow Permittee to file petitions for extension of time for Permits 11516 and 11518 to demonstrate that it meets the requirements for a time extension to apply the amounts of water necessary for future growth and development to beneficial use, not to exceed 51,250 afa. (Order, pp. 29 & 33.) The Order states that failure to comply with the requirements shall result in cancellation of the additional petitions for extension of time. (Order, p. 34.)

14. Subsequent to issuance of the Order, the Permittee assigned Permits 11516 and 11518 to Yuba County Water District.

15. On November 17, 2004, the Permittee filed Time Extension Petitions requesting a 45-year extension of time. The Permittee paid the required fees. An attachment to the petitions documents recent water use under each water right.

Water Use in AF					
Year	Permit 1267	Permit 1268	Permit 1271	Permit 2492	Annual Total
1997	13,021	2,876	3,356	2,838	21,636
1998	11,928	1,381	1,807	1,394	16,510
1999	13,043	2,187	1,225	2,446	18,901
2000	12,101	999	4,414	2,472	19,986
2001	11,055	2,210	4,003	5,300	22,568
2002	12,154	2,414	3,838	4,737	23,143
2003	11,778	1,449	3,868	2,351	19,446

The Progress Reports by Permittee show the following regarding water use:

Water Use in AF					
Year	Permit 1267	Permit 1268	Permit 1271	Permit 2492	Annual Total
2004	12,672	3,968	2,209	3,227	22,076
2005	10,268	1,736	3,384	No Report	---
2006	11,566	1,332	3,212	1,815	17,925
2007	12,666	2,283	3,322	2,838	21,109

The petitions also indicate that the population of the City of Oroville in 2000 was approximately 13,000. Estimated future growth was 2 percent. The Permittee's service area only covers the eastern portion of Oroville. The Permittee does not serve any other cities.

16. Permittee has failed to complete application of water to beneficial use within the time provided in the permits. The four water rights authorize use of 275,000 afa. The Permittee previously estimated water use of 27,000 af, and this quantity was listed in the Order. The Permittee's new data on water use shows that a maximum of 23,143 af was used during the period 1997 through

2007. Thus, actual use is less than previously reported use. This may be attributable to a reduction in population in Oroville. The population of Oroville in 2000 was 13,000 persons, which is less than the 1976 population of 17,100.

17. The petitions on Permits 1267, 1268, 1271 and 2492 do not comply with the Order, because the Order specifically states that water use should be credited to Permits 11516 and 11518 and not the senior permits. Pursuant to the Order, the petitions should be cancelled.

18. On July 13, 2006, Division staff requested a showing that the requirements for approval of a time extension have been met. (tit. 23, CCR § 844.) On August 21, 2006, Permittee advised the Division that it has made capital improvements to modify operational spills, tail water return and water treatment processes by reducing filter backwash, which have contributed to overall water savings. The Permittee states that over the past ten years the number of agricultural and domestic water customers and related consumption has been steadily increasing while the total diverted water has been decreasing. This trend is not anticipated to continue.

    The Permittee explained that its inability to put its consumptive water under the subject permits to full beneficial use within the last extension period of the permits is attributable to slower than anticipated growth in the area served. The rate of growth and agricultural development in and around the town of Oroville did not keep pace with the use projections set forth in the original permits. Notwithstanding slower than anticipated historic growth in demand, it is anticipated that Permittee's domestic and agricultural water use will increase in the future. The projected annual growth rate is 2.7 percent for single-family housing and 3.4 percent for multi-family housing. Domestic water demand was estimated to increase from the current demand of 5,600 af to an eventual demand of 24,000 af. Permittee also projected that agricultural demand would increase.

19. Public notice of the request for an extension of time was issued on April 22, 2005 and no protests were received.

20. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.

21. Permittee has not shown that due diligence has been exercised. Although the Order approved an extension of time for Permits 11516 and 11518 that were then held, in part, by the Permittee, the Order found that the Permittee had not diligently put the water to use in the past 40 years[1]. The Permittee asserts that implementation of a program to increase water use efficiency and reduce unaccounted for losses in its water distribution system resulted in lower water use. The program reduced unaccounted for water in the domestic distribution system from 34 percent in 1995 to 13 percent. Operational modifications have also reduced water diversions. The Permittee did not describe whether, and to what extent, the reported 80 percent conveyance losses have been reduced. Implementation of water conservation measures is required by the Order.

[1] The development period for the permits herein is greater than the 40 years for Permits 11516 and 11518 evaluated in the Order. The development period for Permits 1267, 1268 and 1271 totals 82 years, and for Permit 2492 totals 85 years.

22. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permittee states that growth has been slow, and the Permittee has no control over the rate of growth. The Permittee's last time extension was for a period of 29 years (1975 to 2004). Despite the lengthy time extension, water use did not increase.

23. Permittee has not shown that satisfactory progress will be made if a time extension is granted. Permittee has had 85 years to develop full beneficial use of water under Permits 1267, 1268, and 1271 and 82 years to develop full beneficial use of water under Permit 2492. Permittee was previously granted time extensions totaling 76 years (1928 through 2004) for Permits 1267, 1268 and 1271 and time extensions totaling 64 years on Permit 2492 and has yet to complete the project. Although the Permittee predicted growth during prior time extensions, increased water diversion did not occur during the past 40 years. Moreover, the Division's records show that the population of Oroville declined during the last extension period.

The Permittee's August 21, 2006 due diligence submittal states that it has issued "will-serve" letters for residential subdivisions consisting of over 4,000 dwelling units that should be developed over the next four years. In addition, the Permittee indicates that there will be an expansion in agricultural water use.

Although the Permittee's due diligence submittal state that growth is imminent, the Draft Initial Study/Mitigated Negative Declaration (MND) for South Feather Water and Power Agency Permit Extension, April 2006 indicates that the Permittee has no plans to expand its facilities at this time to serve new customers. The Order limits any future development to 51,250 afa. To divert 51,250 afa, an expansion of the Miners Ranch Oroville water treatment facility filtering system is required, but the Permittee has not yet developed a design for the filtration expansion. (MND, p. 2-3.) Potential impacts related to installation of new water conveyance facilities were not evaluated. The MND explains that the impacts cannot be assessed because project plans for future operations and expansion activities have not been developed. (MND, p. 2-36.) The location of future distribution lines and other infrastructure is not known and cannot be known at this time. (MND, p. 2-69.)

In Butte and Yuba Counties and the City of Oroville, only a portion of the growth would occur within the Permittee's service area. (MND, p. 2-78.) The location and timing of such future growth is unknown. (MND, p. 2-78.) Extension of water service would be dependent upon sufficient financing to pay for the installation of distribution lines to individual development projects. (MND, p. 2-78.)

Surveys and evaluation of impacts to the fishery and other biological resources occurring as a result of increase in diversion flows were not conducted for inclusion in the MND. This work was deferred to the Federal Energy Regulatory Commission re-licensing for the power operation. (MND, p. 2-37.)

24. Permittee has not shown good cause for the time extension.

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25. The State Water Board has delegated the authority to act on requests for an extension of time to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057. (Attachment to Resolution No. 2007-0057, section 4.2.7) The Deputy Director has re-delegated this authority to the Assistant Deputy Director for in a memorandum dated October 4, 2007.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY DENIES THE PETITIONS FOR EXTENSION OF TIME.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY JAMES W. KASSEL FOR

Victoria A. Whitney
Deputy Director for Water Rights

Dated: December 17, 2008

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

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

AMENDED PERMIT 1267

Application **1651** of **South Feather Water and Power Agency**
P.O. Box 581
Oroville, CA 95965-0581

filed on February 2, 1920, has been approved by the State Water Resources Control Board (State Water Board) SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source: **South Fork Feather River**

Tributary to: **Feather River**

within the Counties of **Butte and Plumas**

By California Coordinate System of 1927 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
Points of Diversion **Direct Diversion** **1. N1°30'W, 1,520 feet from SE corner of section 30**	**NE¼ of SE¼**	**30**	**21N**	**8E**	**MD**
Storage **2. Little Grass Valley Dam S55°W, 4,055 feet from NE corner of section 31**	**SE¼ of NW¼**	**31**	**22N**	**9E**	**MD**
Points of Rediversion **1. South Fork Diversion Dam N1°30'W, 1,520 feet from SE corner of section 30**	**NE¼ of SE¼**	**30**	**21N**	**8E**	**MD**
2. Sly Creek Storage Dam S8°30'W, 1,240 feet from NE corner of section 19	**NE¼ of NE¼**	**19**	**20N**	**8E**	**MD**
3. Lost Creek Storage Dam N28°E, 2,200 feet from S¼ corner of section 24	**NW¼ of SE¼**	**24**	**20N**	**7E**	**MD**
4. Forbestown Diversion Dam S45°W, 2,000 feet from NE corner of section 32	**SW¼ of NE¼**	**32**	**20N**	**7E**	**MD**
5. Ponderosa Dam N41°30'E, 3,710 feet from SW corner of section 33	**NW¼ of SE¼**	**33**	**20N**	**6E**	**MD**

3. Purpose of use	4. Place of use	Sections	Township	Range	Base and Meridian	Acres
Recreation	**Little Grass Valley Reservoir**	**22, 27, 28, 29, 30, 31, 32 & 33**	**22N**	**9E**	**MD**	
		4 & 5	**21N**	**9E**	**MD**	
	Sly Creek Reservoir	**4, 8, 9, 16, 17 & 20**	**20N**	**8E**	**MD**	
	Ponderosa Reservoir	**33, 34 & W½ of 35**	**20N**	**6E**	**MD**	
	Lost Creek Storage Dam	**24 & 25**	**20N**	**7E**	**MD**	
		19 & 20	**20N**	**8E**	**MD**	
Domestic	**Within the boundaries of the South Feather Water and Power Agency as shown on map dated May 2000 filed with the State Water Board**					
Municipal*						
Industrial*						
Irrigation						

***Upon compliance with Condition 8 of this permit**

The place of use is shown on map filed with the State Water Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 200 cubic feet per second by direct diversion to be diverted from April 1 to July 1 of each year and 109,012 acre-feet per annum by storage to be collected from October 1 of each year to July 1 of the succeeding year.

   The total amount of water allowed under Permits 1267, 1268, 1271, 2492, 11516 and 11518 shall not exceed 810,000 acre-feet per water year of October 1 to September 30.

   (0000005F)

6. Construction work shall be completed on or before December 1, 1990.

   (0000009)

7. Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 1, 2004.

   (0000009)

8. Pursuant to condition 5 of Order WR 2004-0029:
   The petitions to add municipal and industrial purposes of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 are approved subject to the permittee's submission of water conservation plans that meet the requirements for an urban water management plan under Water Code section 10620 et seq. and that is acceptable to the Chief, Division of Water Rights (Division Chief). The water conservation plans shall be submitted to the Division Chief by December 14, 2004, and any

revisions required to make the plans acceptable to the Division Chief shall be submitted in accordance with a schedule established by the Division Chief. Yuba County Water District shall submit a water conservation plan for use under Permit 11518. South Feather Water and Power Agency shall submit a water conservation plan for use under Permits 1267, 1268, 1271, 2492, and 11516. In addition, the water conservation plans submitted by South Feather Water and Power Agency shall evaluate and address ditch conveyance losses. No water shall be diverted for municipal and industrial purposes, except for amounts currently delivered to Yuba City, until the Division Chief accepts the plan. The permittee also shall submit to the Division Chief any updates made in accordance with Water Code section 10621 and, at the same time, provide information regarding the permittee's implementation of any measures previously required by the Division Chief that are contained in the water conservation plan. All cost effective measures in the water conservation program shall be implemented in accordance with the schedule for implementation found therein.

9. If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map prepared to accompany the application, permittee shall, at its expense, have the subject map updated or replaced with equivalent as-built map. Said revision or new map shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of title 23 of the California Code of Regulations. Said revision or map shall be furnished upon request of the Chief, Division of Water Rights.

(0000030)

10. The amount of water diverted under this permit, together with that received under existing rights of permittee herein shall not exceed the rate of one cubic foot per second to eighty acres of irrigated land.

(0000114)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.

(0000010)

C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee 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 State Water 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water 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)

E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary

for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit 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 1391. Every permit 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 permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any permit 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 permittee 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 permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel

for *Victoria A. Whitney, Chief*
Division of Water Rights

Dated: JUN 1 2 2006

June 17, 2004

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004-0029

In the Matter of Petitions to Change Place of Use and Purpose of Use

for Water Right Permits 1267, 1268, 1271, and 2492 of
SOUTH FEATHER WATER AND POWER AGENCY (SFWPA)
and
Permits 11516 and 11518 of
SFWPA AND YUBA COUNTY WATER DISTRICT (YCWD)

And Petitions for Extension of Time for
Permits 11516 and 11518 of
SFWPA and YCWD.

SOURCE: South Fork Feather River, Slate Creek, and Lost Creek

COUNTY: Butte, Yuba

ORDER ON PETITIONS FOR CHANGE IN PURPOSE AND PLACE OF USE, PETITIONS FOR EXTENSION OF TIME, AND PARTIAL REVOCATION

BY THE BOARD:

1.0 INTRODUCTION

On October 16, 2000, the State Water Resources Control Board (SWRCB) held an evidentiary hearing on petitions filed by Oroville-Wyandotte Irrigation District (OWID) and YCWD. In 2003 OWID changed its name to the South Feather Water and Power Agency (SFWPA).[1] SFWPA petitions the SWRCB to add municipal and industrial uses as authorized purposes of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 and to consolidate its place of use under the six permits to cover its current service area boundaries. SFWPA also petitions for an extension of time until December 1, 2004, to complete construction and application of water to beneficial use under Permits 11516 and 11518. YCWD, which jointly holds Permits 11516 and

[1] For ease of reference, OWID will be referred to as SFWPA irrespective of the date of the name change.

11518 with SFWPA, petitions the SWRCB to add Yuba City to the authorized place of use under Permit 11518, to add municipal use as a purpose of use, and to add a point of diversion and rediversion on the Feather River near Yuba City to the permit. The SWRCB also considered partial revocation of Permit 1268 in the proceeding.

After considering the evidence in the hearing record and the arguments of the parties, in this Order the SWRCB conditionally approves SFWPA's petitions to add municipal and industrial uses to the six permits and to change its place of use. The SWRCB also conditionally approves YCWD's petition to add Yuba City to the place of use under Permit 11518. The petitions for extension of time for Permits 11516 and 11518 are partially denied and partially held in abeyance. This Order partially revokes Permit 1268.[2]

2.0 FACTUAL AND PROCEDURAL BACKGROUND

2.1 History of Jointly Held Permits

SFWPA and YCWD jointly hold Permits 11516 and 11518 (Applications 13957 and 14113) for the South Fork Project. The decisions of the SWRCB's predecessors,[3] Decision D 838 (1955) and Decision D 907 (1958), describe in detail the history of the districts' water right applications and joint project. (YCWD 6, 8.)

