

# Memorandum

Date: June 16, 2008

To: Vicki Whitney, Chief  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

From: Department of Water Resources

Subject: Temporary Urgency Petition Requesting a Modification of a D-1641 Term Relating To Joint Point of Diversion Operation

Enclosed for your review and consideration is the Department of Water Resources (DWR) and the United States Bureau of Reclamation's (USBR) joint Temporary Urgency Petition (Petition) pursuant to Water Code Section 1735, requesting a modification of a D-1641 term relating to our Joint Point of Diversion (JPOD) operations. A brief summary of the request and some important points are described below.

Through the Petition, DWR and USBR are seeking a modification of a term in D-1641 that conditions the use of JPOD upon all provisions of the two agencies' permits being satisfied. We are asking that language be added to the term which would clarify that JPOD operations may occur even if south delta salinity objectives are not being met as long as the State Water Resources Control Board's (SWRCB) Executive Officer determines that the exceedance of the objectives is outside the reasonable control of either DWR or USBR, and that the use of JPOD will not unreasonably affect the salinity in the south delta.

DWR and USBR believe that a Temporary Urgency Petition is appropriate at this time given the current conditions. Due to critically dry conditions and the recent court ruling that seriously curtailed exports during the winter and fall, there is an urgent need for operational flexibility and certainty this summer. This need is reflected in Governor Schwarzenegger's recent drought declaration and emergency proclamation directing DWR, in coordination with USBR, to take immediate actions to facilitate water transfers to respond to emergency shortages across the state, and to assist water suppliers and implement operations and water exchanges to alleviate critical impacts to San Joaquin Valley agriculture. In order to fulfill the Governor's directives, DWR and USBR must have certainty that using JPOD or facilitating third-party transfers, which are conditioned on the Projects' authority to use JPOD, will be consistent with D-1641. Thus, given the need to take immediate actions to address the dire circumstances many of California's water suppliers face in the coming months, a Temporary Urgency Petition is the appropriate method to address this issue in the near-term.

However, DWR and USBR recognize that a Temporary Urgency Petition, while appropriate in the near-term, is not a long-term solution to this issue. Therefore, we will also be filing a petition for a long-term change in the near future.

Importantly, although DWR and USBR submit this petition to clarify when JPOD and transfer operations are authorized, we are not suggesting that DWR and USBR operations are causing, or will cause, any violation of our water rights in the Delta.

We look forward to working with the SWRCB in resolving this issue. If you or your staff wishes to discuss this petition further, please contact me at (916) 653-5613 or [crothers@water.ca.gov](mailto:crothers@water.ca.gov), or you may also contact Richard J. Woodley, Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation, at 916-978-5201.



Cathy Crothers  
Assistant Chief Counsel

Enclosure

State of California  
State Water Resources Control Board  
**DIVISION OF WATER RIGHTS**  
**P.O. Box 2000, Sacramento, CA 95812-2000**  
Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

**PETITION FOR TEMPORARY URGENCY CHANGE**

(Water Code 1435 & Cal. Code Regs., title 23, §791(e))

\_\_\_\_ Point of Diversion, \_\_\_\_ Point of Rediversion, \_\_\_\_ Place of Use, \_\_\_\_ Purpose of Use

X  Change in Permit Term (See Supplement)

Application # 5630, 14443, 14445A, 17512 Permit # 16478, 16479, 16481, 16482 License # \_\_\_\_\_  
License and Permits of the US Bureau of Reclamation as shown on Supplement

I (we) Department of Water Resources and US Bureau of Reclamation hereby petition for a temporary-urgency  
(Water Right Holders Name)  
change(s) noted above and shown on the accompanying map and described as follows:

**Point of Diversion or Rediversion** (Give coordinate distances from section corner or other ties as allowed by Cal CR 715, and the 40-acre subdivision in which the present & proposed points lie.)

Present Harvey O. Banks Pumping Plant, within NW ¼ of SE ¼ of Projected Section 20, T1S, R3E MDB&M  
Jones Pumping Plant, within SW ¼ of SW ¼ of Projected Section 31, T1S, R4E, MDB&M

Proposed No change

**Place of Use** (If irrigation then state number of acres to be irrigated within each 40-acre tract.)

Present SWP and CVP authorized place of use as shown on the maps on file with SWRCB

Proposed No Change

**Purpose of Use**

Present Municipal, Domestic, Irrigation, Fish & Wildlife Enhancement, Recreation, Streamflow  
Enhancement, Salinity Control, Incidental Power

Proposed No Change

Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See WC 1707)? No

(yes/no)

The temporary urgency change(s) is to be effective from June 21, 2008 to December 12, 2008

(Cannot exceed 180 days)

