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

In the Matter of Pre-1914 Appropriative Rights, Licenses 2614, 2615, 2616 and 2617 and Permits 4743, 4744, 5847 and 5848 (Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735 and 9736)

M & T Chico Ranch and Parrott Investment Company

ORDER CORRECTING TYPOGRAPHIC MISTAKES IN ORDER DATED JANUARY 25, 2008

SOURCE: Butte Creek tributary to Sacramento River

COUNTY: Butte

WHEREAS:

1. On January 25, 2008, the Division of Water Rights (Division) issued an Order Approving in Part and Denying in Part Change in Place of Use and Purpose of Use of Pre-1914 Appropriative Rights, Licenses 2614, 2615, 2616 and 2617 and Permits 4743, 4744, 5847 and 5848 (Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735 and 9736) (Order) of M&T Chico Ranch and Parrott Investment Company (Petitioners).

2. There were no timely filed petitions for reconsideration of the Order, however, on August 21, 2008, the Petitioners requested changes and modifications in the Order.

3. On December 23, 2008, the Petitioners provided additional information regarding the requested changes and modifications that they sought.

4. The Division has not received subsequent petitions to change the rights identified herein. Therefore, no substantive changes may be made. The Petitioners identified typographic errors that are corrected herein.

NOW, THEREFORE, PURSUANT TO WATER CODE SECTION 1124, IT IS ORDERED THAT:

The following language on page 3 of the January 25, 2008 Order is changed to read as shown:

A. Feather River Imports to Butte Creek:

   i. License 2614 (Application 5109) for 20 cfs for irrigation from October 1 through April 1 of the following year;

   ii. License 2617 (Application 8188) for 100 cfs irrigation and stockwatering from January 1 through December 31 of each year;

C. Feather River Imports to Butte Creek:

   v. License 2615 (Application 5110) for 20 cfs for irrigation from October 1 through April 1 of the following year;

vi. License 2616 (Application 8187) for 100 cfs irrigation from January 1 through December 31 of each year.

STATE WATER RESOURCES CONTROL BOARD

Original Signed by:

Victoria A. Whitney
Deputy Director for Water Rights

Dated: 02/24/09

KDM: DCC: 01/20/09
U:\PERDRV\KMrowka\M&T PET-Admin Correction of Orders.doc

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

DIVISION OF WATER RIGHTS PERMISSION FOR FILE.

ORDER WR 2008-0010-DWR

In the Matter of Pre-1914 Appropriative Rights, Licenses 2614, 2615, 2616, and 2617 and Permits 4743, 4744, 5847, and 5848 (Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735, and 9736)

M&T Chico Ranch and Parrott Investment Company

ORDER APPROVING IN PART AND DENYING IN PART CHANGE IN PLACE AND PURPOSE OF USE

SOURCE: Butte Creek tributary to Sacramento River

COUNTY: Butte County

WHEREAS:

1. M&T Chico Ranch (M&T) and Parrott Investment Company (Parrott) (Petitioners) have filed petitions pursuant to Water Code section 1707 to change the purpose of use and place of use under the water rights listed above for the enhancement of fish and wildlife resources. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division), finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioners are entitled to use nor unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources. Accordingly, the petitions for change are approved for Licenses 2614, 2615, 2616 and 2617 subject to the conditions imposed herein. The petitions for change are denied for Permits 4743, 4744, 5847 and 5848 for the reasons set forth herein.

2. The water rights held by M&T and Parrott are set forth in the Judgment and Decree, "In the Matter of the Determination of the Rights of the Various Claimants to the Waters of that Portion of Butte Creek and Its Tributaries Situated Above the Western Dam near Nelson, in Butte County, California" (Decree), Butte County Superior Court, Case No. 18917, and the Supplemental Decree dated December 16, 1946. The rights are listed in Table 1.

   Butte Creek flow is comprised of two elements; (a) natural flow, and (b) foreign water brought into the Butte Creek stream system primarily for the generation of hydroelectric power. The foreign water is appropriated from the West Branch of the Feather River and transported through the Hendricks Ditch to the reservoir or forebay of the Pacific Gas and Electric Company at DeSabla. For 8 to 10 hours in any 24-hour period, up to 170 cubic feet per second (cfs) is released to flow through the DeSabla and Centerville Powerhouses into Butte Creek.

3. Petitions to change the place and purpose of use of pre-1914 appropriative rights, Licenses 2614, 2615, 2616, 2617 and Permits 4743, 4744, 5847 and 5848, pursuant to Water Code section 1707, were filed with the State Water Board on July 13, 2005. Downstream portions of the Butte Creek watercourse would be added to the authorized places of use, and fish and wildlife enhancement would be added as purposes of use.