Briefly, in Decision D 838, the State Engineer determined that water right applications separately filed by SFWPA and YCWD were in mutual conflict and that it was in the public interest for the districts to undertake a joint water project to provide an adequate water supply to both districts' service areas. (YCWD 6.) The State Engineer deferred further action on the applications to allow SFWPA and YCWD to enter into an agreement to construct and operate a joint water project and to submit the necessary change petitions to the Division of Water Resources. In 1958 the districts entered into an agreement to construct the South Fork Project and SFWPA's Applications 13957 and 14113, among others, were amended to name YCWD as a joint

[2] This order is not a precedent decision and may not be expressly relied on as precedent. (Gov. Code § 11425.60, subd. (a); SWRCB Order WR 96-1 at 17, fn. 11.)

[3] The SWRCB's predecessors include the State Engineer and the State Water Rights Board.

applicant. (YCWD 7, 9.) In Decision D 907, the State Water Rights Board approved SFWPA's applications and ordered that the permits issued pursuant to the applications, including Permits 11516 and 11518 that were subsequently issued on Applications 13957 and 14113, be subject to the 1958 agreement between SFWPA and YCWD. (YCWD 8.) On December 9, 1959, the districts amended their agreement and the State Water Rights Board accordingly amended the permits, including Permits 11516 and 11518. (YCWD 13, 14.) Permits 11516 and 11518 continue to be to subject to the terms of the districts' agreement, as amended.[4]

2.2 South Fork Project Facilities

SFWPA developed and operates the multiple-purpose South Fork Project, shown on Figures 1 and 2. The primary purpose of the project is to develop irrigation and domestic water supplies for SFWPA and YCWD. (YCWD 12, p. 2.) SFWPA also holds a federal license for hydroelectric power generation that expires in 2010. SFWPA has constructed seven reservoirs on the South Fork Feather River and tributary streams and has built a diversion facility on Slate Creek, a tributary to the North Yuba River.

SFWPA diverts water from the South Fork Feather River to storage in the 94,700 acre-foot (af) capacity Little Grass Valley Reservoir. The South Fork Diversion Dam, which is located on the South Fork Feather River about 8.5 miles downstream of Little Grass Valley Reservoir, intercepts reservoir releases and natural flows. The water is then conveyed 2.5 miles through a tunnel to the upper end of the 65,600 af capacity Sly Creek Reservoir on Lost Creek, a tributary of the South Fork Feather River. The water that bypasses the South Fork Diversion Dam continues to flow downstream into the 352 af capacity Forbestown Reservoir located just downstream of the confluence of Lost Creek and the South Fork Feather River. Water released from Forbestown Reservoir either flows downstream in the South Fork Feather River to the 4,750 af capacity Ponderosa Reservoir or is conveyed through a penstock to the Forbestown power plant and discharged from the power plant into Ponderosa Reservoir.

[4] The districts subsequently amended their agreement in 1965 to allow YCWD to provide domestic service to customers in the Forbestown area. (YCWD 18, 19.) The 1959 agreement between SFWPA and YCWD, as amended, is referred to herein as the "SFWPA-YCWD agreement."

Water exiting the Ponderosa Reservoir either continues downstream to Lake Oroville (a Department of Water Resources facility) or is diverted into Miners Ranch Canal, which terminates in the 815 af capacity Miners Ranch Reservoir. Water released from the Miners Ranch Reservoir is directed to one of the following facilities: (1) Bangor Canal; (2) a domestic distribution system; or (3) Kelly Ridge tunnel and penstock.

Sly Creek Reservoir receives water from four sources: Lost Creek, Sly Creek, water imported from the South Fork Feather River, and Slate Creek. Slate Creek flows are intercepted by the Slate Creek Diversion Dam and conveyed via a 2.5 mile-long tunnel to Sly Creek Reservoir.

Water flows from Sly Creek Reservoir into the 5,920 af capacity Lost Creek Reservoir located immediately below Sly Creek Dam. Flows exiting Lost Creek Reservoir can be directed to the South Fork Feather River, where the water flows into the Forbestown Reservoir, thence Ponderosa Reservoir. Alternatively, the water can be directed from Lost Creek Reservoir into the Woodleaf Penstock and thence to either the Woodleaf Power Plant or the Forbestown Ditch. Water in the Forbestown Ditch flows to YCWD, SFWPA's customers on the ditch, or the 350 af capacity Lake Wyandotte. SFWPA diverts water from Lake Wyandotte to serve its customers in the Lost Horizon Drive area.

YCWD does not own or operate any onstream diversion or storage facilities associated with the jointly held permits. All water used in YCWD's service area under the permits is delivered by SFWPA via the Forbestown Ditch. Two turn-outs from the Forbestown Ditch are used to deliver 3,700 afa to YCWD: the Costa Creek turnout for irrigation deliveries and the Forbestown Water Treatment Plant for domestic uses.

Table 1 summarizes the South Fork Project's facilities and applicable water rights. Permits 1267, 1268, and 2492 allow domestic, irrigation, and recreational uses. Permits 1271, 11516, and 11518 allow domestic and irrigation uses. The South Fork Project also generates hydroelectric power under separately held water rights that are not under consideration in this proceeding and are not identified in Table 1.

TABLE 1[5]					
Facility Name and Actual Size	Permit (Application)	Source	Direct Diversion (cfs) (Season)	Storage (af) (Season)	Permittee
Forbestown Reservoir 352 af	*	S.F. Feather River			
Lake Wyandotte 350 af	*	Lost Creek and Sly Creek			
Little Grass Valley Reservoir 94,700 af	1267 (1651) 11518 (14113)	S.F. Feather River S.F. Feather River		109,012 (10-1 to 7-1) 50,500 (11-1 to 7-1)	SFWPA SFWPA / YCWD
Lost Creek Direct Diversion	1271 (2979) 2492 (2778) 11518 (14113)	Lost Creek Lost Creek Lost Creek	185 (1-1 to 12-31) 50 (4-1 to 6-1) 350 (1-1 to 12-31)		SFWPA SFWPA SFWPA/ YCWD
Miners Ranch Reservoir 815 af	*	S.F. Feather River			
New York Flat Reservoir (Proposed Size 40,000 af)	1268 (2142)	Lost Creek		40,000 (10-1 to 7-1)	SFWPA
Ponderosa Reservoir 4,750 af	*	S.F. Feather River			
Slate Creek Reservoir 223 af	11516 (13957)	Slate Creek		5,400 (1-1 to 7-1)	SFWPA / YCWD
Slate Creek Direct Diversion	11516 (13957)	Slate Creek	300 (5-1 to 11-1)		SFWPA / YCWD

[5] Permit 11518 authorizes storage of 117,300 af: 77,300 af from the South Fork Feather River and 40,000 af from Lost Creek. This table identifies the permitted reservoirs and actual storage in each facility, which amounts to 104,300 af.

TABLE 1 (Continued)					
Facility Name and Actual Size	Permit (Application)	Source	Direct Diversion (cfs) (Season)	Storage (af) (Season)	Permittee
Sly Creek Reservoir 65,600 af	2492 (2778)	Lost Creek		25,000 (10-1 to 6-1)	SFWPA
	11516 (13957)	Slate Creek		29,600 (1-1 to 7-1)	SFWPA / YCWD
	11518 (14113)	S.F. Feather River		48,000 (11-1 to 7-1)	SFWPA / YCWD
S.F. Feather River Direct Diversion	1267 (1651)	S.F. Feather River	200 (4-1 to 7-1)		SFWPA
	11518 (14113)	S.F. Feather River	350 (1-1 to 12-31)		SFWPA / YCWD

*The SWRCB has no record of a water right for Forbestown Reservoir, Lake Wyandotte, Miners Ranch Reservoir, or Ponderosa Reservoir.

2.3 Change Petitions Filed by SFWPA

On March 8, 1989, SFWPA filed petitions for change in the place and the purpose of use, which it subsequently amended in 1997 and 2000. SFWPA petitions the SWRCB to add municipal and industrial purposes to Permits 1267, 1268, 1271, 2492, 11516, and 11518 and to consolidate SFWPA's place of use under the six permits to cover its present service area boundaries.

2.4 Change Petition Filed by YCWD

On June 7, 1982, YCWD filed a petition to add Yuba City's service area to the place of use under Permit 11518 and to add municipal use as a purpose of use. Yuba City diverts water from the Feather River into its water distribution system, approximately 50 miles downstream of Lost Creek Reservoir (the farthest downstream point of diversion under Permit 11518). Although the map filed with the petition identified a point of diversion and rediversion on the Feather River, the petition did not request the addition of those points to the Permit. On August 17, 2000, YCWD supplemented its change petition with a request to add Yuba City's intake facilities on the Feather River as a point of diversion and rediversion.

2.5 Petitions for Extension of Time

The time to complete construction under Permits 11516 and 11518 ended on December 1, 1964, and the time to complete beneficial use ended on December 1, 1975. In March 1980 SFWPA filed petitions for an extension of time to complete construction and the full beneficial use of water. The SWRCB issued notice of the time extension petitions in 1980, 1991, and 2000.

2.6 Protests

Due to the passage of time since the petitions were first noticed, on July 19, 2000, the SWRCB issued another public notice and provided another opportunity to protest the districts' petitions for change and for time extension.

2.6.1 Protest Filed by the California Sportfishing Protection Alliance

In 1991 the California Sportfishing Protection Alliance (CSPA) filed a protest against the petitions for extension of time for Permits 11516 and 11518 alleging that approval of the petitions would have potential adverse environmental impacts. On July 28, 2000, CSPA filed a protest based on environmental grounds against all of the change petitions and time extension petitions identified in the SWRCB's July 19, 2000, notice. CSPA's protest also alleged that the water rights for New York Flat Reservoir (Permit 1268) should be revoked because the facility has not been built. The Division of Water Rights (Division) accepted the revocation issue as a protest issue and requested additional information supporting CSPA's environmental allegations. CSPA did not respond.

2.6.2 Protest Filed by SFWPA

On March 8, 1983, SFWPA filed a protest against YCWD's change petition based on the following grounds: (1) the two districts jointly hold Permit 11518, and consequently, both entities must join in or approve the proposed change before the SWRCB may grant any change petition; (2) the SFWPA-YCWD agreement limits the use of water under the permit to Yuba County, whereas Yuba City is in Sutter County; (3) the release from priority[6] granted by the California Water Commission and by the Department of Water Resources to SFWPA and

[6] A release from priority is a waiver by the state of the priority of a state-filed application in favor of an application filed by the recipient of the waiver. (See Wat. Code § 10504.)

YCWD for Application 14113 (Permit 11518) is subject to the March 21, 1958, agreement between SFWPA and YCWD and any amendments to the agreement mutually agreed upon by the districts, and SFWPA has not agreed to change the service area; and (4) if the petition is granted and YCWD delivers water to Yuba City, then that water will not be available to SFWPA at the outlet of Kelly Ridge Powerhouse.

2.6.3 Protest Filed by YCWD

On August 17, 2000, YCWD filed protests against SFWPA's petitions to change the place of use in the six permits alleging public interest considerations and injury to vested rights. YCWD noted that, pursuant to provisions of the December 9, 1959, agreement between YCWD and SFWPA, YCWD did not protest SFWPA's petitions that would enlarge the place of use in Permits 11516 and 11518, to the extent those changes would include additional lands located within both Butte County and SFWPA's boundaries. YCWD alleged that the proposed changes would increase SFWPA's diversion and use of water from the South Fork Project and thereby reduce the amount of available water for YCWD's use. YCWD stated that its protest could be resolved if the SWRCB included conditions in the six permits that would allow YCWD to receive sufficient water from the South Fork Project "to satisfy its present and projected future water needs."

3.0 HEARING ISSUES

The SWRCB held a hearing on October 16, 2000, in accordance with a notice issued September 12, 2000. The hearing notice identified several key issues, including: (1) whether the SWRCB should approve the petitions for change in purpose and place of use for (i) addition of municipal and industrial purposes of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518, (ii) addition to SFWPA's place of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518, and (iii) addition of Yuba City as a place of use under Permit 11518; (2) whether the SWRCB should approve the petitions for extension of time for Permits 11516 and 11518 or find cause to revoke the permits, in part or in full; (3) whether the SWRCB should revoke

authorization to store 40,000 afa in New York Flat Reservoir under Permit 1268; (4) what the status is of the environmental documentation for the actions requested by the petitioners; and (5) whether approval of the petitions would result in adverse impacts on public trust resources.

4.0 PARTIES TO THE HEARING

In addition to YCWD and SFWPA, Yuba City was designated a party to the hearing pursuant to California Code of Regulations, title 23, section 648.1, subdivision (b).[7] Yuba City appeared in support of YCWD's petition to add the city as a place of use under Permit 11518.

CSPA did not file a Notice of Intent to Appear at the hearing and did not participate in the proceeding. CSPA is hereby dismissed as a party to the proceeding. (Cal. Code Regs., tit. 23, § 648.1, subd. (c).)

5.0 DETERMINATION OF HEARING ISSUES

5.1 Change Petitions

Water Code sections 1700 through 1705 govern changes in the place of use, purpose of use, or point of diversion, of an appropriative water right. Permission to make such change must be granted by the SWRCB and "[b]efore permission to make such a change is granted the petitioner shall establish, to the satisfaction of the [SWRCB], and it shall find, that the change will not operate to the injury of any legal user of the water involved." (Wat. Code § 1702.) The petitioner must establish that the proposed change will not effectively initiate a new right. (Cal. Code Regs., tit. 23, § 791, subd. (a).)

5.1.1 Petitions for Change in Purpose of Use Filed by SFWPA

SFWPA seeks to add municipal and industrial uses to Permits 1267, 1268, 1271, 2492, 11516, and 11518. No protests were filed against the proposed changes in the purpose of use and no objection was raised at the hearing. (See YCWD Closing Brief, p. 9 (stating it has no objection

[7] Section 648.1, subdivision (b) states: "In a water right proceeding, the party or parties shall include the water right applicant or petitioner, persons who have filed unresolved protests, . . . and any other persons who are designated as parties in accordance with the procedure specified in the hearing notice."

to SFWPA's request to add municipal and industrial uses to the permits).) There is no evidence in the record that the addition of municipal and industrial uses to the six permits would operate to the injury of any legal user of water; accordingly, the SWRCB finds that the changes will not result in any injury and conditionally approves the petitions.

To ensure that the water is used efficiently and that the permittee acts diligently, the changes in purposes of use are approved subject to the development and submittal of a water conservation program to the Chief, Division of Water Rights, within 180 days from the date of this Order. Because SFWPA experiences approximately 80 percent conveyance losses, the water conservation program must evaluate and address the conveyance losses. (R.T. 77:4-9.) The petitions will be deemed denied if the permittee fails to timely submit the water conservation program to the Division.

Further, SFWPA's General Manager testified that he could not allocate SFWPA's diversion and use under its six permits to a specific water right. (R.T. 115:17-20.) SFWPA must separately document its annual water use under each permit on the "Progress Report by Permittee"[8] forms furnished by the Division. Finally, the SWRCB will issue amended permits that include updated permit terms regarding map requirements for larger projects, endangered species, and water quality standards and objectives.

5.1.2 Petition for Change in Place of Use Filed by SFWPA

SFWPA also seeks to expand its place of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 to cover its present service area boundaries. YCWD objects to the proposed change,[9] arguing that enlargement of SFWPA's place of use could increase SFWPA's diversion and use of water from the South Fork Project and thereby reduce the amount of project water available to

[8] After the water rights are licensed, SFWPA must separately report its water use under each right on the "Progress Report by Licensee" forms furnished by the Division.