Will this temporary urgency change be made without injury to any lawful user of water? Yes

(yes/no)

Will this temporary urgency change be made without unreasonable effect upon fish, wildlife, and other instream beneficial uses? Yes

(yes/no)

State the "Urgent Need" (Water Code 1435(c)) which is the basis of this temporary urgency change petition:  
See Supplement

If the point of diversion or rediversion is being changed, is any person(s) taking water from the stream between the old point of diversion or rediversion and the proposed point? N/A

(yes/no)

Are there any persons taking water from the stream between the old point of return flow and the new point of return flow? No change in return flow location

(yes/no)

If yes, give name and address, as well as any other person(s) known to you who may be affected by the proposed change.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I (we) consulted the California Department of Fish and Game concerning this proposed temporary change. Yes  
(yes/no)

If yes, state the name and phone number of the person contacted and the opinion concerning the potential effects of your proposed temporary urgency change on fish and wildlife and state the measures required for mitigation.

Jim White - (916) 445-1287 DFG has no objection to the petition to temporarily set aside compliance with the south Delta EC standards as a condition of using JPOD, based on the assessment that south Delta water quality will not be made worse, i.e., EC will not increase, compared to conditions without JPOD use. Thus water quality for fish will not be adversely affected.

However, since the Old River/Middle River limits per Judge Wanger's interim remedy end on June 20, there needs to be a discussion among the WOMET agencies about SWP/CVP operations plans or fish species conditions after that date, including use of JPOD and application of the fish response plan, and a decision will have to be made about operations and the ongoing risk of impact to delta smelt.

**THIS TEMPORARY URGENCY CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE. THIS TEMPORARY URGENCY CHANGE IS REQUESTED FOR A PERIOD OF ONE HUNDRED EIGHTY DAYS OR LESS.**

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated 6/16/08 at Sacramento, California

Robert B. Cook (916) 653-0190  
Signature(s) Telephone No.  
P.O. Box 942836, Sacramento, Ca 94236  
(Address)

James J. Woodley (916) 978-5201  
Signature(s) Telephone No.  
2800 Cottage Way, Sacramento, CA 95825  
(Address)

**NOTE: A \$1000 filing fee, for each Application listed, made payable to the State Water Resources Control Board and an \$850 fee made payable to the Department of Fish and Game must accompany this petition for change.**

## Supplement to Petition for Temporary Urgency Change

### U.S. Bureau of Reclamation License and Permits

Application Numbers: 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9368, 15764

Permit Numbers: 11315, 11316, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12727, 12860

License: 1986 (Application 23)

### Requested Change

The Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) request that the State Water Resources Control Board (SWRCB) modify the D-1641 permit term relating to our Joint Point of Diversion (JPOD) operations. The existing term would be changed by adding the underlined language shown below:

"All other provisions of the above permits are met, provided, however, if the southern delta water quality objectives are exceeded, and the SWRCB Executive Officer has found that (i) the exceedance is the result of actions beyond the reasonable control of the SWP and CVP, and (ii) the use of JPOD will not unreasonably affect salinity in the southern delta, then JPOD may occur."

(See D-1641 permit term 2.a(4) at page 156 for DWR water rights permits and D1641 permit term 1.a(4) at page 150 for Reclamation water rights permits and license.)

## **Urgent Need**

On June 4, 2008, citing two straight years of below-average rainfall, very low snowmelt runoff and the largest court-ordered water transfer restrictions in state history, Governor Schwarzenegger declared a statewide drought and issued Executive Order S-06-08 (Executive Order). The Executive Order directs DWR and other entities to take immediate action to address the situation where numerous California communities are being forced to mandate water conservation or rationing. Importantly, it directs DWR to, among other things, 1) facilitate water transfers to respond to emergency shortages across the state and 2) coordinate with other state and federal agencies and departments to assist water suppliers and implement operations and water exchanges to alleviate critical impacts to San Joaquin Valley agriculture.

One week later, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger proclaimed a state of emergency in nine Central Valley counties. The Governor's proclamation directs DWR, in coordination with USBR, to take the necessary steps and make the necessary operational changes that will allow more water to be delivered to the San Joaquin Valley during the coming summer months, when it is needed the most. Relevant to this Petition, the Governor's proclamation directs DWR to do the following:

1. along with the SWRCB, expedite the processing of water transfer requests;
  2. in cooperation with USBR, make operational changes to State Water Project (SWP) facilities, including the San Luis Reservoir and Southern California reservoirs, that will permit additional water deliveries to the San Joaquin Valley;
- and

3. prepare and file necessary water right urgency change petitions to facilitate surface water transfers and the use of joint point of diversion by the SWP and Central Valley Project (CVP).