   The Petitioners intend to forego gravity diversion of up to 40 cfs from Butte Creek, at the Parrott-Phelan Dam (Decree Diversion 50), during April 1 through June 30 and October 1 through March 31 of the succeeding year. Pursuant to the petitions, water that would otherwise have

M&T has the following licenses and permits issued by the State Water Board:

A. Feather River Imports to Butte Creek:

i. License 2614 (Application 5109) for 20 cfs for irrigation from January 1 through March 31 each year;

ii. License 2617 (Application 8188) for 100 cfs irrigation and stockwatering throughout the year

B. Butte Creek Natural Flow:

iii. Permit 4744 (Application 8565) for 50 cfs for irrigation from April 1 to May 31, and

iv. Permit 5847 (Application 9735) for 50 cfs for irrigation from June 1 to October 15

The decree limits total diversions under Licenses 2614 and 2617 to 53.33 cfs (in combination with claimed pre-1914 appropriative rights). The Court did not set aside any water specifically for the claimed pre-1914 appropriative rights. Moreover, the Court limited diversions pursuant to License 2617 to substantially less than the face value of the water right.

Parrott has the following licenses and permits issued by the State Water Board:

C. Feather River Imports to Butte Creek:

v. License 2615 (Application 5110) for 20 cfs for irrigation from January 1 through March 31 each year;

vi. License 2616 (Application 8187) for 100 cfs irrigation and stockwatering throughout the year

D. Butte Creek Natural Flow:

vii. Permit 4743 (Application 8559) for 50 cfs for irrigation from April 1 to May 31, and

viii. Permit 5848 (Application 9736) for 50 cfs for irrigation from June 1 to October 15.

The decree limits total diversions under Licenses 2615 and 2616 to 53.33 cfs (in combination with claimed pre-1914 appropriative rights). The Court did not identify the quantity of water recognized pursuant to any pre-1914 rights. The combined diversion limit is inclusive of the licensed water rights issued by the State Water Board. Only one assignment of water pursuant to the combined rights is permissible. Absent information on the scope of the pre-1914 right, the petitions should be approved pursuant to the post-1914 rights.

The project shall be approved for the first and second priority rights which attach to the Feather River Imports to Butte Creek. This is Licenses 2614, 2617 of M&T and Licenses 2615 and 2616 of Parrott. The requested 40 cfs instream flow dedication shall be evenly apportioned between the rights of the two parties. The Petitioners shall measure flows to document the quantity of instream flow resulting from the 1707 petition for purposes of documenting diversions under the licenses. A daily record of instream flows pursuant to the petitions shall be submitted within the triennial Reports of Licensee.

Inasmuch as the Petitioners only have rights to surplus flow from Butte Creek Natural Flow pursuant to Permits 4744, 5847 of M&T and Permits 4743 and 5848 of Parrott, the priority of right is too low for purposes of establishing a continuous fishery flow, as requested in the petitions. Under the decree, the rights in the surplus class are inferior and subject to all other rights in the stream system. The decree states that the mean seasonal precipitation as measured at Chico is approximately 24.04 inches, of which 90 percent occurs from October 1 to April 30. The growing season is from about March 26 to November 14.

E. D.W.R. Gaging Station - Sacramento Slough Near Karnak, North 407,600 feet and East 2,098,850 feet, being within the SW ¼ of the NW ¼ of projected section 21, T11N, R3E, MDB&M (Map Point 10)

Should any gaging stations be discontinued or rendered inoperable, the Petitioners shall inform the Division within 30 days of the date the gage is discontinued or becomes inoperable and shall submit a plan for measuring the flows for approval of the Chief, Division of Water Rights. The plan shall be submitted within 60 days of the date a gage is no longer operable and the plan shall be implemented in accordance with a schedule of implementation approved by the Division Chief. The Petitioners may be required to repair or re-install the gages in order to measure the flows required by this order.

8. In order to ascertain when water is being dedicated to instream uses, it will be necessary for the petitioner to measure the instantaneous rate of diversion and the cumulative quantity of water (a) instream and (b) diverted for consumptive use at all points of diversion, including the Sacramento River pumping plant.

9. The State Water Board standard water right terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for DFG stream alteration agreement shall be included in the order approving the petition.

10. The State Water Board has determined that changes to the water rights do not constitute initiation of a new right, and do not injure prior rights or the public trust resources of the State.

11. The instream flow dedication is subject to the terms and conditions of the Butte Creek Adjudication; including limits on diversions based on priority of rights. Amended licenses and amended permits shall be issued that reflect the conditions of this order and the Decree (including any supplemental Decrees).

NOW, THEREFORE, IT IS ORDERED:

That the petitions are denied for Permits 4743, 4744, 5847 and 5848 (Applications 8559, 8565, 9735 and 9736).

That the petition to change Petitioner's water rights is approved subject to the following conditions:

1. The water dedicated to the environment pursuant to Water Code section 1707, shall not exceed 40 cfs, at Parrott-Phelan Dam, during April 1 through June 30 and October 1 through March 31 of the succeeding year, from point #11 (on map) North 406,850 feet and East 2,105,250 feet, downstream limit to point #3 North 744,200 feet and East 2,070,500 feet, upstream limit, under all rights combined. The change in purpose of use to add fish and wildlife enhancement is approved.

2. The M&T petition is approved pursuant to License 2614 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2614 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is January 1 through March 31 each year.

3. The M&T petition is approved pursuant to License 2617 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2617 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is April 1 through June 30 and October 1 through December 31 each year.

4. The Parrott petition is approved pursuant to License 2615 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2615 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is January 1 through March 31 each year.

5. The Parrott petition is approved pursuant to License 2616 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2616 in the amount of 16.67 cfs of second priority

determine compliance with the terms of this order.

11. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the 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 order with a view to eliminating waste of water and to meeting the reasonable water requirements of Petitioner without unreasonable draft on the source. Petitioner 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 order 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 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 Petitioner 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)

12. The quantity of water diverted under this water right issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Petitioner 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)

13. This order 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 and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the water right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Water right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

14. The instream flow dedication is subject to the terms and conditions of the Butte Creek Adjudication, "In the Matter of the Determination of the Rights of the Various Claimants to the Waters of that Portion of Butte Creek and Its Tributaries Situated Above the Western Dam near Nelson, in Butte County, California", Butte County Superior Court, Case No. 18917 and the December 16, 1946 Supplemental Decree regarding diversion limits and water right priorities. This order does not authorize diversion of water under any water rights, or portions thereof, which have been forfeited or lost through non-use for five or more years.

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

DIVISION OF WATER RIGHTS SAFE COPY

ORDER WR 2008-0010-DWR

In the Matter of Pre-1914 Appropriative Rights, Licenses 2614, 2615, 2616, and 2617 and Permits 4743, 4744, 5847, and 5848 (Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735, and 9736)

M&T Chico Ranch and Parrott Investment Company

ORDER APPROVING IN PART AND DENYING IN PART CHANGE IN PLACE AND PURPOSE OF USE

SOURCE: Butte Creek tributary to Sacramento River

COUNTY: Butte County

WHEREAS:

1. M&T Chico Ranch (M&T) and Parrott Investment Company (Parrott) (Petitioners) have filed petitions pursuant to Water Code section 1707 to change the purpose of use and place of use under the water rights listed above for the enhancement of fish and wildlife resources. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division), finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioners are entitled to use nor unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources. Accordingly, the petitions for change are approved for Licenses 2614, 2615, 2616 and 2617 subject to the conditions imposed herein. The petitions for change are denied for Permits 4743, 4744, 5847 and 5848 for the reasons set forth herein.

2. The water rights held by M&T and Parrott are set forth in the Judgment and Decree, "In the Matter of the Determination of the Rights of the Various Claimants to the Waters of that Portion of Butte Creek and Its Tributaries Situated Above the Western Dam near Nelson, in Butte County, California" (Decree), Butte County Superior Court, Case No. 18917, and the Supplemental Decree dated December 16, 1946. The rights are listed in Table 1.

   Butte Creek flow is comprised of two elements; (a) natural flow, and (b) foreign water brought into the Butte Creek stream system primarily for the generation of hydroelectric power. The foreign water is appropriated from the West Branch of the Feather River and transported through the Hendricks Ditch to the reservoir or forebay of the Pacific Gas and Electric Company at DeSabla. For 8 to 10 hours in any 24-hour period, up to 170 cubic feet per second (cfs) is released to flow through the DeSabla and Centerville Powerhouses into Butte Creek.

3. Petitions to change the place and purpose of use of pre-1914 appropriative rights, Licenses 2614, 2615, 2616, 2617 and Permits 4743, 4744, 5847 and 5848, pursuant to Water Code section 1707, were filed with the State Water Board on July 13, 2005. Downstream portions of the Butte Creek watercourse would be added to the authorized places of use, and fish and wildlife enhancement would be added as purposes of use.

   The Petitioners intend to forego gravity diversion of up to 40 cfs from Butte Creek, at the Parrott-Phelan Dam (Decree Diversion 50), during April 1 through June 30 and October 1 through March 31 of the succeeding year. Pursuant to the petitions, water that would otherwise have

M&T has the following licenses and permits issued by the State Water Board:

A. Feather River Imports to Butte Creek:

i. License 2614 (Application 5109) for 20 cfs for irrigation from January 1 through March 31 each year;

ii. License 2617 (Application 8188) for 100 cfs irrigation and stockwatering throughout the year

B. Butte Creek Natural Flow:

iii. Permit 4744 (Application 8565) for 50 cfs for irrigation from April 1 to May 31, and

iv. Permit 5847 (Application 9735) for 50 cfs for irrigation from June 1 to October 15

The decree limits total diversions under Licenses 2614 and 2617 to 53.33 cfs (in combination with claimed pre-1914 appropriative rights). The Court did not set aside any water specifically for the claimed pre-1914 appropriative rights. Moreover, the Court limited diversions pursuant to License 2617 to substantially less than the face value of the water right.

Parrott has the following licenses and permits issued by the State Water Board:

C. Feather River Imports to Butte Creek:

v. License 2615 (Application 5110) for 20 cfs for irrigation from January 1 through March 31 each year;

vi. License 2616 (Application 8187) for 100 cfs irrigation and stockwatering throughout the year

D. Butte Creek Natural Flow:

vii. Permit 4743 (Application 8559) for 50 cfs for irrigation from April 1 to May 31, and

viii. Permit 5848 (Application 9736) for 50 cfs for irrigation from June 1 to October 15.

The decree limits total diversions under Licenses 2615 and 2616 to 53.33 cfs (in combination with claimed pre-1914 appropriative rights). The Court did not identify the quantity of water recognized pursuant to any pre-1914 rights. The combined diversion limit is inclusive of the licensed water rights issued by the State Water Board. Only one assignment of water pursuant to the combined rights is permissible. Absent information on the scope of the pre-1914 right, the petitions should be approved pursuant to the post-1914 rights.