[9] YCWD states that, in accordance with the provisions of part II. E of the SFWPA-YCWD agreement, the district does not protest SFWPA's petitions to enlarge the place of use under Permits 11516 and 11518 to include lands that are located both within Butte County and within SFWPA's boundaries. According to the uncontroverted testimony of SFWPA's general manager, all lands are both within Butte County and eligible for inclusion within SFWPA's service boundaries. (SFWPA C, pp. 1-2.) Apparently then, YCWD does not protest the petitioned changes to Permits 11516 and 11518.

YCWD. YCWD, however, does not object to SFWPA's change petition if the SWRCB imposes permit conditions to ensure that sufficient water is available under Permits 11516 and 11518 to meet YCWD's "reasonable present and future water needs." (YCWD Closing Brief, p. 9.)

YCWD, however, failed to provide evidence linking approval of the change to a reduction in the amount of project water available to YCWD or to any other harm. To the contrary, YCWD's General Manager testified that he didn't know if approval of SFWPA's change petitions would have a direct impact on YCWD's water supply availability. (R.T. 206: 21-207:1.) SFWPA's General Manager testified that there would be no injury to any user of water resulting from enlargement of the place of use. (R.T. 32:2-4.) YCWD will continue to receive the amount of water allowed under the jointly held permits and the SFWPA-YCWD agreement. The SWRCB finds that the change will not injure any legal user of water and approves SFWPA's petition for change in the place of use.

5.1.3 Petition for Change in Place of Use Filed by YCWD

YCWD requests the SWRCB to grant its change petition so that YCWD can continue to sell 4,500 af of South Fork Project water to Yuba City. Specifically, YCWD seeks to provide a supplemental water supply to Yuba City by amending Permit 11518 as follows: (i) adding a point of diversion or rediversion on the Feather River, and (ii) adding a new place of use at Yuba City.[10] YCWD asserts that the change will not injure any legal user of water and that approval of YCWD's petition will not violate the SFWPA-YCWD agreement. SFWPA requests the SWRCB to deny YCWD's petition to add Yuba City to the place of use until the SFWPA-YCWD agreement is amended to allow such change. (R.T. 32:9-11; 109:11-15.)

5.1.3.1 Agreement between SFWPA and YCWD

A threshold issue is whether the proposed change in the place of use—the addition of Yuba City, which is in Sutter County—is permissible under the terms of Permit 11518 and the agreement

[10] YCWD's request to add municipal uses to Permit 11518 has been disposed of by the SWRCB's conditional approval of SFWPA's petition for change in the purposes of use of its six permits, including Permit 11518. The conditions imposed apply to either co-permittee who seeks to divert water for municipal or industrial use.

between SFWPA and YCWD to which Permit 11518 is subject. The relevant portions of the agreement state, in part:

> [Part II.] "The parties hereto agree and consent to and approve:
>
> * * *
>
> C. The amendment of said Applications of Oroville to include as an additional place of use such area in Yuba County as Yuba may designate, to include Yuba as an applicant, and to provide for additional points of diversion and use of water, to the following extent and within the following limits, to-wit:
>
> 1. The amount of 3,700 acre feet per annum for Yuba diverted into Forbestown Ditch . . . .
> 2. The amount of four thousand five hundred acre feet per annum to be diverted by Yuba . . . at the outlet from Miners Ranch Terminal Reservoir . . . .
> 3. After construction of storage facilities adequate to store the water, an additional amount up to 10,500 acre feet to be delivered to Yuba at Miners Ranch Terminal Reservoir . . . .
>
> * * *
>
> E. The amendment of said applications of Oroville numbered 13957 and 14113 and permits issued thereon [Permits 11516 and 11518] to include as additional places of use such additional land in Butte County as Oroville may from time to time determine to include within its boundaries." (YCWD 13.)

In construing the agreement, the SWRCB is mindful of contract law that prohibits adding terms to a contract that are beyond the scope of the parties' contractual intent. Civil Code section 1648 requires the interpretation of a contract to be limited to its evident object: "However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract." The agreement neither expressly allows nor prohibits adding Yuba City as a place of use. In consenting to specified changes, without reference to other possible changes, the agreement obviously would allow SFWPA or YCWD to oppose a change not addressed in the agreement, but nothing in the agreement prohibits either district from proposing such a change.

The parties have not submitted any evidence that the agreement was intended to prohibit the parties from petitioning for changes that are not expressly consented to in the agreement. In fact,

it appears that the purpose of Part II was to include YCWD as a co-applicant on SFWPA's applications and that neither party contemplated service outside either Yuba or Butte County at the time of the agreement. The agreement does not expressly address whether either district could amend jointly held permits to include a place of use in Sutter County and the SWRCB will not add such a term in construing the agreement.

Moreover, in the past, both districts have sought to serve water to Yuba City and to add Yuba City to the place of use under the permits without amending the agreement. "The 'construction given the contract by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight and will, when reasonable, be adopted and enforced by the court.' (Citations omitted.)" (*Whalen v. Ruiz* (1953) 40 Cal.2d 294, 301 [253 P.2d 457, 461].) In 1965 YCWD and Yuba City entered into an agreement to provide the city with 4,500 afa of water at either the outlet of the Miners Ranch Terminal Reservoir or the outlet of the Kelly Ridge Power Plant on the Feather River. (Yuba City 6, pp. 2 (¶ 3), 3 (¶ 6).) Yuba City began pumping water from the Feather River in 1969. (R.T. 225:23-226:7.) In 1980 SFWPA agreed to sell water to YCWD that the district would in turn sell to Yuba City. (Yuba City 10; see R.T. 96:12-23 (testimony that SFWPA was aware of water sale to Yuba City for at least thirty years).) The agreement expressly acknowledged both parties' earlier agreement and YCWD's contract with Yuba City:

> "[YCWD] proposes to enter into an Agreement to provide water in the approximate amount of 4,500 acre feet to the City of Yuba City for the period ending December 31, 2010. That water is water provided by O.W.I.D to [YCWD] pursuant to the terms of the contracts entered into between the parties." (Yuba City 10, p. 1 (¶ 1).)

Thus, until 1980, both districts participated in agreements to sell water to Yuba City and there is no indication that the terms of the SFWPA-YCWD agreement were a source of controversy between the parties.

In 1982 YCWD filed its petition to add Yuba City as a place of use. By this time, however, relations between the districts apparently had soured and SFWPA protested the petition, arguing, in part, that Part II.C. of the agreement incorporated into the permit limited YCWD's uses to the

area within Yuba County. (SFWPA C, ex. 1.) The acts and conduct of the districts prior to any controversy in 1982, however, support the SWRCB's decision to construe the agreement to allow adding Yuba City as a place of use to Permit 11518. In sum, the Water Code provides for changes in the place of use and, absent express language or practical construction by the parties to the contrary, the SWRCB will not construe an agreement to prohibit a change that may be otherwise permissible under law.

Aside from any limitations that may be established by agreement among the co-permittees, there is an issue whether the SWRCB should require the concurrence of each co-permittee before the SWRCB will consider a request concerning a jointly held permit. Neither the Water Code nor the SWRCB's regulations require co-permittees to jointly sign change petitions or other requests for SWRCB action, and the SWRCB has not found it necessary to impose such requirement in the past. There may be cases, however, it would be appropriate for the SWRCB to impose such a requirement in its discretion. In this case, the co-permittees have a long, contentious history.[11] Both districts have argued that their agreement prevents the other from serving Yuba City.[12] Yet, at various times, both districts have entered into water purchase agreements to serve Yuba City without amending the agreement. Nonetheless, although the SWRCB prefers the districts to agree between themselves as to their relative rights and duties under the jointly held permits, the SWRCB will not require such concurrence at this time. The SWRCB will, however, include a term in the permits acknowledging the SWRCB's continuing authority to change or add terms or conditions that are necessary to resolve, in the public interest, issues arising from alleged conflicts in the provisions of the agreement.

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[11] In fact, in 1992 the SWRCB's Executive Director recommended that the SWRCB not approve change petitions to add Yuba City to the place of use of SFWPA or YCWD until the two districts had reached agreement or taken other action to clarify their relative rights and duties with respect to their jointly held water right permits. (SWRCB 7, p. 6.)

[12] In 1988 Yuba City entered into an agreement with SFWPA to purchase water. (Yuba City 11.) Believing that a petition to add Yuba City as a place of use would soon follow, YCWD argued to the Division that such agreement violated Part.II.E., above. (SWRCB 6, Letter from Robert C. Epley, Arostegui, Cooke, Epley & Gengler to the Division, dated January 17, 1989.)

5.1.3.2 Injury to Legal User of Water

The evidence in the record supports a finding that the proposed change will not result in injury to any legal user of water. SFWPA admits that it will not suffer physical injury from YCWD's sale of water to Yuba City in Sutter County. (R.T. 108:16 – 109:1.) SFWPA also testified that it does not have the infrastructure to use the 4,500 af of water after the water is delivered to the Kelly Ridge Power Plant and thence to the Feather River. (R.T. 106:20 – 107:1.) Moreover, SFWPA does not need the water that is currently sold to Yuba City, never anticipated using the water, and is not deprived by delivery of water to the city. (R.T. 107:2-6; 109:2-10; 111:9-15.) In its closing brief, SFWPA withdrew its 1983 protest to YCWD's change petition. (SFWPA Closing Brief, p. 5.) There are no other protests raising the issue of injury to a legal user of water. The SWRCB finds that no legal user of water will be injured by the proposed change.

5.1.3.3 Initiation of New Right

YCWD's petition seeks, in part, to add points of diversion and rediversion from the Feather River at Yuba City. The Feather River is not identified as a source under Permit 11518 and to ensure that the addition of a point of diversion would not effectively initiate a new right, this Order contains a condition requiring the permittee to demonstrate that the SWRCB's approval of the change will not result in a net increase in diversion. The permittee must demonstrate that the natural and abandoned flow at the Lost Creek or South Fork Feather River points of diversion for Permit 11518 is sufficient to cover both existing direct diversions by the co-permittees and the new direct diversion at Yuba City.

The Feather River also may be added as a point of rediversion for water stored and released under Permit 11518. In order for the diversion of water at Yuba City to be considered a point of rediversion under Permit 11518, the water must originate in one of the storage facilities authorized under the permit, be released from storage, and then be rediverted at Yuba City. To ensure that the reservoir releases are coordinated with the rediversion at Yuba City, YCWD must submit a reservoir operations plan that, at a minimum, identifies the reservoir(s) that will be used to serve Yuba City, specifies the flow regimes under which reservoir releases will be made to serve Yuba City, identifies the typical release rates based on hydrologic conditions and subsequent rediversion rates at Yuba City, and includes a provision for measuring diversions at

Yuba City. If releases will vary on a seasonal basis, all release rates must be specified for expected reservoir storage conditions. The reservoir operations plan shall be subject to the review, modification, and approval of the Chief, Division of Water Rights. The plan shall be updated whenever there is a modification in the reservoir operations that may affect reservoir releases to serve Yuba City and the revised information shall be submitted to the Chief, Division of Water Rights for approval. Additionally, the Progress Reports by Permittee shall document the dates when Yuba City received released stored water, identify the reservoir from which the water was released, and identify the quantity of water (i) released from storage and (ii) rediverted at Yuba City.

YCWD, however, does not have physical or operational control over the South Fork Project facilities and the diversions of water. (R.T. 208:10-13.) SFWPA owns the facilities, makes all diversions (direct diversion, rediversion, and diversion to storage), and operates all weirs and control valves to release the water and measure the water. (R.T. 117:22-25.) YCWD receives its water via conveyance through the SFWPA diversion works and does not control the water by requesting releases from specified reservoirs or diversions from a specific source. The water in the system is commingled, and at any time, YCWD may receive water from reservoir releases, direct diversion, or a combination thereof. (R.T. 120:2-20.) Because YCWD does not have physical control over, or access to, the storage facilities, the reservoir operations plan must identify the basis of YCWD's authority (i.e., agreement) to require such releases and to coordinate reservoir operations with the rediversion of water at Yuba City.

The SWRCB approves the addition of Yuba City as a place of use under Permit 11518, subject to these conditions. Absent compliance with these conditions, YCWD may be subject to an enforcement action for the unauthorized diversion of water if YCWD continues to serve Yuba City. (Wat. Code § 1052.) In the meantime, Yuba City has a water supply under its own permits and its contract with the Department of Water Resources. (R.T. 220:20-222:3.)

5.1.4 The California Environmental Quality Act and the Public Trust Doctrine

Under the California Environmental Quality Act (CEQA), the SWRCB is a responsible agency for purposes of considering whether to approve the change petitions. As a responsible agency, the SWRCB must consider the environmental documentation prepared by the lead agency, and any other relevant evidence in the hearing record, and reach its own conclusions on whether and how to approve the project involved. (Cal. Code Regs., tit. 14, § 15096, subd. (a).) SFWPA is the lead agency for the preparation of environmental documentation for its change petitions. On June 24, 1997, SFWPA adopted a Negative Declaration (SCH #92063071) for the expansion of place of use and related actions for Applications 1651, 2142, 2778, 2979, 13957, and 14113 (Permits 1267, 1268, 1271, 2492, 11516, and 11518).

On March 22, 1985, Yuba City filed a Notice of Determination and a Negative Declaration for the proposed water delivery from SFWPA and YCWD of up to 35,000 afa. (SWRCB 6.) The project contemplated in the Negative Declaration included YCWD's petition to change the place of use. The record is silent as to whether YCWD has taken any action under CEQA.

The SWRCB has reviewed the Negative Declarations, which concluded that the proposed projects would not have a significant effect on the environment. The SWRCB has considered the Negative Declarations in deciding whether to approve the change petitions.

Regardless of any obligation the SWRCB may have under CEQA, the SWRCB has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that the project will have any adverse impacts on public trust resources.

5.2 <u>Petitions for Extension of Time Filed by SFWPA</u>

Permits 11516 and 11518, which were issued in 1958, require construction work to be completed by December 1, 1964, and the beneficial use of water to be completed by December 1, 1975. SFWPA requests an extension of time until December 1, 2004, which is the same completion

date as SFWPA's other four permits (Permits 1267, 1268, 1271, and 2492). (R.T. 38:12-22.) YCWD argues that the portions of the permits that apply to SFWPA should be revoked, but that the SWRCB should grant YCWD an extension of time under the permits. (YCWD Closing Brief, pp. 13-15.) Because Permits 11516 and 11518 are jointly held, the SWRCB will consider both permittees' diligence in constructing the project and putting water to beneficial use.

5.2.1 Applicable Law

Water Code section 1396 requires a permittee to prosecute project construction and beneficial use of water with due diligence, in accordance with the Water Code, the SWRCB's regulations, and the terms specified in the permit. The SWRCB may approve a request for an extension of time if the SWRCB finds that there is good cause for the extension. (Wat. Code § 1398, subd. (a).) The SWRCB's regulations allow an extension of time to be granted only on such conditions as the SWRCB determines to be in the public interest, and on a showing to the SWRCB's satisfaction that (1) due diligence has been exercised, (2) failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and (3) satisfactory progress will be made if an extension of time is granted. (Cal. Code Regs., tit. 23, § 844.) The SWRCB generally will not accept conditions incident to the person and not to the enterprise as good cause for delay. (*Ibid.*) After a hearing on a petition for an extension of time, the SWRCB may revoke the permit. (Wat. Code § 1398, subd. (b); § 1410, subd. (a) – (b)(1).)