In light of the above directives and the subsequent need for DWR and USBR to immediately find ways to facilitate water transfers and exchanges, there is an urgent need for the requested change to clarify when both the SWP and CVP (collectively, "Projects") may be assured that use JPOD and facilitate water transfers during the summer months will not be viewed by the State Board as a violation of their water rights terms and conditions. Without the requested change, DWR and USBR will not have certainty that they may utilize the flexibility JPOD provides because, given the current "critically dry" status, the southern delta agricultural salinity objectives will be exceeded this summer and the CVP and SWP operations cannot control this salinity. Thus, the urgency change is needed to avoid curtailing the ability of DWR and USBR to coordinate and implement operations that would assist water suppliers and alleviate the impacts to San Joaquin Valley agriculture.

Moreover, third-party transfers approved by the SWRCB are often conditioned on DWR and USBR meeting all the conditions of JPOD as described in D-1641. As such, the ability of water suppliers to confidently plan on transferred water to serve areas where there is a critical need would be uncertain without the requested change to the JPOD terms in D-1641.

To illustrate the urgent need for immediate action, the following example is provided. Due to the extremely dry conditions and the impacts of the Delta smelt remedial actions imposed on the Projects' operations by the Wanger Decision<sup>1</sup>, the current allocation to the SWP water users is only 35% of this year's contract amount and the allocation to CVP contractors was initially only 45% of their contract amount. The CVP allocation has now been reduced to 40%. Because of the 45% allocation that Westlands Water District initially received from the CVP, approximately one-third of the District's lands (200,000 acres) were fallowed this year. Even with the fallowing, crops planted this year and permanent crops have created an aggregate demand of approximately 350,000 acre-feet in June, July, and August. However, based on the amount of CVP water presently in storage at San Luis Reservoir and the District's projections of the amount of water the CVP will be able to pump at the Jones Pumping Plant between now and the end of August, the District calculated that the amount of water that it can reasonably expect to receive from the Project prior to the end of the low point period is approximately 240,000 acre-feet. This projection led the Westlands Water District Board of Directors to take action to ration the amount of water available to farmers until the end of the San Luis Reservoir low point period. The ration, apportioned among all irrigable acres in the District, excluding District owned lands, will result in 0.47 acre-feet being available to each irrigable acre. This is insufficient for permanent crops and has created an emergency situation where immediate action is needed to prevent the irretrievable loss of these crops.

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<sup>1</sup> Natural Resources Defense Council v. Kempthorne (2008) 539 F.Supp.2d 1155. The Wanger Decision's remedial actions have reduced the Projects' exports by more than 600,000 acre/feet of water.



Additionally, a number of other water supply agencies are facing significant shortages in 2008. In an effort to alleviate the water shortages, these agencies have executed water transfer agreements with entities on the Sacramento and Feather Rivers. The water made available for transfer will be released north of the Delta and exported at the SWP and CVP Delta pumping facilities. Due to operational and regulatory constraints intended to protect Delta resources, the opportunities for pumping the transfer water is restricted to a limited period in the summer and fall months, which are outside the period of concern for sensitive species. The transfer of these supplemental supplies is needed to help alleviate serious water supply deficiencies in 2008.

In sum, the combination of a critically dry year, a court ruling seriously curtailing the ability of the Projects to export water during the winter and spring, and the Governor's drought proclamation and Executive Order directing DWR to take immediate actions has created an urgent need for the requested clarifying change.

### **JPOD Operations and Transfers**

DWR and USBR may convey SWP and CVP water at each others' Delta pumping plant, commonly termed Joint Point of Diversion (JPOD) operations, subject to water right permit conditions in SWRCB Decision 1641. D-1641 specifically conditions JPOD operations as follows:

1. JPOD is not authorized when the Delta is in excess conditions and such diversion causes the location of X2 to shift east (upstream) of: (a) Chipps Island during the months of February through May, or (b) east of Collinsville during the months of January, June, July, and August or, (c) east of Collinsville and Delta

smelt are present at Contra Costa Water District's (CCWD) point of diversion under Permits 20749 and 20750 (Application 20245) in December.

2. JPOD diversions that cause the Delta to change from excess to balanced conditions will be junior in priority to CCWD Permits 20749 and 20750.
  3. Reclamation and DWR prepare water level, water quality response plans for all stages of JPOD operations and prepare a fishery response plan for Stage 2 and 3 JPOD operations.
  4. All provisions of Reclamation's and DWR's water right permits subject to JPOD conditions must be met.
- (See D-1641, pp, 150-158).