The project shall be approved for the first and second priority rights which attach to the Feather River Imports to Butte Creek. This is Licenses 2614, 2617 of M&T and Licenses 2615 and 2616 of Parrott. The requested 40 cfs instream flow dedication shall be evenly apportioned between the rights of the two parties. The Petitioners shall measure flows to document the quantity of instream flow resulting from the 1707 petition for purposes of documenting diversions under the licenses. A daily record of instream flows pursuant to the petitions shall be submitted within the triennial Reports of Licensee.

Inasmuch as the Petitioners only have rights to surplus flow from Butte Creek Natural Flow pursuant to Permits 4744, 5847 of M&T and Permits 4743 and 5848 of Parrott, the priority of right is too low for purposes of establishing a continuous fishery flow, as requested in the petitions. Under the decree, the rights in the surplus class are inferior and subject to all other rights in the stream system. The decree states that the mean seasonal precipitation as measured at Chico is approximately 24.04 inches, of which 90 percent occurs from October 1 to April 30. The growing season is from about March 26 to November 14.

E. D.W.R. Gaging Station - Sacramento Slough Near Karnak, North 407,600 feet and East 2,098,850 feet, being within the SW ¼ of the NW ¼ of projected section 21, T11N, R3E, MDB&M (Map Point 10)

Should any gaging stations be discontinued or rendered inoperable, the Petitioners shall inform the Division within 30 days of the date the gage is discontinued or becomes inoperable and shall submit a plan for measuring the flows for approval of the Chief, Division of Water Rights. The plan shall be submitted within 60 days of the date a gage is no longer operable and the plan shall be implemented in accordance with a schedule of implementation approved by the Division Chief. The Petitioners may be required to repair or re-install the gages in order to measure the flows required by this order.

8. In order to ascertain when water is being dedicated to instream uses, it will be necessary for the petitioner to measure the instantaneous rate of diversion and the cumulative quantity of water (a) instream and (b) diverted for consumptive use at all points of diversion, including the Sacramento River pumping plant.

9. The State Water Board standard water right terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for DFG stream alteration agreement shall be included in the order approving the petition.

10. The State Water Board has determined that changes to the water rights do not constitute initiation of a new right, and do not injure prior rights or the public trust resources of the State.

11. The instream flow dedication is subject to the terms and conditions of the Butte Creek Adjudication; including limits on diversions based on priority of rights. Amended licenses and amended permits shall be issued that reflect the conditions of this order and the Decree (including any supplemental Decrees).

NOW, THEREFORE, IT IS ORDERED:

That the petitions are denied for Permits 4743, 4744, 5847 and 5848 (Applications 8559, 8565, 9735 and 9736).

That the petition to change Petitioner's water rights is approved subject to the following conditions:

1. The water dedicated to the environment pursuant to Water Code section 1707, shall not exceed 40 cfs, at Parrott-Phelan Dam, during April 1 through June 30 and October 1 through March 31 of the succeeding year, from point #11 (on map) North 406,850 feet and East 2,105,250 feet, downstream limit to point #3 North 744,200 feet and East 2,070,500 feet, upstream limit, under all rights combined. The change in purpose of use to add fish and wildlife enhancement is approved.

2. The M&T petition is approved pursuant to License 2614 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2614 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is January 1 through March 31 each year.

3. The M&T petition is approved pursuant to License 2617 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2617 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is April 1 through June 30 and October 1 through December 31 each year.

4. The Parrott petition is approved pursuant to License 2615 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2615 in the amount of 16.67 cfs of second priority water. Said water is derived from Feather River imports to Butte Creek. The authorized diversion period is January 1 through March 31 each year.

5. The Parrott petition is approved pursuant to License 2616 in the amount of 3.33 cfs of first priority water and is also approved pursuant to License 2616 in the amount of 16.67 cfs of second priority

determine compliance with the terms of this order.

11. Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the 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 order with a view to eliminating waste of water and to meeting the reasonable water requirements of Petitioner without unreasonable draft on the source. Petitioner 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 order 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 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 Petitioner 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)

12. The quantity of water diverted under this water right issued pursuant thereto is subject to modification by the State Water Board if, after notice to the Petitioner 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)

13. This order 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 and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the water right holder shall obtain authorization for an incidental take prior to construction or operation of the project. Water right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

14. The instream flow dedication is subject to the terms and conditions of the Butte Creek Adjudication, "In the Matter of the Determination of the Rights of the Various Claimants to the Waters of that Portion of Butte Creek and Its Tributaries Situated Above the Western Dam near Nelson, in Butte County, California", Butte County Superior Court, Case No. 18917 and the December 16, 1946 Supplemental Decree regarding diversion limits and water right priorities. This order does not authorize diversion of water under any water rights, or portions thereof, which have been forfeited or lost through non-use for five or more years.