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5.2.2 Time to Complete Construction

SFWPA has not constructed any diversion or storage facilities since the 1960s, and SFWPA's Power Division Manager testified that SFWPA has no plans to construct additional facilities under Permits 11516 and 11518. (R.T. 122:9-14.) The evidence indicates that SFWPA considers its construction to be complete.

YCWD has not constructed any facilities to directly divert or to store water from the sources identified in Permits 11516 and 11518. (R.T. 200: 8-13.) YCWD constructed one conveyance facility in 1964, the Dobbins-Oregon House Canal,[13] and has not developed other water supply facilities since then. (R.T. 202:14-203:2.) Although the SFWPA-YCWD agreement allows the construction of storage facilities adequate to store an additional amount of 10,500 af, and also states that Yuba shall own certain storage facilities that it may construct, those facilities have not been built. (YCWD 13, parts II.C.3, V.B.) Thus, in over 40 years, YCWD has not developed water supply facilities allowed under the permits and the agreement.

The evidence in the record does not support a finding that there is good cause to extend the time for the co-permittees to complete construction. Accordingly, an extension of time to complete construction under Permits 11516 and 11518 is denied.

5.2.3 Time to Complete Beneficial Use of Water

As explained herein, the SWRCB partially denies and partially holds in abeyance SFWPA's petitions for extension of time. The evidence in the record does not support a finding that there is good cause to extend the time for the co-permittees to make full beneficial use of the 768,080 af of water authorized under Permits 11516 and 11518 and accordingly, the SWRCB denies the petitions for extension of time to the extent that it would allow the co-permittees to make full beneficial use of this amount. A complete denial of the time extension, however, would limit the co-permittees to their 1975 levels of water use when a license for the project is issued to the co-permittees. Instead of limiting the co-permittees to their 1975 level of water use, the SWRCB

[13] Water from the Forbestown Ditch that is released into Costa Creek flows into Dry Creek and is rediverted at the Brownsville Diversion Dam into the Dobbins-Oregon House Canal. (R.T. 152:19-153:7.)

finds that it is in the public interest to give the co-permittees an opportunity to pursue the pending time extension petitions to the extent it would allow the co-permittees to demonstrate their current level of water use. Additionally, the co-permittees may file petitions for an extension of time to demonstrate their diligence and ability to make satisfactory progress in putting water to beneficial use in the amounts necessary for growth and development, up to the amounts for which the SWRCB finds that the co-permittees provided some support in the hearing record in this matter. Unless the co-permittees petition for and receive an extension of time for this purpose, the SWRCB will not allow any expansion of use beyond 2004.

5.2.3.1 Due Diligence

In determining whether there is good cause to approve SFWPA's request for an extension of time to complete the beneficial use of water, the SWRCB must consider whether the co-permittees have exercised diligence over the past 40 years in putting water to beneficial use. Due diligence requires a demonstrable effort to put water to beneficial use within the time period specified in the permits. (But see 25 Ops.Cal.Atty.Gen. 32, 40 (1955) (noting that diligence may require something more than simply complying with time limits in permits).)

SFWPA appropriates water from the South Fork Project under its six water rights, including jointly held Permits 11516 and 11518. The total annual diversion and use allowed under the six permits is limited to 810,000 afa. (See, e.g., SWRCB 3 (Permit 1271, Order dated July 25, 1985).) Permits 11516 and 11518 authorize the total diversion of 768,080 af,[14] subject to the 810,000 af limitation applicable to the six permits. SFWPA's General Manager testified that SFWPA uses approximately 27,000 afa under all six water rights and that he couldn't allocate this amount to a specific water right. (R.T. 115:17-20.)

[14] Converting direct diversion into acre-feet. Permit 11516: 109,296 af by direct diversion (300 cfs x 185 days x 1.98 af/day/cfs = 109,890 af) + 35,000 af storage = 144,890 af. Permit 11518: 252,945 af by direct diversion (350 cfs x 365 days x 1.98 af/day/cfs) (SF Feather) + 117,300 af storage (SF Feather + Lost Creek)+ 252,945 af by direct diversion (350 cfs x 365 days x 1.98 af/day/cfs) (Lost Creek) = 623,190 af. The total for both permits is 768,080 af.

YCWD contends that it diligently has applied water to beneficial use to the maximum extent possible under present contractual conditions. (YCWD Closing Brief, p. 19.) Under the terms of the Agreement incorporated into the jointly held permits, YCWD is limited to 3,700 afa plus certain surplus water on request at Forbestown Ditch and to 4,500 afa at Miners Ranch Reservoir. (YCWD 13; 4, p. 3; R.T. 119:10-14.) In 1991, YCWD received 3,647 af from Forbestown Ditch. (YCWD 5, p. 9, table 5.) The evidence indicates that YCWD has diligently put the 3,700 afa to beneficial use.

Both districts have used a portion of the water outside their authorized places of use. YCWD cannot directly use the 4,500 af of water available at Miners Ranch Reservoir due to its lower elevation and considerable distance from YCWD's service area. (YCWD 2, p. 3.) Instead, YCWD sells the water to Pacific Gas & Electric (PG&E) for non-consumptive power generation at the Kelly Ridge Powerhouse. Since 1969, YCWD has then sold the water to Yuba City under a 1965 agreement between YCWD and Yuba City. (R.T. 227: 21-25; YCWD 2, p. 3.) Until approved by this order, however, Yuba City, however, was not authorized as a place of use under the joint permits. SFWPA also has used water outside its authorized place of use.

A permittee must apply the water to beneficial use in accordance with the Water Code, the SWRCB's regulations, the terms of the permit, and within the period specified in the permit. (Wat. Code § 1397.) A permittee cannot support an extension of time by identifying the diversion and use of water outside an authorized place of use in an attempt to show water use under the permit. Such diversion and use is not made under the permit; instead it is unauthorized and made without a claim of right. (See SWRCB Order WR 85-4 (concluding that the permittee's diversion of water at an unauthorized point of diversion and outside the season of diversion did not support an extension of time).)

Nonetheless, even if the SWRCB considered quantities of water used outside the authorized places of use, SFWPA at best has diverted approximately 27,000 afa of water under the

combined permits during the past four decades.[15] To the extent SFWPA's water rights are duplicative, a portion of this amount would be credited to its senior permits before being credited to the junior jointly held permits.[16] Moreover, as discussed below, neither co-permittee has complied with the requirements of the CEQA in filing the time extension petitions. The co-permittees have not exercised diligence in putting the full amount of water authorized under the jointly held permits—768,080 afa—to beneficial use.

5.2.3.2 Obstacles Not Reasonably Avoided

The SWRCB must also consider whether the co-permittees' failure to comply with previous time requirements has been occasioned by obstacles that could not reasonably be avoided. Lack of finances and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay. (Cal. Code Regs., tit. 23, § 844.)

YCWD asserts that its inability to apply more water to beneficial use under Permits 11516 and 11518 has been occasioned by obstacles that could not reasonably be avoided, specifically the limits on water diversions imposed by the 1960 power purchase contract between SFWPA and PG&E. It is unclear why YCWD identifies the power purchase contract as an obstacle. Although the contract identifies the amounts that SFWPA may divert for its use and YCWD's use, the total maximum amounts are the same as those contained in the agreement between SFWPA and YCWD. (YCWD 13, p. 2 (part II.C.1-2); 15, pp. 13-14 (¶ I.C-2(a)-(b)).) YCWD negotiated and accepted the terms of the SFWPA-YCWD agreement, including the limitations on the district's diversion and use of water. YCWD's inability to apply more water to beneficial use under the permits has been occasioned by its own agreement, and not by any unavoidable obstacle.

Moreover, the 1960 power purchase contract provided a revenue source to fund bonds for the construction of the South Fork Project. (YCWD 2, p. 2; 15.) The availability of this revenue

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[15] This amount is comparable to SFWPA's diversions in 1955 when the district diverted a total of 27,500 af (gross duty) at its various points of diversion in its service area. (YCWD 6, p. 80.)

[16] SFWPA's four senior water right permits were issued in 1923 and 1926. (R.T. 28:12-23.) Diverted water is first credited to the senior right to the limit of that right. (SWRCB Order WR 85-4, p. 5.) Only diversions in excess of the senior right or under conditions not authorized by the senior right can be credited to the junior right.

source allowed the project to proceed in the first place. (YCWD 2, p. 2.) Thus, the contract is not an obstacle to YCWD's development of project facilities or use of water; instead, it is a necessary component of the South Fork Project's development.

In any event, YCWD has not developed all of the water supply facilities allowed under either the SFWPA-YCWD agreement or the power purchase contract. For example, the SFWPA-YCWD agreement allows YCWD to construct facilities to store up to an additional 10,500 afa and the power purchase contract allows YCWD to increase its diversions from the Forbestown Ditch from 12 cfs to 72 cfs on completion of YCWD's proposed diversion from Canyon Creek. (YCWD 13, p. 2 (part II.C.3); YCWD 15, p. 13, (¶ C-2(a)).) Even if YCWD was unable to fund construction of these facilities, lack of finances is not generally accepted as good cause for delay. The evidence does not support a finding that the delay was occasioned by obstacles not reasonably avoided.

5.2.3.3 Satisfactory Progress

Evidence in the record before the SWRCB indicates that the co-permittees will not make satisfactory progress if the SWRCB grants an extension of time to complete beneficial use of the 768,080 afa of water. As discussed in section 5.2.5, however, the SWRCB finds that it is in the public interest to hold a portion of SFWPA's time extension petitions in abeyance.

SFWPA

To date, SFWPA has only appropriated a small quantity of water, approximately 27,000 afa under its six water right permits, compared to the total amount of 768,080 afa allowed under Permits 11516 and 11518. The evidence indicates that SFWPA will not complete full beneficial use of the permitted amount of water.

First, SFWPA acknowledged that the 810,000 afa limitation on its annual diversion and use under its six permits greatly exceeds the South Fork Project's yield of 340,000 af in an average year. SFWPA admitted that it was unlikely that it would use the rights exceeding the project's yield. (R.T. 114:11-22.)

Second, for over forty years, the amount of water available for beneficial use has been limited by SFWPA's 1960 power purchase contract with PG&E, which imposes specific limits on the diversion of water for consumptive use by SFWPA and YCWD. Diversions to the Forbestown Ditch are limited to 14,420 afa (10,720 afa by SFWPA and 3,700 afa by YCWD) at a rate of 38 cfs, except when Lost Creek Reservoir is spilling, the diversion rate may increase to 50 cfs. (YCWD 15, p. 13 (¶ C-2(a)).) Diversions at Miners Ranch Reservoir are limited to 42,439 afa at a rate of 125 cfs. (*Id.* at p. 14 (¶ C-2(b)).) SFWPA may increase this amount by a total of 26,000 afa if it meets certain conditions but there is no evidence in the record that it has ever done so. SFWPA may divert 17,555 afa at a rate of 40 cfs to the Palermo Canal and, subject to certain limitations, any water that otherwise would spill past the Palermo Canal Diversion Dam.

(*Id.* At C-2(c)).) Adding these annual diversion limits together, SFWPA's diversions are limited by contract to approximately 71,000 afa (10,720 + 42,439 + 17,555 = 70,714).[17]

Third, SFWPA's average annual diversion of 27,000 afa is much less than that allowed under contract. Of this amount, approximately 6,000 afa is used for domestic purposes and after conveyance losses of approximately 80 percent, 4,200 afa is used for irrigation. (R.T. 75:14-20; 76:23-78:1.) SFWPA could not identify how much water it will consumptively use at full development, but the Oroville area historically has grown at a one percent rate. (R.T. 124:7-125:2.) YCWD estimates the future combined irrigation and domestic demands for SFWPA's service area, through 2040, to be 51,250 afa. (R.T. 164:9-166:2; YCWD 4, p. 20.) Even if SFWPA's growth rate increased, its diversions would need to more than double to reach the contractual limit of roughly 71,000 afa and they would need to increase by about ten times to reach the 275,000 afa allowed under Permits 1267, 1268, 1271 and 2492.[18] There is no evidence indicating that such extraordinary growth would occur in that area.

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[17] By Memorandum of Understanding with PG&E, dated September 25, 1979, SFWPA agreed to further reduce its diversions from the South Fork Project by approximately 20,000 afa during the term of the SFWPA-PG&E contract. (R.T. 98:14-101:25; YCWD 21, part II.)

[18] Again, diversions would be credited against the senior rights before the junior jointly held rights.

YCWD

YCWD asserts that satisfactory progress will be made if a time extension is granted. YCWD's General Manager testified that YCWD needs additional water supplies and that it cannot add new irrigation customers given its current supplies. (R.T. 184:17-24; YCWD 2, p. 4; 4, pp. 3-4.) YCWD's peak delivery demand of 16 cfs from the Forbestown Ditch exceeds the maximum delivery rate of 12 cfs. (YCWD 5, p. 3.) YCWD's historic rate of growth has ranged from 1 to 3 percent and the district estimates its long-term (to 2040) water supply demand within its service area to be 27,100 afa. (R.T. 206:12-19; YCWD 4, p. 5, table 2.) Of this amount, 23,700 afa can be supplied from the South Fork Project through the Forbestown Ditch under Permits 11516 and 11518. The district plans to develop a conveyance project, the Forbestown Conveyance Project, to deliver this supply from the Woodleaf Penstock to YCWD's service area. (YCWD 4, p. 1.).

The agreement to which the jointly held permits are subject, however, limits the amount of water supplied to YCWD to 3,700 afa plus certain requested surplus water diverted at Forbestown Ditch and 4,500 afa diverted at Miners Ranch Reservoir or the Kelly Ridge Powerhouse. (YCWD 4, p. 3; R.T. 119:10-15.) Further, SFWPA owns and operates the South Fork Project's facilities and YCWD has no access to or operational control over the project. Although YCWD asserts that it has several potential mechanisms for obtaining rights of access to additional South Fork Project water, including the imposition of certain conditions by Federal Energy Regulatory Commission on relicensing, these mechanisms are speculative at best. Moreover, although YCWD identified potential sources of money to finance the project, including the revenue it will receive from hydroelectric generation in 2010, it has neither specific construction plans nor financing in place. (R.T. 194:18-196:18; 197:22-199:2.) Accordingly, the record does not support a finding that YCWD will make satisfactory progress in completing beneficial use.

5.2.4 CEQA Compliance

Moreover, the co-permittees have not diligently pursued fulfilling their responsibilities under CEQA. CEQA applies to discretionary projects proposed to be carried out or approved by public agencies. (Pub. Resources Code, § 21080.) The SWRCB's decision whether to grant an extension of time is a discretionary act. (*See* Wat. Code § 1398, subd. (a); Cal. Code Regs., tit. 23, § 844 (identifying factors to evaluate when considering a request for extension of time).)

Therefore, environmental documentation consistent with the requirements of CEQA must be completed before the SWRCB approves an extension, unless the project is subject to a statutory or categorical exemption from CEQA. (Cal. Code Regs., tit. 14, §§ 15002, 15061, subd. (d).) No exemption is applicable here. SFWPA, as the petitioner for an extension of time, is the lead agency for the preparation of environmental documentation for the proposed time extension. Because the SWRCB's approval of a time extension and subsequent amendment of Permits 11516 and 11518 would authorize SFWPA (and YCWD) to complete the project and to apply water to beneficial use, the SWRCB's approval constitutes an approval of the project. Thus, the SWRCB is a responsible agency for purposes of considering whether to approve SFWPA's petitions.

The Division previously has informed the co-permittees that CEQA compliance is necessary to process a time extension petition. When SFWPA initially filed its change petitions, it also filed a petition to add Yuba City as a place of use. The Division explained that the SWRCB's approval of a time extension is one of the necessary elements for addition of Yuba City as a place of use and that SFWPA must prepare the appropriate environmental documentation to address any potential impacts related to the change and time extension petitions. (SWRCB 6 (letters from Katherine Mrowka, Division, to Jeffrey Meith, SFWPA dated Sept. 20, 1991, and Dec. 16, 1991).) The Division also explained that approval of the time extension petitions is a discretionary act subject to CEQA. (SWRCB 6 (letter from Katherine Mrowka, Division, to Jeffrey Meith, SFWPA (Dec. 16, 1991).) The Division provided YCWD with a copy of the letter. Without the co-permittees' compliance with CEQA, the SWRCB cannot approve the time extension petitions.

5.2.5 Public Interest

SFWPA and YCWD assert that approval of the time extension petitions is in the public interest. As discussed above, (1) the evidence in the record does not support a finding of good cause to grant an extension of time to make full beneficial use of the 768,080 afa authorized under Permits 11516 and 11518, and (2) the increased use of water after the time to put water to beneficial use expires cannot be counted for purposes of licensing the water right. (SWRCB Decision 1629, p. 36.) Consequently, the time to complete beneficial use of water under Permits

11516 and 11518 will have ended in 1975 and any water use since that time cannot be counted for licensing purposes. The SWRCB finds that it is in the public interest to give the co-permittees an opportunity to pursue a time extension to the extent it would allow the co-permittees to demonstrate their current needs and level of water use, including amounts used in areas covered by the change petitions approved in this Order, instead of their 1975 level of use. Accordingly, the SWRCB will hold in abeyance the portions of SFWPA's time extension petitions that would allow the co-permittees to demonstrate this current use.[19]

The SWRCB, however, cannot approve any time extension without compliance with CEQA. Accordingly, the co-permittees have until December 1, 2004, to comply with CEQA and prepare environmental documentation before the SWRCB will consider whether to approve the pending time extension petitions that would allow the co-permittees to demonstrate their current level of use. The co-permittees then may file a motion with the SWRCB to reopen the hearing record for the sole purpose of admitting this documentation and any party may object to such motion. Preparation of the environmental documentation regarding current levels of use should not be difficult because the environmental impacts should be easy to assess. In practical effect, the effect of granting the extension relating to current use will be to allow an increase in water use from 1975 levels to current levels. The SWRCB then will consider the portions of the time extension held in abeyance. Absent compliance with CEQA by December 1, 2004, the petitions for time extension will be deemed denied in full.

Additionally, the SWRCB finds that it is in the public interest to allow the co-permittees to file petitions for an extension of time under Permits 11516 and 11518 to apply water necessary for future growth and development to beneficial use, for which the SWRCB finds that the co-permittees provided some support in the existing hearing record.[20] As discussed above, YCWD

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[19] SFWPA has requested an extension until December 1, 2004. By holding the requests for extension in abeyance it is not the intent of the SWRCB to authorize or encourage any expansion in water delivery or use beyond that necessary to continue deliveries in accordance with current needs and current use patterns.

[20] This order is nonprecedential, in part, because the SWRCB will continue to rigorously apply the applicable law governing diligence, time extensions, and revocations in all other similar proceedings. The SWRCB's public interest finding that allows the co-permittees to file an additional extension of time is limited to the unique circumstances of this case and should not be construed as precedent.

estimates the future combined irrigation and domestic demands for SFWPA's service area, through 2040, to be 51,250 afa. (R.T. 164:9-166:2; YCWD 4, p. 20.) YCWD estimates its own water supply demand to 2040, within its service area, to be 27,100 afa. (R.T. 206:12-19; YCWD 4, p. 5, table 2.) Of this amount, 23,700 afa can be supplied from the South Fork Project through the Forbestown Ditch under Permits 11516 and 11518. Subject to the conditions herein, the co-permittees may file time extension petitions for the sole purpose of demonstrating that they satisfy the requirements for an extension of time to put these amounts of water to beneficial use: 51,250 afa by SFWPA and 23,700 afa by YCWD. If they choose to file a petition for a time extension, the co-permittees must meet the requirements for approval of the requested extension for the amount of water they propose to put to beneficial use; otherwise, the SWRCB may approve a time extension to apply a lesser amount of water to beneficial use or may deny the time extension in full.

To pursue a time extension to put water needed for future growth and development to beneficial use, the co-permittees must comply with the requirements set forth in this order. First, they must file any such time extension petitions by December 1, 2004. The co-permittees may file the petitions either jointly or individually. Second, to ensure that the co-permittees will make satisfactory progress in putting the amounts needed for future growth and development to beneficial use, the co-permittees must submit the following documents and information supporting their petitions to the SWRCB by June 1, 2005: (1) an agreement between SFWPA and YCWD that allows YCWD to use SFWPA's diversion works and conveyance facilities for the quantity of water identified as necessary to accommodate YCWD's growth in the time extension petition; and (2) information demonstrating that the water necessary to accommodate SFPWA's growth and development will be credited to Permits 11516 and 11518 and not to its senior permits. Third, the co-permittees must submit any environmental documentation necessary for CEQA compliance by June 1, 2006.[21] Fourth, SFWPA and YCWD must also comply promptly with any request from the Chief of the Division of Water Rights for

[21] Ordinarily, the SWRCB will presume that any environmental impact report or negative declaration prepared by the petitioner is adequate for purposes of CEQA. (See Cal. Code Regs., tit. 14, § 15096, subd. (e).) This presumption applies only where the petitioner as lead agency has prepared environmental documents; it does not apply where the petitioner fails to comply with CEQA or concludes that the activity is exempt. (See *id.* § 15050 et seq.; Pub. Resources Code § 21167.3.)

information reasonably necessary to clarify, correct, amplify or otherwise supplement the petitions or information provided in support of the petitions, including but not limited to information needed to evaluate the amount of water use projected to occur if the petitions are granted or to evaluate impacts of increases in water use. Failure to comply with these requirements shall result in cancellation of the additional petitions for extension of time. Moreover, the additional petitions will not be accepted for filing by the SWRCB if the co-permittees fail to comply with the conditions established in this order for extending Permits 11516 and 11518 from 1975 to the present or if the SWRCB denies the pending time extension petitions.

In sum, the SWRCB denies the request for extension of time to make full beneficial use of the 768,080 af authorized under Permits 11516 and 11518, but will hold in abeyance the portions of the time extension petitions to the extent necessary to allow the co-permittees to divert and use water under the permits consistent with their current levels of use. Additionally, the SWRCB finds that it is in the public interest to allow the co-permittees to file petitions for extension of time to demonstrate that they meet the requirements for a time extension to apply the amounts of water necessary for future growth and development to beneficial use, not to exceed 51,250 afa by SFWPA and 23,700 afa by YCWD.

5.2.6 Licensing

The SWRCB directs the Division of Water Rights to conduct a licensing inspection and to license Permits 11516 and 11518 if the portions of the time extension petitions held in abeyance are denied or deemed denied. The Division of Water Rights shall license Permits 11516 and 11518 for the project elements and quantities of water put to beneficial use that are not duplicative of project elements and beneficial use under Permits 1267, 1268, 1271, and 2492. If either co-permittee fails to timely provide the Division with the information needed to license the jointly held permits, the Division will revoke the permit elements for which the Division does not receive licensing information.

5.3 Partial Revocation of Permit 1268 (New York Flat Reservoir)

The SWRCB may revoke a permit if it finds that cause exists. (Wat. Code § 1410.) "There shall be cause for revocation of a permit if the work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use as contemplated in the permit and in accordance with the this division and the rules and regulation of the [SWRCB]." (*Id.* at subd. (a).) Based on the evidence in the record, the SWRCB finds that SFWPA has not commenced, diligently pursued, or completed construction of New York Flat Reservoir and finds that there is cause for partial revocation of Permit 1268.

Permit 1268 (Application 2142) authorizes the diversion to storage of 5,000 afa in the Lost Creek Reservoir and 40,000 afa in New York Flat Reservoir on Lost Creek. SFWPA has received numerous extensions of time to develop the project since Permit 1268 was issued in 1923, but New York Flat Reservoir has not been built. The most recent extension of time to complete construction under Permit 1268 expired on December 1, 1990, and SFWPA has not filed a petition for extension of time to construct the facility.

In nearly eighty years, the permittee has not constructed New York Flat Reservoir and there is no evidence that permittee intends to construct the facility. Accordingly, the portion of Permit 1268 that authorizes diversion to storage of 40,000 afa at New York Flat Reservoir is revoked. The portion of Permit 1268 that authorizes diversion to storage at Lost Creek Reservoir is retained.

In its closing brief, YCWD suggests that Permit 1268 should be split into two permits and the New York Flat Reservoir portion should be assigned to YCWD. YCWD is not a co-permittee for Permit 1268 and there is no evidence in the record supporting such an assignment. Moreover, YCWD's General Manager testified that the district has no plans to proceed with construction of the reservoir. (R.T. 194:5-15.) YCWD must obtain its own water right if it wants to construct the reservoir.

6.0 CONCLUSION

Based on the evidence in the record, the SWRCB conditionally approves SFWPA's and YCWD's petitions for change in the purpose of use and place of use. The SWRCB will require a

water conservation plan for municipal and industrial uses under Permits 1267, 1268, 1271, 2492, 11516, and 11518 and operations plans for diversions of water to Yuba City under Permit 11518. The Division will issue amended permits for all six permits that include updated permit terms and conditions.

The evidence in the record does not support a finding of good cause to extend the time to complete construction and beneficial use of 768,000 afa of water under Permits 11516 and 11518. The SWRCB, however, finds that it is in the public interest to hold in abeyance the portion of the time extension petitions that would allow the co-permittees an opportunity to demonstrate their current level of water use. Additionally, the SWRCB finds that it is in the public interest to conditionally allow the co-permittees to file petitions for an extension of time to demonstrate that they meet the requirements for a time extension to apply water necessary for future growth and development to beneficial use, not to exceed 51,250 afa by SFWPA and 23,700 afa by YCWD. The SWRCB also finds good cause to partially revoke Permit 1268.

ORDER

IT IS HEREBY ORDERED,

1. The petitions for extension of time are partially denied and partially held in abeyance. The portions of the petitions that would allow the co-permittees to complete construction are denied. The portions of the petitions that would allow the co-permittees to complete application of 768,000 afa of water to beneficial use under Permits 11516 and 11518 are also denied. No further time extension to put this entire amount of water to beneficial use shall be granted for these permits.

2. The portions of the petitions for extension of time that would allow the co-permittees to apply water to beneficial use until December 1, 2004, are held in abeyance. The co-permittees have until December 1, 2004, to comply with CEQA and prepare environmental documentation in support of approval of the time extensions. Absent compliance with CEQA by this date, SFWPA's petitions for a time extension will be deemed denied in full.

If the portions of the time extension petitions held in abeyance are denied or deemed denied, Permits 11516 and 11518 shall be licensed based on the quantities of water diverted, collected, stored, and placed to beneficial use between July 12, 1960, and December 1, 1975 (the "licensing perfection period"), and the following conditions shall apply:

a. The co-permittees shall furnish all available meter records for its diversions under these permits to the Division of Water Rights (Division) within 180 days of the date the time extension is denied or deemed denied and shall furnish any other materials requested by the Division for licensing purposes within 90 days of any written request from the Division.

b. For Little Grass Valley Reservoir, Lost Creek Reservoir, Slate Creek Reservoir, and Sly Creek Reservoir, the permittees shall document the reservoir capacity, maximum amount of water collected to storage in any one season of diversion, the maximum amount of water held in storage at one time, the maximum withdrawn from storage and put to beneficial use within one season of use, and the maximum rate(s) of diversion to offstream storage from each source during the licensing perfection period.

c. For direct diversion from South Fork Feather River, Lost Creek, and Slate Creek, the permittees shall document the maximum rate of direct diversion, the 30-day average diversion rate for irrigation, and the 7-day average diversion rate for domestic and municipal use, from each source during the licensing perfection period.

d. The permittees shall document the maximum total amount of water appropriated and put to beneficial use in a twelve-month period by combined direct diversion and withdrawal from storage under Permits 11516 and 11518 during the licensing perfection period.

e. Licensing shall be based on the quantities collected to storage and off-stream storage, directly diverted, and put to beneficial use, after deducting the quantities diverted and beneficially used under Permits 1267, 1268, 1271 and 2492. The permittees shall submit new engineered drawings for Permits 11516 and 11518 if the maps on file do not

accurately reflect the as-built project(s), including points of diversion, rediversion, and diversion to offstream storage, conveyance facilities, and place of use (service area). The permittees shall document compliance with all permit conditions during the licensing perfection period.

f. The permittees shall furnish the water diversion and use records and the engineered maps (if necessary) within 180 days of the date the partial time extension is denied or deemed denied. If the required information, including permit compliance information, is not submitted in a timely manner, the Chief, Division of Water Rights is delegated authority to revoke any permit elements for which the required information is not submitted.

3. The co-permittees may, either jointly or individually, file petitions for an extension of time under Permits 11516 and 11518 to apply water necessary for future growth and development to beneficial use, not to exceed total combined diversions for existing demands and future use of 51,250 afa by SFWPA and 23,700 afa by YCWD, subject to the following conditions:

a. The co-permittees must file any such time extension petitions by December 1, 2004.

b. The co-permittees must submit the following documents and information supporting their petitions to the Chief, Division of Water Rights, by June 1, 2005: (i) an agreement between SFWPA and YCWD that allows YCWD to use SFWPA's diversion works and conveyance facilities for the quantity of water identified as necessary to accommodate YCWD's growth in the time extension petition; and (ii) information demonstrating that the water necessary to accommodate SFPWA's growth and development will be credited to Permits 11516 and 11518 and not to its senior permits.

c. The co-permittees must submit to the Chief, Division of Water Rights, any environmental documentation necessary for CEQA compliance by June 1, 2006.

d. The co-permittees must comply promptly with any request from the Chief, Division of Water Rights, for information reasonably necessary to clarify, correct, amplify or

otherwise supplement the petitions or information provided in support of the petitions, including but not limited to, information needed to evaluate the amount of water use projected to occur if the petitions are granted or to evaluate impacts of increases in water use.

e. Failure to comply with these requirements shall result in cancellation of the additional petitions for extension of time. The additional petitions will not be accepted for filing by the SWRCB if the co-permittees fail to comply with the conditions established in this order for extending Permits 11516 and 11518 from 1975 to the present or if the SWRCB denies the pending time extension petitions.