P5848

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

ORDER APPROVING TEMPORARY CHANGE
IN PLACE AND PURPOSE OF USE,
OF M&T CHICO RANCH'S AND PARROTT RANCH COMPANY'S
WATER RIGHTS (APPLICATION 9736 ET AL.),
INVOLVING THE DEDICATION
OF UP TO 40 CUBIC FEET PER SECOND OF WATER
TO BUTTE CREEK IN EXCHANGE FOR A LIKE AMOUNT OF WATER
FROM THE SACRAMENTO RIVER

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 INTRODUCTION

The M&T Chico Ranch (M&T) and the Parrott Investment Company (PIC), herein after referred to as the Petitioners, filed a petition with the State Water Resources Control Board (SWRCB) on February 6, 1998 for the Butte Creek Enhancement Project (Project) under Water Code Sections 1707 and 1725 et seq. The petition requests authorization to temporarily dedicate and leave up to 40 cubic feet per second (cfs) of water in Butte Creek to enhance fish and wildlife resources. The petition also requests the expansion of the place of use to include Butte Creek between the Parrott-Phelan Dam and the confluence with the Sacramento River, and the addition of fish and wildlife enhancement as a purpose of use under existing water rights. The SWRCB provided notice of the petition on March 13, 1998 and requested that comments on the petition be submitted by March 31, 1998.

The water rights associated with the petition include: adjudicated, riparian, pre-1914 appropriative water rights, and permits and licenses associated with Water Right Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735, 9736, 15866 and 15867. These water rights involve the diversion of water at the Parrott-Phelan Dam, being within the NE¼ of the NE¼ of Section 4, T21N, R2E, MDB&M. The water rights are reflected in the Butte Creek Decree, dated November 6, 1942, as supplemented on December 16, 1946 (Butte County, Superior Court Case No. 18917). The temporary change would be effective five days after the date of petition approval and continue for a period of one year.

The Petitioners filed a petition for a long-term transfer for the Project, pursuant to Water Code sections 1707 and 1735, et seq., on December 1, 1997. The SWRCB has not noticed or acted on the long-term transfer at this time. The Petitioners are essentially requesting an additional year to continue their 1997 temporary transfer due to the lack of a finalized agreement with the U.S. Bureau of Reclamation (USBR) and an order from the SWRCB approving the long term transfer.

On January 23, 1997, the SWRCB adopted Resolution No. 97-006, delegating authority to approve petitions for temporary changes to the Chief of the Division of Water Rights, provided that the necessary statutory findings can be made. There is adequate information in SWRCB files to make the evaluation required by Water Code Sections 1707 and 1727. In accordance with the delegation of authority I find as follows:

2.0 SUBSTANCE OF PETITION

The proposed Project involves the Petitioners foregoing gravity diversion of up to 40 cfs of water from Butte Creek, at the Parrott-Phelan Dam, during October 15, 1998 through March 31, 1999. None of the diverted water returns to Butte Creek. In exchange for the water not being diverted from Butte Creek, Petitioners propose to divert a like amount of water from the Sacramento River pursuant to a contract with the USBR. The water not diverted from Butte Creek would be dedicated to fishery and habitat enhancement in Butte Creek, between the Parrott-Phelan Dam and the confluence of Butte Creek with the Sacramento River. The Project is proposed as part of a cooperative effort involving the California Department of Fish and Game (DFG), the U.S. Fish and Wildlife Service (USFWS), and the USBR.

A new state-of-the-art screened pumping plant is being constructed on the Sacramento River, just downstream from its confluence with Big Chico Creek, being within the SE¼ of the SE¼ of projected Section 2, T21N, R1W, MDB&M. The new pumping plant will provide water to the Petitioners' places of use via a 72-inch pipeline to be connected to their existing irrigation systems. The pumping plant has been designed to mitigate impacts to Chinook salmon and steelhead. The DFG and the USFWS, through the Wildlife Conservation Board, have prepared a Negative Declaration for the new Sacramento River pumping plant.

The DFG has committed personnel to monitor downstream Butte Creek water diversions to help ensure that the dedicated water stays in Butte Creek down to the Sacramento River. Upon reaching the Sacramento River, the dedicated water will be available to the USBR in exchange for water supplied to the Petitioners at the upstream pumping plant. It is understood, that in the near future, DFG intends to install up to 10 real-time flow monitoring stations on Butte Creek. Information from the stations will be sent to the California Data Exchange Center, and will be available to the public on the Internet. The Universal Resource Location is http://cdec.water.ca.gov.

3.0 BACKGROUND

3.1 Summary of Petitioner's Water Rights

Rates and Amounts of Diversions: The water rights affected by the petition include riparian, pre-1914 appropriative water rights, and permits and licenses associated with Water Right Applications 5109, 5110, 8187, 8188, 8559, 8565, 9735, 9736, 15866 and 15867. These

water rights involve the diversion of water at the Parrott-Phelan Dam, being within the NE¼ of the NE¼ of Section 4, T21N, R2E, MDB&M. The water rights are reflected in the Butte Creek Decree, dated November 6, 1942, as supplemented on December 16, 1946 (Butte County, Superior Court Case No. 18917). Most of the rights list the Petitioners as co-equal owners, with either party having the right to take any water that the other is not using.

The Butte Creek Decree, sets forth the Petitioners' priorities as follows:

1. A first priority right to the year-round diversion of up to 6.666 cfs; i.e., 3.333 cfs for each party.
2. A second priority right to the year-round diversion of foreign water at rates up to 100 cfs; i.e., 50 cfs for each party.