4. The petition to add Yuba City to the place of use under Permit 11518 and to add a point of diversion and rediversion on the Feather River is approved, subject to the following conditions:

No water shall be directly diverted for consumptive use from the Feather River at Yuba City under Permit 11518 until the permittee submits a direct diversion operations plan to the Chief, Division of Water Rights (Division Chief) and the Division Chief approves the plan. The operations plan must identify the following: (1) the flow conditions under which Yuba City will directly divert water under Permit 11518; (2) the quantity of natural and abandoned flows typically available at the Lost Creek and South Fork Feather River points of diversion when Yuba City will be diverting water; and (3) the quantity of natural and abandoned flows projected to be diverted by the permittees under Permits 1267, 1268, 1271, 2492, 11516, and 11518 at the Lost Creek and South Fork Feather River points of diversion to serve the permittees' place of use when Yuba City will be directly diverting water. The plan must provide a means of demonstrating that direct diversion at Yuba City under Permit 11518 will always be less than or equal to the quantity of natural and abandoned flows at the Lost Creek and South Fork Feather River points of diversion minus the quantity diverted under Permits 1267, 1268, 1271, 2492, 11516, and 11518 at the Lost Creek and South Fork Feather River points of diversion. All quantities shall be calculated after deducting from the quantity of natural and abandoned flows any bypass flows required now or in the future.

The Progress Reports by Permittee shall document the dates when Yuba City received water by direct diversion under Permit 11518, shall specify the quantity directly diverted, and shall demonstrate that direct diversions did not exceed the quantity of natural and abandoned flows minus the quantity diverted, as provided in the direct diversion operations plan.

No water shall be rediverted for consumptive use from the Feather River at Yuba City under Permit 11518 until the permittee submits a reservoir operations plan to the Division Chief at least 30 days before the proposed operation and the Division Chief approves the plan. The plan must identify the following: (1) the reservoir(s) that will be used to serve Yuba City; (2) the flow conditions under which Yuba City will receive released stored water; (3) the typical release rates based on hydrologic conditions and the subsequent rediversion rates at Yuba City; and (4) a means for metering diversions at Yuba City. If releases will vary on a seasonal basis, all release rates must be specified for expected reservoir storage conditions. The plan shall be updated whenever there is a modification in the reservoir operations that may affect reservoir releases to serve Yuba City and the revised plan shall be submitted to the Division Chief for approval within the timeframe established by the Division Chief for such modifications.

The Progress Reports by Permittee shall document the dates when Yuba City received released stored water, identify the reservoir from which the water was released, and identify the quantity of water (i) released from storage and (ii) rediverted at Yuba City.

If YCWD is responsible for the rediversion of water from the Feather River at Yuba City, the reservoir operations plan shall also identify the basis of YCWD's right to control such rediversions. Accordingly, no water shall be rediverted from the Feather River at Yuba City until the following actions are taken: (1) SFWPA and YCWD have an agreement establishing sufficient control by YCWD over reservoir operations for the rediversion of water at Yuba City; (2) SFWPA and YCWD provide a copy of the agreement to the Division Chief; and (3) the Division Chief advises the co-permittees in writing that the agreement provides YCWD with the necessary operational control.

The permittee must separately report daily diversions at Yuba City on the Progress Reports by Permittee for Permit 11518 (and any subsequent license issued pursuant to Permit 11518).

5. The petitions to add municipal and industrial purposes of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 are approved subject to the permittee's submission of water conservation plans that meet the requirements for an urban water management plan under Water Code section 10620 et seq. and that is acceptable to the Chief, Division of Water Rights (Division Chief). The water conservation plans shall be submitted to the Division Chief within 180 days after the date of this Order, and any revisions required to make the plans acceptable to the Division Chief shall be submitted in accordance with a schedule established by the Division Chief. YCWD shall submit a water conservation plan for use under Permit 11518. SFWPA shall submit a water conservation plan for use under Permits 1267, 1268, 1271, 2492, and 11516. In addition, the water conservation plans submitted by SFWPA shall evaluate and address ditch conveyance losses. No water shall be diverted for municipal and industrial purposes, except for amounts currently delivered to Yuba City, until the Division Chief accepts the plan. The permittee also shall submit to the Division Chief any updates made in accordance with Water Code section 10621 and, at the same time, provide information regarding the permittee's implementation of any measures previously required by the Division Chief that are contained in the water conservation plan.

All cost effective measures in the water conservation program shall be implemented in accordance with the schedule for implementation found therein.

6. The petitions to change SFWPA's place of use under Permits 1267, 1268, 1271, 2492, 11516, and 11518 are approved.

7. The element of Permit 1268 authorizing storage of 40,000 afa in New York Flat Reservoir is revoked. Amended Permit 1268 shall continue to authorize collection to storage of 5,000 afa in Lost Creek Reservoir.

8. Permits 11516 and 11518 are amended to include the following term: "The SWRCB will maintain continuing authority to change or add terms or conditions necessary to resolve, in the public interest, issues arising from alleged conflicts among the provisions of the agreement to which the permit is subject."

9. Permits 1267, 1268, 1271, 2492, 11516, and 11518 shall be amended and reissued to include the following conditions:

   Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, 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.
   The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee 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 SWRCB 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 SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB 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)

The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

This permit does not authorize any act that 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 et seq.) 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 permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

Permittee shall maintain records of the amount of water diverted and used to enable the State Water Resources Control Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605. The permittee shall separately report water use under each permit (and after license issuance, for each license), on forms furnished by the SWRCB.

(0000015)

If it is determined after permit issuance that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, permittee shall, at its expense, have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered of licensed in the State of California and shall meet the requirements prescribed in section 715 and sections 717 through 723 of title 23 of the California Code of Regulations. Said revision(s) or map(s) shall be furnished upon request of the Chief, Division of Water Rights.

(0000030)

10. Permits 1267, 1268, 1271, 2492, 11516, and 11518 shall include all other terms and conditions presently in Permits 1267, 1268, 1271, 2492, 11516, and 11518 which have not been expressly revised, amended, or revoked from the permits by this order

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2004.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.

Debbie Irvin
Clerk to the Board

Schematic Diagram of the OWID Water System

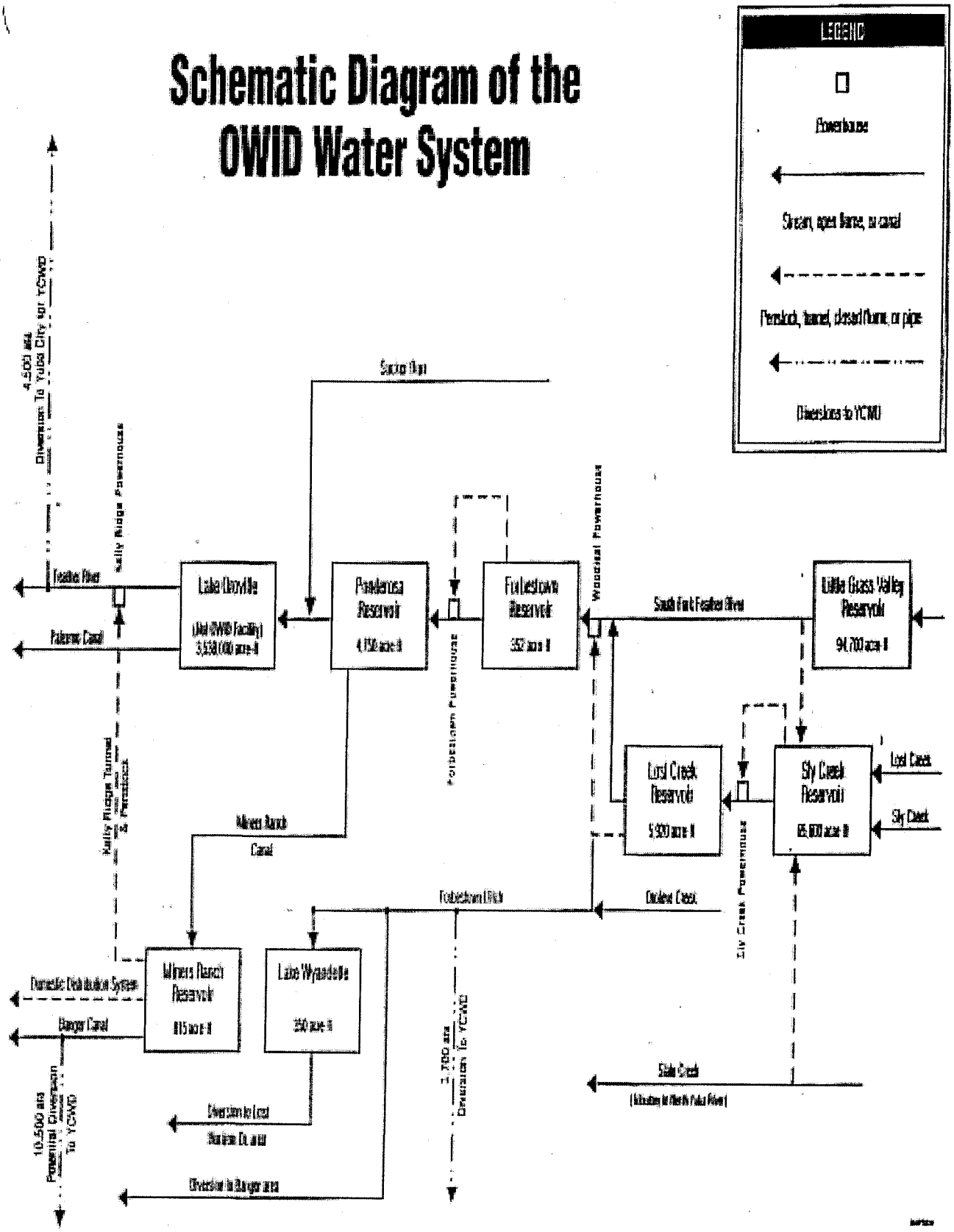
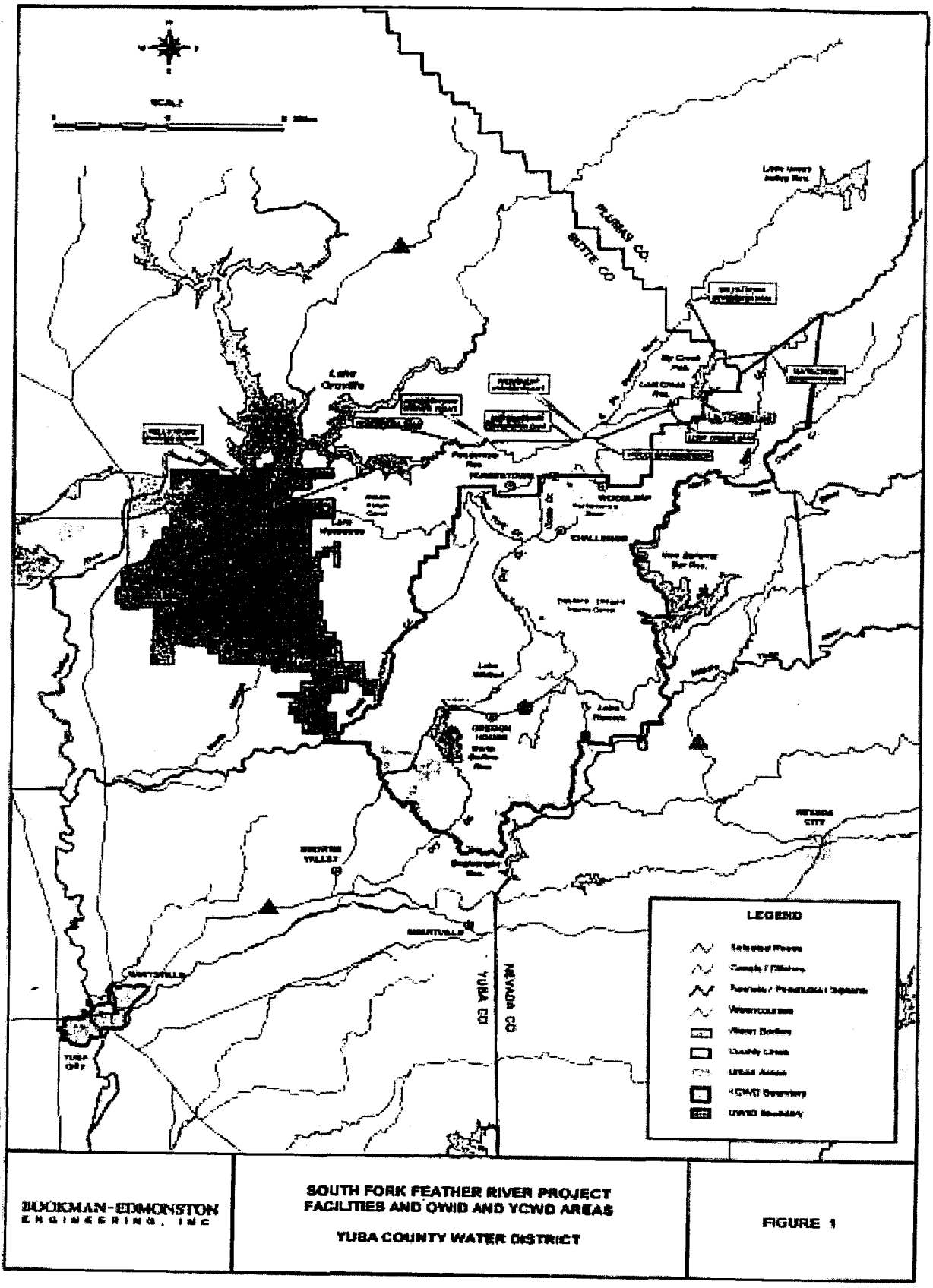


EXHIBIT YCWD-4A



BOOKMAN-EDMONSTON ENGINEERING, INC

SOUTH FORK FEATHER RIVER PROJECT
FACILITIES AND OWID AND YCWD AREAS

YUBA COUNTY WATER DISTRICT

FIGURE 1

P1267

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

In the Matter of Permit 1267 on Application 1651 of
OROVILLE-WYANDOTTE IRRIGATION DISTRICT, Petitioner

ORDER APPROVING TEMPORARY CHANGES IN
PLACE OF USE AND POINTS OF REDIVERSION
INVOLVING TEMPORARY TRANSFER

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 INTRODUCTION

Oroville-Wyandotte Irrigation District (OWID) having filed a petition on August 15, 1990 under Water Code Section 1725 et seq. for a temporary transfer of water involving temporary changes in place of use and points of rediversion; notice of the petition and of a State Water Resources Control Board (Board) hearing on the petition having been given on August 17, 1990; comments on the proposed transfer having been received by August 24, 1990; the Board having held a hearing on September 5, 1990; the Board having adopted a motion to direct the Chief of the Division of Water Rights to exercise his delegation of authority to act upon the petitioned temporary changes on an expedited basis; I find as follows:

2.0 SUBSTANCE OF PETITION

OWID proposes to transfer up to 15,000 acre-feet (af) of water to Westlands Water District (WWD), beginning

five days after the approval of the petition and ending March 31, 1991. To accomplish the transfer, OWID requests that the Board temporarily amend Permit 1267 to add temporary points of rediversion at Clifton Court Forebay on Old River within the NW1/4 of SW1/4 of projected Section 20, T1S, R7E, MDB&M, and at San Luis Forebay Dam within the NE1/4 of SW1/4 of Section 1, T10S, R8E, MDB&M, and temporarily add the service area of WWD within Fresno and Kings counties to the place of use. Under the transfer, OWID would release a net quantity of 10,000 af from Little Grass Valley Reservoir and a net quantity of 5000 af from Sly Creek Reservoir. The water will be drawn from Sly Creek Reservoir, and Sly Creek Reservoir will be partially refilled from Little Grass Valley Reservoir. From Sly Creek Reservoir, the water will travel through OWID's system to the Kelley Ridge powerhouse and into the Feather River below Oroville Dam. From there, it will flow to the Delta. Four thousand five hundred af will be used for carriage water in the Delta, and the Department of Water Resources (DWR) will divert the balance of 10,500 af from the Delta at Clifton Court Forebay on Old River. DWR will then transport the 10,500 af to San Luis Reservoir and in part directly to WWD via the State Aqueduct. The water retained in

San Luis Reservoir will be distributed to WWD as needed during the period of the transfer.

3.0 BACKGROUND

3.1 Substance of Permit

OWID, under Permit 1267, is authorized to divert water from the South Fork Feather River in Plumas County, as follows:

1. up to 200 cfs, from April 1 to July 1, from a point of diversion within the NE of SE of Section 30, T21N, R8E, MDB&M.

2. up to 109,012 afa, from October 1 to July 1, at Little Grass Valley Dam, within the SE of NW of Section 31, T22N, R9E, MDB&M.

Authorized Points of Rediversion are as follows:

1. South Fork Diversion Dam, within the NE of SE of Section 30, T21N, R8E, MDB&M.

2. Sly Creek Storage Dam, within the NE of NE of Section 19, T20N, R8E, MDB&M.

3. Lost Creek Storage Dam, within the NW of SE of Section 24, T20N, R7E, MDB&M.

4. Forbestown Diversion Dam, within the SW of NE of Section 32, T20N, R7E, MDB&M.

5. Ponderosa Dam, within the NW of SE of Section 33, T20N, R6E, MDB&M.

Authorized uses of the water are for domestic, irrigation of 31,000 acres within a gross area of 31,463 acres, and recreation at Little Grass Valley Reservoir, Sly Creek Reservoir, and Ponderosa Reservoir, as shown on a map on file with the State Board.

3.2 Need for the Transfer

Due to the continuing drought, WWD's service area is receiving only 50 percent of its normal irrigation entitlement from the Bureau of Reclamation (Bureau). The transferred water would be used for winter crops, primarily vegetables, which are grown primarily on the fine soils in the western half of the service area.

Because of historic subsidence problems, ground water quality, and pumping costs, ground water pumping is not

considered to be a viable alternative to cover Westlands' entire shortfall.

In 1989, Westlands delivered 1,410,000 af of water to its members. Westlands' estimate of 1990 water supply without additional transfers is as follows:

Source	Amount (af)
CVP	575,000
Interdistrict transfers	8,425
Estimated 1990 ground water pumping	150,000
TOTAL	743,925 af

Landowners within Westlands have instituted a number of water conservation and related practices to reduce the current water shortages. Approximately 100,000 af of the shortfall has been met through fallowing of land, stressing of crops, internal water transfers, pumping of ground water, exchanges and small transfers from other local districts. Westlands states that it needs additional water in order to meet the needs of its planted crops in 1990.

Other water transfers during 1989 and 1990 to Westlands are as follows:

1. Kern County Water Agency (Kern), an SWP water contractor, provided 55,000 af of water to Westlands in 1989. The State Board, on September 18, 1989 in Order WR 89-24, validated a conditional Temporary Urgency Change Order authorizing the transfer under Water Code Section 1435.

2. In 1989, Dudley Ridge Water District, an SWP water contractor, transferred 1,700 af of water to Westlands and the San Luis Water District for use by Munco Farms. The Chief of the Division of Water Rights approved the Petition for Temporary Transfer on December 6, 1989, under Water Code Section 1725.

3. On August 16, 1990, the State Board approved the transfer of 1,500 af of water, stored in San Luis Reservoir and scheduled for use in Tulare County, for use by Sayler American in Westlands.

4. Browns Valley Water District has, in 1990, transferred to Rosconi Farmland in Westlands 3,600 af of water (less 30 percent carriage water) appropriated under pre-1914 water rights. The Bureau wheeled the water through its Tracy Pumping Plant.

5. Placer County water agency proposes to transfer up to 40,000 af of water (less 30 percent carriage water) to Westlands through the Bureau's Tracy Pumping Plant.

3.3 Use of Proceeds from the Transfer

OWID intends to use the money that it will receive from WWD for the transfer to repair and concrete-line the more than 100 miles of open ditches in its water distribution system. This will help prevent the unnecessary waste of water within the service area. Currently, as much as 20,000 af of the 30,000 af diverted annually into the distribution system is lost. It is important to ensure that the unnecessary waste of water is prevented. Therefore, this order will be conditioned upon OWID providing the Board written assurance that it will use all of the revenues from the transfer to repair and line the ditches within its distribution system.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The proposed transfer will take 10,000 af from Little Grass Valley Reservoir and 5,000 af from Sly Creek Reservoir. The capacity of Little Grass Valley Reservoir is 94,700 af, and the capacity of Sly Creek

Reservoir is 65,600 af. With the transfer, the storage in Little Grass Valley Reservoir is expected to be 40,000 af at the end of November 1990 and to refill thereafter. The storage in Sly Creek Reservoir is expected to drop to 18,000 af at the end of November 1990 and to refill thereafter.

Assuming that OWID's reservoirs receive no inflow during the winter of 1990-91, OWID would have 60,000 af in storage. At OWID's current delivery rate of 30,000 afa within its service area, it would have enough water in storage for two years. If there is 80 percent of normal rainfall in 1990-91 OWID states that it can keep the three boat ramps at Little Grass Valley operational through September 30, 1991.

There is a chance that OWID might owe DWR up to 100 percent of the transferred amount, i.e., 15,000 af, depending on whether the transfer causes a reduction in the amount of inflow to Lake Oroville during the winter of 1990-91. This would occur if OWID's reservoirs cannot be refilled during periods when there is uncontrolled water in the Delta. The actual amount will depend on an accounting of reservoir fillings during the January 1 through May 31, 1991 period.

Without the proposed transfer the water would remain in storage. If the winter of 1990-91 is dry or critically dry, retention of the storage might benefit power production, recreation, and fish and wildlife. However, OWID provided no operation study to show the effects of a critically dry year. If OWID requests another temporary transfer in the future, the Board may require an operation study that includes operation during the following water year, with and without the transfer, making the assumption that the following water year will be a repeat of the 1977 water year. Because of the lack of an operation study for 1991, some uncertainties exist. Nevertheless, I am satisfied that OWID will retain enough water to supply water users within its service area during 1991, and meet its other obligations under its permit, even if it has to pay back some water to DWR or Yuba County Water Agency. Consequently, I find that water is available for the temporary transfer.

5.0 EFFECT ON OTHER LEGAL USERS OF WATER

In response to the Notice dated August 17, 1990, the Board received comments from (1) the Four Entities (consisting of the Central California Irrigation District, Columbia Canal Company, Firebaugh Canal Water District, and the San Louis [sp] Canal Company),

(2) Central Delta Water Agency, (3) Yuba County Water Agency, and (4) Yuba County Water District.

The Central Delta Water Agency did not object, since the water will be used to make up for a shortage caused by the drought, but did request that the Board impose conditions requiring that the transferred water plus the carriage water be actually released into the Delta as additional flow and that the carriage water will be added to Delta outflow. The temporary change will be conditioned upon the provision of carriage water when OWID releases water for the transfer; however, OWID may not actually release the full amount of the authorized transfer since DWR has indicated that under certain conditions it may not have uncommitted conveyance capacity available to wheel all of the water during the period of the transfer. Staff Exhibit 1.c.

The Yuba County Water Agency did not object to the transfer, but expressed concern regarding potential impacts associated with refilling OWID storage vacated by the transfer and incremental diversions from the Yuba River Basin to refill the vacated storage. In particular, the Agency was concerned about diversions from Slate Creek. Consequently, Yuba County Water Agency requested that OWID be required to provide

information on the rates of diversion from Slate Creek and the storage conditions in OWID facilities through June 30, 1991. Staff Exhibit 36. In response, OWID agreed to make available to the Agency its records from Slate Creek from September 1990 through May 1991. At the hearing, Yuba County Water Agency's representative reiterated that the Agency has an interest in OWID's storage through June 30, 1991. However, he did not request any special condition.

Yuba County Water District originally opposed the transfer because of a concern that the transfer would affect its right to surplus water from the South Fork Project and would impact its power revenues. Staff Exhibit 41. After meeting with OWID, Yuba County Water District withdrew its opposition. Staff Exhibit 64.

The Four Entities objected to the transfer because of drainage impacts from water use on lands upslope of the Four Entities within the WWD service area. The Four Entities requested that the transfer be denied unless WWD uses none of the transferred water on lands upslope of the Four Entities and WWD will make no interdistrict transfers of water to lands upslope of the Four Entities in lieu of receiving water from the transfer. During the hearing the Board received testimony that

WWD is obliged to serve water to its customers under a formula that will enable Area I within the service area to receive 78 percent of the transferred water. According to the petition, however, the winter crops for which the transfer is requested are located primarily in Area II, which does not drain toward other agricultural areas. Evidence in the record shows that part of Area I drains toward the Four Entities when enough irrigation water is applied to reach the ground water table. The 10,500 af to be applied pursuant to this Order will be applied over a large area during a period extending from September 1990 through March 1991. The maximum incremental amount to be applied under the temporary transfer within the district during any month will be 2500 af, and approximately 186,000 acres will be irrigated. This will result in underirrigation of the crops. Westlands' witness estimated during the hearing that this transfer will add about 0.3 af per acre to Area I and about 0.15 af per acre to Area II.

Given the size of the area to be served and the relatively small amount of water, the transfer will not cause a significant change that would injure the members of the Four Entities or any other legal user of water. Consequently, I find, pursuant to Water Code

Section 1727(a)(1) that the proposed temporary change will not injure any legal user of water.

6.0 ENVIRONMENTAL CONSIDERATIONS

Numerous parties raised environmental issues regarding the proposed transfer. The environmental issues can be considered in several groups: potential impacts to reservoir production of fish; bald eagles nesting near Little Grass Valley Reservoir; nesting Canada geese at Little Grass Valley Reservoir; spawning brown trout; fall spawning Chinook salmon in the Feather River because of flow fluctuations and temperature increases; recreational use of Little Grass Valley Reservoir; direct and cumulative effects on fish and wildlife in the Sacramento-San Joaquin Delta; and ground water quality in the San Joaquin Valley due to contaminated agricultural drainage.

A temporary change under Water Code Section 1725 et seq. is exempt from the requirements of the California Environmental Quality Act set forth in Division 13 (commencing with Section 21000) of the Public Resources Code. Water Code Section 1729.

Water Code Section 1727(a)(2) requires that before the Board can approve a temporary transfer, it must find

that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. The Board is required to make an evaluation sufficient to make this finding. Water Code Section 1727(a). In order to satisfy the requirements of Section 1727, Board Orders WR 89-20 and WR 89-21 require that temporary transfers involving an increase in exports through the Delta be preceded by an adequate environmental analysis of the potential fishery impacts and other environmental effects. Potential impacts to fish, wildlife, and other instream beneficial uses are considered below in accordance with Section 1727.

6.1 Bald Eagles at Little Grass Valley Reservoir and Lake Oroville

Little Grass Valley Reservoir supports a pair of nesting bald eagles, a species listed as endangered by both the state and federal governments. The proposed water transfer could adversely affect the eagles' reproduction if it caused sufficient drawdown of the lake to decrease food availability while eagle chicks were in the nest. Such an effect is unlikely. Monitoring of bald eagle populations in California has not shown any relationships between reservoir levels and eagle nesting success. For example, Shasta Lake has had lower than normal storage levels for several

years, and no differences in nesting success have been noted. Staff Exhibit 44. The difference in storage from 50,000 af to 40,000 af in Little Grass Valley Reservoir caused by the transfer is unlikely to affect the eagles. The U.S. Forest Service monitors the nest, and does not believe the transfer will adversely affect the eagles. Failure of the nest has already been documented this year, prior to initiation of the water transfer. The U.S. Forest Service sees no problems with potentially lower lake levels next spring reducing the forage base for the eagles. OWID Exhibit 1. To ensure better documentation for any future transfer requests, the order will include a term requiring a report on the monthly water levels and the nesting success of the eagles until the reservoir spills. To avoid duplication of effort, the nesting success information may be obtained from the U.S. Forest Service.

Lake Oroville supports two nesting pairs of bald eagles. The transfer could affect water levels in Lake Oroville during the refill period by reducing the probability of spill from Little Grass Valley and Sky Creek Reservoirs. Since the volume of Lake Oroville is largely compared to the 15,000 acre-foot difference in storage caused by the transfer, and the probability of

the two smaller reservoirs not spilling is small (Staff Exhibit 1.b), it is unlikely that eagle nesting at Lake Oroville will be affected.

The transfer will not unreasonably affect bald eagles at Little Grass Valley Reservoir and Lake Oroville.

6.2 Recreational Access at Little Grass Valley Reservoir

Recreational boating is an instream beneficial use of water at Little Grass Valley Reservoir. Lowering of the water level due to the transfer could affect recreational use there. There are three boat ramps at the reservoir. The Maidu ramp is usable when storage is greater than 50,000 af; the Tooms and Black Rock ramps are usable when storage is greater than 55,000 af. OWID Exhibit 3.d. The 1967 Davis-Grunsky contract which provided funds to construct the ramps requires that the ramps be usable until September 30 of each year. Staff Exhibit 3. Under OWID's planned operation for the transfer, 57,000 af would remain in storage in the reservoir at the end of September. OWID Exhibit 3.a. Thus, the three boat ramps would be usable through September as required by the Davis-Grunsky contract. To ensure that recreational boaters may use the ramps through September, the order will

include a term requiring the level of the reservoir remain at or above 55,000 af through September.

6.3 Fisheries in Little Grass Valley and Sly Creek Reservoirs

The lowering of Little Grass Valley and Sly Creek Reservoirs would provide less habitat for fish populations and could adversely affect fisheries in those reservoirs. The expected reductions in reservoir levels fall within the historical operating levels of the reservoirs. Staff Exhibit 1.b. The Department of Fish and Game does not expect the reservoir drawdowns to unreasonably affect fisheries because adequate cold water habitat for trout will remain available at the lower elevations. Staff Exhibit 1.d. Therefore, I find that the transfer will not unreasonably affect fisheries in Little Grass Valley and Sly Creek Reservoirs.