3. A sixth priority right, relating to the "surplus class" of natural flow in Butte Creek. Petitioners may divert up to 5 cfs, during the October 16 through March 31 period; and up to 62.5 cfs during the rest of the year, provided that the total quantity of water diverted during such period does not exceed a continuous 25 cfs flow allotment. This priority relates to permitted Applications 8559, 8565, 9735 and 9736.
4. A seventh priority right, for M&T alone, for the year-round diversion of up to 2.5 cfs.

In combination, licensed Applications 5109, 5110, 8187 and 8188 are limited to 100 cfs and 5,060 acre-feet per annum. Also, licensed Applications 15866 and 15867, authorize the diversion of up to 5.9 cfs, during the March 1 through July 15 period, not to exceed a total of 500 acre-feet per annum.

Purposes of Use: Domestic, Irrigation and Stockwatering.

Place of Use: The Butte Creek Decree references the use of Butte Creek water "...upon [the parties] respective lands shown on DWR Map." M&T's place of use is 3,620 acres, within a gross area of 4,580 acres; within portions of T21N, R1E&W, MDB&M. PIC's place of use is 17,427 acres, within portions of T19-21N, R1E&W, MDB&M. The places of use are shown on maps on file with the SWRCB.

3.2 Applicable Statutory Provisions

Water Code Section 1707 authorizes any person entitled to the use of water, whether based upon an appropriative, riparian, or other right, to petition the SWRCB to change the purpose of use in order to preserve or enhance wetlands habitat and wildlife resources, or recreation. Where a petition to change the purpose of use is filed pursuant to Section 1707 involves a temporary transfer or exchange of water or water rights, the petition is processed pursuant to Water Code Section 1725 et seq. The SWRCB may approve a petition pursuant to Section 1707 provided that the proposed change:

1. Will not increase the amount of water the Petitioners are entitled to use;
2. Involves only water which would otherwise have been consumptively used or stored by the Petitioners;
3. Will not injure any legal user of the water; and
4. Will not unreasonably affect fish, wildlife, or other instream beneficial uses.

Petitioners have USBR's approval for the extension of the 1997 temporary exchange agreement. Petitioners are negotiating with the USBR, for the ability to divert water from the Sacramento River for use within Petitioners' places of use on a long-term basis. The USBR would supply such water in exchange for water dedicated to Butte Creek by the Petitioners. When the dedicated Butte Creek water reaches the Sacramento River, it will be available to the USBR to offset the amount of exchange water supplied by the USBR to the Petitioners.

4.0 AVAILABILITY OF WATER FOR DEDICATION AND EXCHANGE

Reports of historical water usage indicate that Petitioners have diverted water in excess of 40 cfs from Butte Creek during the April through October period. Currently, the amount of Petitioners diversions during the November through March period is not established.

Based on the information provided regarding Petitioners' water rights and past water use for the months of April through June and October, I conclude that Petitioners have the right to divert in excess of 40 cfs of Butte Creek water during these months. The petition proposes to dedicate up to 40 cfs for instream use in Butte Creek in exchange for diversion of an equal amount of water to be supplied from the Sacramento River under a USBR contract. The Sacramento River water will be used on the places of use formerly served by diversions from Butte Creek. The record establishes that, during the months of April through June and October, the proposed transfer will not increase the amount of water the Petitioners are entitled to use, nor will it unreasonably affect any legal user of water.

The effect on Petitioners' dedication of water, during the November through March period, depends on their historical use of water. As provided in this Order, approval of the dedication of water during the November through March period is conditioned upon Petitioners submitting acceptable documentation of the historical diversion and use of water from Butte Creek during the period of interest.

The proposed transfer will involve a change in the source of Petitioners' water, but it will not result in an increase in consumptive use of water or a decrease in water available to downstream users. I find, in accordance with Water Code Section 1727(a)(1), that under the conditions established in this Order, the proposed transfer will not injure any legal user of water.

5.0 ENVIRONMENTAL CONSIDERATIONS

Pursuant to Water Code Section 1729, temporary changes are exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) However, the SWRCB must consider potential impacts to fish, wildlife and other instream beneficial uses in accordance with Water Code Section 1727(a)(2). The DFG and the USFWS, through the Wildlife Conservation Board, have prepared a Negative Declaration for the new Sacramento River pumping plant. The increased flows in Butte Creek are expected to benefit fishery habitat.

The proposed change will have a virtually imperceptible effect on flows in the Sacramento River, for the short distance between the new pumping plant located on the Sacramento River and the confluence with Butte Creek. The proposed change should have no significant impact downstream of the confluence with Butte Creek. I find that, in accordance with Water Code Section 1727(a)(2), the proposed change would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

6.0 WAIVER OF STATUTORY PERIOD FOR ACTION ON THE PETITION

On May 11, 1998, Petitioners' agent waived the 60-day period referenced in Water Code Section 1727(c). Subsequently, the Petitioners' agent letter of September 30, 1998 requested that the SWRCB act on the petition as soon as possible.

7.0 COMMENTS ON THE PROPOSED PROJECT

The SWRCB received comments on the proposed temporary change from the Butte Slough Irrigation Company Ltd (BSIC), and Mr. Paul Persons. The comments of each party are discussed below.

7.1 Butte Slough Irrigation Company Ltd

BSIC's letter dated March 25, 1998, requested that the SWRCB clarify the effects of the Petition on BSIC's legal use of water. Subsequently, the petitioner's agent contacted BSIC and has negotiated an agreement between M&T, PIC, BSIC, and California Department of Fish and Game regarding operations of the exchange of water to preclude any effect on BSIC's water rights. Consequently, BSIC's May 26, 1998 letter to the SWRCB withdrew the comments of BSIC in opposition to the Project.

7.2 Mr. Paul Persons' Comments

Mr. Paul Persons' letter dated March 30, 1998 advised the SWRCB of public trust concerns pursuant to Article X, Section 2 of the California Constitution, Sections 5937 and 5946 of the

California Fish and Game Code, and the Endangered Species Act. With respect to the fishery protection measures requested by Mr. Persons, the Water Code does not require that approval of the pending petition be conditioned upon requiring the Petitioners, or others, to undertake all potential or feasible measures to protect or improve the fishery. Rather, the criteria for approval of the pending petition are set forth in Water Code Sections 1707 and 1725 et seq. As discussed elsewhere in this Order, the record before the SWRCB establishes that the specified statutory requirements are met and the change petition should be approved.

8.0 SUMMARY AND CONCLUSIONS

Based on the evidence discussed above, I conclude that the proposed temporary change:

1. Will not injure or unreasonably affect any legal user of the water;
2. Will not increase the amount of water the Petitioners are entitled to use;
3. Will not unreasonably affect fish, wildlife, or other instream beneficial uses; and
4. Involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary change, filed pursuant to Water Code Sections 1707 and 1725 et seq., is approved to allow the dedication of water to the portion of Butte Creek between the Parrott-Phelan Dam and the confluence with the Sacramento River. Such dedication would be in exchange for a like amount of U.S. Bureau of Reclamation (USBR) contract water to be diverted from the Sacramento River. Water dedicated to instream use in Butte Creek, under this Order, shall be provided by the M&T Chico Ranch (M&T) and the Parrott Investment Company (PIC) pursuant to any of the following water rights:

a. All riparian and pre-1914 appropriative water rights held by Petitioners, or their predecessors in interest, as recognized in the Butte Creek Decree dated November 16, 1942, as supplemented on December 16, 1942 (Butte County, Superior Court No. 18917.);
b. Water Right Permits 4743, 4744, 5847 and 5848 issued on Applications 8559, 8565, 9735 and 9736 respectively; and
c. Water Right Licenses 2614, 2615, 2616, 2617, 9267 and 9268 issued on Applications 5109, 5110, 8187, 8188, 15866 and 15867 respectively.

All existing terms and conditions of the subject water rights and interests remain in effect, except as temporarily amended by the following provisions:

1. This Order shall be in effect during the period commencing five days following its date of approval. Therefore, the Butte Creek Enhancement Project may be operated from the effective date of this Order through March 31, 1999.

2. The subject water rights are hereby modified to allow the dedication of up to 40 cfs of Butte Creek water for instream use in Butte Creek, in exchange for a equivalent amount of water to be diverted concurrently from the Sacramento River, pursuant to a written agreement with the USBR.

3. The authorized places of use are temporarily expanded to include downstream reaches of Butte Creek, from the Parrott-Phelan Dam to the Sacramento River. The downstream reaches of Butte Creek, extending to the Butte Slough Outfall, and also through Butte Slough thence the Sutter Bypass, down to the confluence with the Sacramento River near Verona.

4. The purpose of use shall temporarily include fish and wildlife enhancement.

5. Prior to commencing diversion of water from the Sacramento River, Petitioners shall provide the Chief of the Division of Water Rights a copy of its written agreement with the USBR to divert water from the Sacramento River.

7. During the periods in which the dedication of water to Butte Creek is occurring, Petitioners shall make available, or have made available, a public notice of the rate of flow dedicated to Butte Creek pursuant to this Order. The manner of the public notice is subject to the approval of the Chief of the Division of Water Rights.

8. By May 31, 1999, Petitioners shall provide the Chief of the Division of Water Rights, a report describing their operations under this Order and the April 4, 1997 Order. The report shall include a summary showing the monthly amounts of water actually dedicated to instream use in Butte Creek, the general locations where the exchange water was used, and the amount of water diverted for Petitioners from the Sacramento River under this Order.

9. This Order constitutes the SWRCB's approval of the petition in accordance with the provisions of Water Code Section 1707. The approval is applicable to water rights whether or not acquired under the Water Commission Act. This Order does not relieve Petitioners of any obligation related to the Butte Creek Decree. (Butte County, Superior Court No. 18917.)

10. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

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

11. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

Dated: November 12, 1998

Harry M. Schueller, Chief
Division of Water Rights

FILED
Dec. 18, 1946
W. F. Matthews, Clerk
By L. Martel Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF BUTTE

IN THE MATTER OF THE DETERMINATION OF THE RIGHTS OF THE VARIOUS CLAIMANTS TO THE WATERS OF THAT PORTION OF BUTTE CREEK AND ITS TRIBUTARIES SITUATE ABOVE THE WESTERN DAM NEAR NELSON, IN BUTTE COUNTY, CALIFORNIA.	No. 18917

SUPPLEMENTAL DECREE

PARROTT INVESTMENT COMPANY, a corporation, and M. & T. INCORPORATED, a corporation, having on the 30th day of November, 1946, filed herein their notice of intention to offer proof of completion of appropriations and the clerk of this court having posted notice of the time of hearing such proof for the time and in the manner provided by law;

And it appearing to the court, and the court now finding, that service of said notice of intention to offer proof of completion of appropriations and of notice of the time for hearing of proof of completion of appropriations was made upon the Division of Water Resources, Department of Public Works, of the State of California, by depositing, on the 2nd day of December, 1946, an endorsed copy of each of said notices in the United States Post Office at Chico, California;

And it appearing to the court, and the court now finding, that due and proper notice of the time and place of the hearing of said proof of completion of appropriations has been given in all respects for the time and in the manner provided by law;

And this matter coming on regularly to be heard on the 16th day of December, 1946; and proof having been made to the satisfaction of this court, consisting of due and proper evidence, of the completion of said appropriations, and the court, being fully advised in the premises, hereby finds that:

At such times during the period from April 1 to October 15, 1946, when the available water supply of Butte Creek was adequate to supply the rights set forth in paragraph 85 of the judgment and decree of this court in the above entitled matter, dated November 6, 1942, said Parrott Investment Company and M. & T. Incorporated have each used twenty-five cubic feet per second of said water supply for domestic, stock-watering, and irrigation purposes upon their lands described under their respective names in Schedule 1 of said judgment and decree, all in accordance with applications 8559, 8565, 9735 and 9736, filed under the provisions of the Water Code.

At such times during said period from April 1 to October 15, 1946, when the available water supply of Butte Creek was inadequate to supply the rights set forth in said paragraph 85 of said judgment and decree, and during the continuance of such shortage, said Parrott Investment Company and M. & T. Incorporated have prorated such available water supply, if any, in excess of the quantity required to supply all prior rights in accordance with their respective allotments set forth in said paragraph 85 of said judgment and decree;

Said Parrott Investment Company and M. & T. Incorporated have performed, within the time specified in said judgment and decree of November 6, 1942, as extended by proper orders of this court, all things necessary to entitle them, and they are entitled to and have, all rights and privileges awarded to them as in said judgment and decree set forth, including, without limitation, the rights and privileges set forth in paragraph 85 thereof;

Now, Therefore, it is hereby ORDERED, ADJUDGED and DECREED:

That said Parrott Investment Company and M. & T. Incorporated have completed said appropriations from Butte Creek and applied said water to beneficial use in accordance with the terms of permits 4743, 4744, 5847 and 5848, issued by the Division of Water Resources on said applications 8559, 8565, 9735 and 9736, and have duly and regularly submitted evidence of such completed appropriations and uses to this court.

Done in open court this 16th day of December, 1946.

Harry Deirup
Judge of the Superior Court

The foregoing instrument is a correct copy of the original on file and of record in this office.

Attest: Dec. 18 1946
W. F. MATTHEWS County Clerk and Clerk of the Superior Court in and for the County of Butte, State of California.

By L. Martel Deputy

(Seal)

JUL 1 '41

FORM O-13

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
SACRAMENTO

PERMIT TERMS

Application No. 9736 ✓ Filled out by H Date JUL 1 '41 J.J.H.

This is to certify that we have examined the application of which the foregoing is a true and correct copy and hereby grant the same, subject to VESTED RIGHTS and the following limitations and conditions, in addition to the enumerated in Section 20 (Statutes 1913—Chapter 586) set forth above.

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed fifty (50) cubic feet per second ✓

from about June 1 ✓ to about October 15 ✓ of each year

In case of rotation the equivalent of such continuous flow allowance for any thirty day period may be diverted in a shorter time if there be no interference with other vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before November 1, 1941 ✓ shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit shall be revoked.

4. Said construction work shall be completed on or before December 1, 1943 ✓

5. Complete application of the water to the proposed use shall be made on or before December 1, 1[illegible]

6. Progress reports shall be filed promptly by permittee on forms appropriate to the purpose which will be [illegible] annually by the Division of Water Resources until license is issued.

7. ✓ ✓

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

this di[illegible]

CHARGES FOR PERMIT

AGRICULTURAL			POWER		
SCHEDULE	ACRES	CHARGE	SCHEDULE	THEO. HORSE POWER	CHARGE
0 to 100 @ 5¢			~~0 to 100 @ 10¢~~		
100 to 1000 @ 3¢			~~100 to 1000 @ 5¢~~		
1000 and over @ 2¢			~~1000 and over @ 1¢~~		
Fees paid in connection with Appl-5110 Per 3211 2/10/39 to 2/14/36 ✓	17427 ✓	0 ✓			
TOTALS					

JUL 18 '41 M.S.E.

Terms OK. MOE

Permit No. 5848 Date approved

QS 7/28/41

CALIFORNIA STATE PRINTING OFFICE