6.4 Fisheries in the South Fork Feather River

Changes in streamflow regime in the South Fork Feather River due to the transfer could affect resident trout populations. OWID has released 130 cubic feet per second (cfs) to the South Fork from Little Grass Valley Reservoir since June 30. Without the transfer, OWID would continue to release water at 130 cfs until about

October 10, and then would reduce the release to 10 cfs. With the transfer, OWID would continue to release 130 cfs through November, which would provide favorable habitat conditions for trout for another two months. OWID Exhibit 4.

Lowering the flows in the South Fork at the end of November is not likely to dewater brown trout redds (spawning nests) which may be present in the South Fork at that time, because spawning gravels in the South Fork are restricted to a narrow channel within steep bedrock sides. OWID Exhibit 4.

Since both reservoirs will probably spill next spring (Staff Exhibit 1.b), the lower storage levels caused by the transfer will probably cause them to spill later than they would without the transfer. Those changes would not cause unreasonable effects on fish populations in the South Fork Feather River.

6.5 <u>Fisheries in the Feather and Sacramento Rivers</u>

The transfer would affect streamflow and water temperature in the Feather River below the Thermalito Afterbay outlet during the spawning period for fall-run Chinook salmon. The expected flows in the Feather River are 1550 cfs (1300 cfs released from Thermalito

Afterbay and 250 cfs released from Kelly Ridge Powerhouse) when the transfer commences. After October 15, streamflows would be reduced and stabilized at 1300 cfs pursuant to a 1983 agreement between DWR and the Department of Fish and Game. The 1300 cfs release after October 15 may include some OWID transfer water, since the entire 15,000 af cannot be transferred prior to that time. During the hearing, DWR requested flexibility to complete transfer of water across the Sacramento-San Joaquin Delta through November if necessary.

The transfer could cause dewatering of Chinook salmon redds in the Feather River when flow levels are reduced after October 15. The planned reduction from 1550 cfs to 1300 cfs would reduce the usable spawning area by about 3 percent. OWID Exhibit 4. This will lower the water level only a few inches and should not harm salmon redds after spawning. If any flow reduction is less than 250 cfs, Chinook salmon redds will not be unreasonably affected. Order WR 90-8 requires DWR to monitor and report on maximum, minimum, and mean daily flows in the Feather River during the period when OWID will release water; consequently, no additional reporting term is required herein. Since flow in the Feather River cannot be reduced below 1300 cfs due to

the agreement with the Department of Fish and Game, no further control is required herein to control the instream flow.

Term 15 of State Board Order WR 90-8 required a maximum daily average temperature of 56°F in the Feather River during October, November, and December 1990 as a condition of a transfer from Yuba County Water Agency to DWR. Temperature criteria established by the Department of Fish and Game for the Feather River Fish Hatchery are 48-56°F in September and 47-55°F in October. OWID's consultants expect the transfer to cause water temperatures in the Feather River to increase from 53.0°F to 55.5°F in September and from 52.1°F to 53.3°F in October. Those temperature increase estimates appear to be based on the flow reduction to 1300 cfs occurring in November (OWID Exhibit 4), rather than October, and the resultant temperatures are close to the maximum criteria. DWR has informed the State Board that, due to low storage levels in Lake Oroville this year, the temperature requirements for protection of fall-run Chinook salmon may not be met. DFG Exhibit 1. The Department of Fish and Game expects the temperature of water released from Kelly Ridge Powerhouse to be at or below the temperature of water released by the Department of

Water Resources to the Feather River. Staff Exhibit 1.d. Based on the foregoing, it is uncertain whether the transfer will cause water temperatures to exceed levels necessary for Chinook salmon in the Feather River and the Feather River Fish Hatchery. Therefore, the order will require monitoring of daily average water temperatures of DWR's releases to the Feather River and the releases from Kelly Ridge powerhouse. The order will require cessation of releases of transfer water from Kelly Ridge Powerhouse whenever such releases will cause temperatures in the Feather River to increase to any level above 56°F in October, November, or December, or when such releases cause temperatures in Feather River Fish Hatchery water to increase to any level above 56°F in October or 55°F in November. The order will allow delivery of transfer water through November, to provide DWR flexibility in delivering the transfer water while attempting to meet temperature requirements in the Feather River, and also avoid losses of winter-run Chinook salmon in the South Delta (see below). With inclusion of such terms, the transfer will not have an unreasonable effect on fisheries in the Feather River.

Substantial changes in flow could affect Sacramento River fisheries during the transfer period. The flow

in the Sacramento River during the transfer period is expected to be greater than 5000 cfs, which is large compared to the transfer rate of 250 cfs. OWID Exhibit 4. Therefore I find that the transfer effects on flow in the Sacramento River will not cause unreasonable effects on Sacramento River fisheries.

6.6 <u>Fisheries in the Sacramento-San Joaquin Delta</u>

The transfer will cause increases in fish losses at the Harvey O. Banks Pumping Plant due to the increase in volume of water pumped. OWID's consultant estimated that the transfer would result in increases of 0.2 percent in annual Chinook salmon losses (61 catchable-equivalent fish) and 0.1 percent in annual striped bass losses (1397 catchable-equivalent fish) at the Banks Pumping Plant. OWID Exhibit 4. Delivery of the transfer water across the Delta is not planned to occur during December through April, when the winter-run Chinook salmon will be present in the Delta. To avoid losses of winter-run Chinook salmon, the order will require that no transfer water may be delivered to the Delta after November 30. According to DWR representative Gerald Cox, such a term would provide sufficient flexibility in timing deliveries of the transfer water to the Delta. With inclusion of such a

term, the transfer will not have unreasonable direct effects on fisheries in the Sacramento-San Joaquin Delta.

The fishery losses due to the transfer will cause small increases in the cumulative total fish losses this year caused by pumping in the South Delta by the Central Valley Project and the State Water Project. With the Brown's Valley transfer and the potential Placer County Water Agency transfer to Westlands, OWID's consultants have estimated the annual increases in fish losses at 0.3 percent and 0.1 percent for Chinook salmon and striped bass, respectively. Those losses are not cumulatively considerable and are not unreasonable under the current drought conditions.

In addition, three transfers in 1989 involving additional diversions across the Delta, and one transfer for Delta outflow in 1990 (Order WR 90-8) have some effect on instream flows and reservoir levels. Under the current circumstances, considering the need for the water and the benefit of reducing losses within OWID's service area by repairing and lining the distribution canals, this transfer is sufficiently beneficial to be approved notwithstanding the potential for future adverse effects.

6.7 Contribution to Agricultural Drainage Problems

Farmers within WWD would use the transfer water from September 1990 through March 1991 for winter crops, permanent crops, and possibly preirrigation. OWID's consultants estimated that about 186,000 acres in WWD will be planted in winter crops this year, and that the 10,500 af of transfer water would be applied on an average of 0.06 af per acre with a deep percolation rate of 32 percent, and therefore the application of the transferred water would result in about 0.02 feet of deep percolation. Staff Exhibit 1.b. The San Joaquin Valley Drainage Program estimated that the net lateral subsurface outflow from WWD is 0.3 percent of the applied water; thus the transfer water would potentially result in a total of 32 af of lateral outflow from WWD. The total lateral outflow this year is estimated at 2220 af. Staff Exhibit 1.b. Staff of the Central Valley Regional Water Quality Control Board have reviewed the drainage assessment prepared by OWID's consultants and concluded that there will be no significant impacts to surface water quality or ground water quality. Staff Exhibit 5. Therefore, the contribution of the transfer to agricultural drainage and lateral outflow from WWD will not cause unreasonable harm to water quality.

7.0 OTHER COMMENTS AND OBJECTIONS

The Board received a comment in favor of the transfer from Supervisor Haskel A. McInturf, of Butte County, who pointed out the benefits of the proposed temporary transfer. California Sportfishing Protection Alliance (CSPA) provided numerous comments, primarily in opposition. The subjects of most of CSPA's comments have been discussed above. However, some remain, and are discussed below.

7.1 Public Trust Review of Permit 1267

CSPA recommends that the Board open Permit 1267 for review under the public trust doctrine, and order terms and conditions to protect the fish and wildlife affected by the project. This recommendation is beyond the scope of the current proceeding to consider a temporary transfer, and will not be given further consideration herein.

7.2 Consultation with the Federal Energy Regulatory Commission

CSPA recommends that the Board consult with the Federal Energy Regulatory Commission [FERC] as to whether the transfer will violate terms and conditions in the FERC's license for the South Fork Feather River

Project. Alleged violations of the FERC's license are a matter for the FERC, not the Board, to decide. The Board is aware of no violations of the FERC's license, and has not been advised of any such violation by the FERC or anyone else. Any alleged violations should be brought to the FERC's attention for its consideration.

7.3 Regulations

CSPA asserts that the Board should adopt regulations before authorizing any further water transfers. The Board is developing amendments to its current regulations for water transfers. The regulations will establish some procedures. However, no regulations are required by law before transfers can be approved. The statute itself provides the requirements regarding the findings to be made. Further, the Water Code places specific time requirements on the Board's action on proposed water transfers; the Board cannot delay consideration of proposed transfers.

7.4 Deadline for Comments

CSPA complains that the comment period was too short for a transfer of this importance. The Board recognizes that the notice was unusually short. The Water Code at Section 1725 et seq. does not specify any

requirements for notice, and no requirements have been violated. OWID submitted the petition on August 15, 1990, and requested the transfer to commence before the middle of September, in order to take advantage of a period during which DWR has capacity to transport the water for OWID. This made it necessary to expedite consideration of this transfer. The Board provided notice of the transfer only two days after the petition was filed, and likewise shortened other periods. OWID is hereby requested to file any future petition substantially farther in advance of the desired date for starting the transfer.

7.5 Environmental Assessment

CSPA asserts that the Board should have included a copy of OWID's environmental assessment with the notice of the petition and of the hearing. I disagree. Given the length of the mailing list, sending the supporting documents with the notice would be impractical. Rather, the permittee should remain responsible for providing copies of the supporting documentation.

8.0 CONCLUSIONS

I conclude that, based on the evidence:

1. The proposed temporary change will not injure any legal user of the water. Water Code Section 1727(a)(1).

2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses. Water Code Section 1727(a)(2).

3. Because the proposed transfer will not cause the water levels in Little Grass Valley Reservoir to drop below the boat ramps before September 30, 1990, and because the reservoir is likely to refill before the next recreational season, the transfer will not unreasonably affect the overall economy of the area from which the water is being transferred. Water Code Section 386.

4. The proposed transfer involves only the amount of water that would have been consumptively used or stored by the permittee in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Oroville-Wyandotte Irrigation District (permittee) notice of temporary transfer and

petition for temporary changes is approved for up to 15,000 acre-feet of water, 10,000 acre-feet from storage in Little Grass Valley Reservoir and 5,000 acre-feet from storage in Sly Creek Reservoir. The added temporary points of rediversion are at Clifton Court Forebay and at San Luis Forebay Dam. The water is to be transferred to the Westlands Water District for use in irrigating crops within the Westlands service area during September 1990 through March 1991. The temporary changes are subject to the following terms and conditions.

1. The temporary transfer and exchange of water between Oroville-Wyandotte Irrigation District and Westlands Water District is limited to the period commencing five days following the date of this Order and continuing through March 31, 1991.

2. The transfer, between Kelley Ridge Powerhouse and Banks Pumping Plant, shall be conducted at a rate not to exceed 250 cubic feet per second.

3. All movement of water across the Sacramento-San Joaquin Delta and rediversions at Clifton Court Forebay under the transfer shall cease on or before November 30, 1990.

4. A minimum of 30 percent of all water released for transfer shall be used for carriage water in the Delta; that is, no

more than 70 percent of the transferred water may be pumped from the Delta and delivered to Westlands Water District. Permittee shall provide the Chief of the Division of Water Rights a copy of its agreement with the Department of Water Resources for delivering the transferred water, before commencing the transfer.

5. Permittee shall deliver to the Chief, Division of Water Rights, a report on water levels and nesting success of bald eagles at Little Grass Valley Reservoir. The report shall include monthly observations of water levels and eagles, if present, starting at the initiation of the water transfer and ending when the reservoir spills. The report shall be due 60 days after the reservoir spills. Permittee may use any data collected by the United States Forest Service or other entities in compiling the report.

6. Permittee shall maintain water storage in Little Grass Valley Reservoir at or above 55,000 acre-feet through September 30, 1990.

7. During the period when transfer water is released to the Feather River, permittee shall monitor daily the temperature and flow of releases from Kelly Ridge Powerhouse. Permittee shall cease releases of transfer water from Kelly Ridge

Powerhouse if such releases, after mixing with Department of Water Resources' releases, would cause daily average temperatures in the Feather River to increase to any level above 56°F during October or November 1990, or when such releases would cause daily average temperatures in Feather River Fish Hatchery water to increase to any level above 56°F in October 1990 or 55°F in November 1990. Permittee shall submit data immediately upon request to the Chief, Division of Water Rights, on the minimum, maximum, and mean daily flows and water temperatures measured at the outlet from the Kelley Ridge Powerhouse, and the minimum, maximum, and mean daily flows in the South Fork Feather River below Little Grass Valley Reservoir. Permittee shall also report on any actions taken to provide water temperatures required by this term.

8. Not later than May 1 of each year, until the effects of this and any subsequent transfers by OWID are obscured hydrologically by spills at Little Grass Valley Reservoir, Sly Creek Reservoir, and Lake Oroville, permittee shall submit a report to the Board and any parties who request it. The report shall include a detailed evaluation of hydrological changes, including secondary impacts, in the Feather River, the South Fork Feather River, and the Sacramento-San Joaquin Delta attributable to the transfer of

water under Permit 1267. The report shall include an evaluation whether these hydrological changes caused measurable impacts to fish, wildlife, and other instream beneficial uses compared to without transfer conditions and an assessment of the significance of these impacts.

9. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary transfer order, 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 also may be exercised by imposing specific requirements over and above those contained in this Order with a view to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

10. The Chief of the Division of Water Rights reserves 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.

11. Permittee shall apply all of the revenue it receives from the temporary transfer toward repairing and lining the ditches within permittee's distribution system. The temporary transfer authorized by this Order is subject to permittee providing to the Board written assurance before it commences the temporary transfer, that all of the revenue permittee receives from the temporary transfer will be applied toward rehabilitation of the ditches within permittee's distribution system.

Dated: September 14, 1990

Walter G. Pettit

Walter G. Pettit, Chief
Division of Water Rights

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 1651 PERMIT 1267 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE, AND AMENDING THE PERMIT

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.

2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A new development schedule is approved as follows:

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE	December 1, 1990
COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE	December 1, 2004

2. The following Paragraph is added to the permit:

   The total annual diversion and use allowed under this permit and Permit 1268, 2492, 1271, 11516 and 11518 shall not exceed 810,000 acre-feet per annum.

3. A new Paragraph is added to the permit as follows:

   Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, 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 permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee 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) to 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 permittee 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.

4. The following paragraph is added to this permit:

Permittee shall consult with the Division of Water Rights and the Department of Water Resources and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the Board for approval within one year from the date of this permit or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation plan may be required by the Board within this period.

Dated: JULY 25 1985

L. D. Johnson
for Raymond Walsh, Chief
Division of Water Rights