As noted above, JPOD operations are subject to a Water Quality Response Plan (WQRP),<sup>2</sup> a Water Level Response Plan, and a Fishery Response Plan that have been approved by the SWRCB Executive Director or Chief of the Division of Water Rights. It is important to note that the requested change will not affect DWR and USBR's ability or willingness to comply with the aforementioned plans when operating JPOD. If the requested change is approved, the Projects will continue to comply with all provisions of the plans; the only difference would be that it would clarify that the authority to use JPOD would no longer be conditioned on the status of salinity in the southern delta when the conditions causing the salinity are outside the reasonable control of the Projects and JPOD or transfer operations would not result in an increase in the otherwise existing salinity levels.

Additionally, DWR and USBR stated in the WQRP that they will follow the WQRP when operating the Delta pumping facilities for water transfers of their own and of third parties (WQRP p. 6). Consistent with the WQRP, the SWRCB has included as a condition of the change in point of diversion for transfers of third parties that DWR satisfy the

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<sup>2</sup> The Water Quality Response Plan for the Use of Joint Points of Diversion Under Water Right Decision 1641 (WQRP) (dated April 2005, conditionally approved July 1, 2005, and modified by WR Order 2006-0006).

requirements for JPOD in D-1641.<sup>3</sup> Because water transfers are subject to these conditions, it is important that the JPOD conditions are modified as requested in this Petition to allow these transfers. As stated in our June 11, 2008 letter, submitted in accordance with Cease and Desist Order WR 2006-0006, DWR and USBR's ability to influence the water quality conditions in the southern Delta is limited and it is likely that the salinity objectives at the three southern Delta compliance locations will be exceeded during much of this summer's irrigation season as a result of conditions beyond the control of the Projects. Thus, without the requested clarifying change, DWR and USBR's ability to convey water purchased by other water supply agencies needed to alleviate serious water supply shortages in their respective service areas south of the Delta will be seriously compromised.

### **JPOD and Transfers can be Conducted Without Injury to Other Legal Users or the Environment**

All water exported at the SWP and CVP pumping plants, including any JPOD or transfer water, is and will be pumped in conformance with the criteria contained in D1641 and mandated under the Biological Opinions for protection of Sacramento River winter-run Chinook Salmon, Delta smelt, Spring-run Chinook Salmon and Steelhead. The

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<sup>3</sup> In the SWRCB Order WR 2008-0014, approving the Yuba County Water Agency change in point of diversion for the Yuba Accord, condition 7.2.1 of the order provides: "Any water transfers under this order will be subject to DWR and USBR compliance with regulations under RD-1641, including compliance with the plans that are prerequisites for the use of Joint Points of Diversion, as well as compliance with all applicable biological opinions and any court orders."

additional restrictions imposed on the operations of the Projects by the December 14, 2008, Wanger Decision, which limits the export of water from the Delta late December through June, are also being met. If the current consultation on the Long-Term CVP and SWP Operations Criteria and Plan (OCAP) with the United States Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Agency (NOAA) Fisheries Service is completed during 2008, resulting in new Biological Opinions for delta smelt, salmon, and green sturgeon, DWR will modify export operations to comply with any applicable new regulations.

The change requested by DWR and USBR is a narrow change to the provisions of D1641, which will not result in water supply or water quality conditions different than what would be experienced in the absence of the JPOD and transfer operations. The use of JPOD and the export of third party transfers will only be authorized as long as it can be determined, to the satisfaction of the SWRCB, they will not adversely impact the otherwise existing southern Delta salinity levels or the Delta environment.

To demonstrate that JPOD and the export of third party transfers will not adversely impact the otherwise existing environment, DWR uses modeling results from Delta Simulation Model 2 (DSM2) to evaluate the water quality conditions with and without JPOD operations (see Attachment 1). The base run includes the upstream releases and Delta exports anticipated without any water transfers during the months of June through August. The alternative run incorporates the increased release and export levels to support a combined water transfer amount of 1,300 cfs, which approximates the anticipated magnitude of transfer flow during the months of July and August. In both

cases, all three Agricultural Temporary Barriers are in place for normal operations and all D-1641 Delta standards are met.

The model results shown in Attachment 1 indicate that the objectives will be met at the three south Delta compliance locations (San Joaquin River at Brandt Bridge, Old River near Middle River, and Old River near Tracy Road Bridge). However, DSM2 tends to underestimate the salinity discharges from local agricultural and municipal drainages in the south Delta channels. Therefore, the actual levels of salinity are expected to be greater than depicted in the model output. Despite this discrepancy, the model results can be used for a comparative analysis and, in this respect, the results demonstrate there is no discernable adverse effect due to the proposed JPOD and transfers operations. In fact, the model results indicate improvements in water quality at the Brandt Bridge due to the water transfers. Therefore, DWR and USBR strongly believe that this Petition request does NOT injure other legal users or the environment.

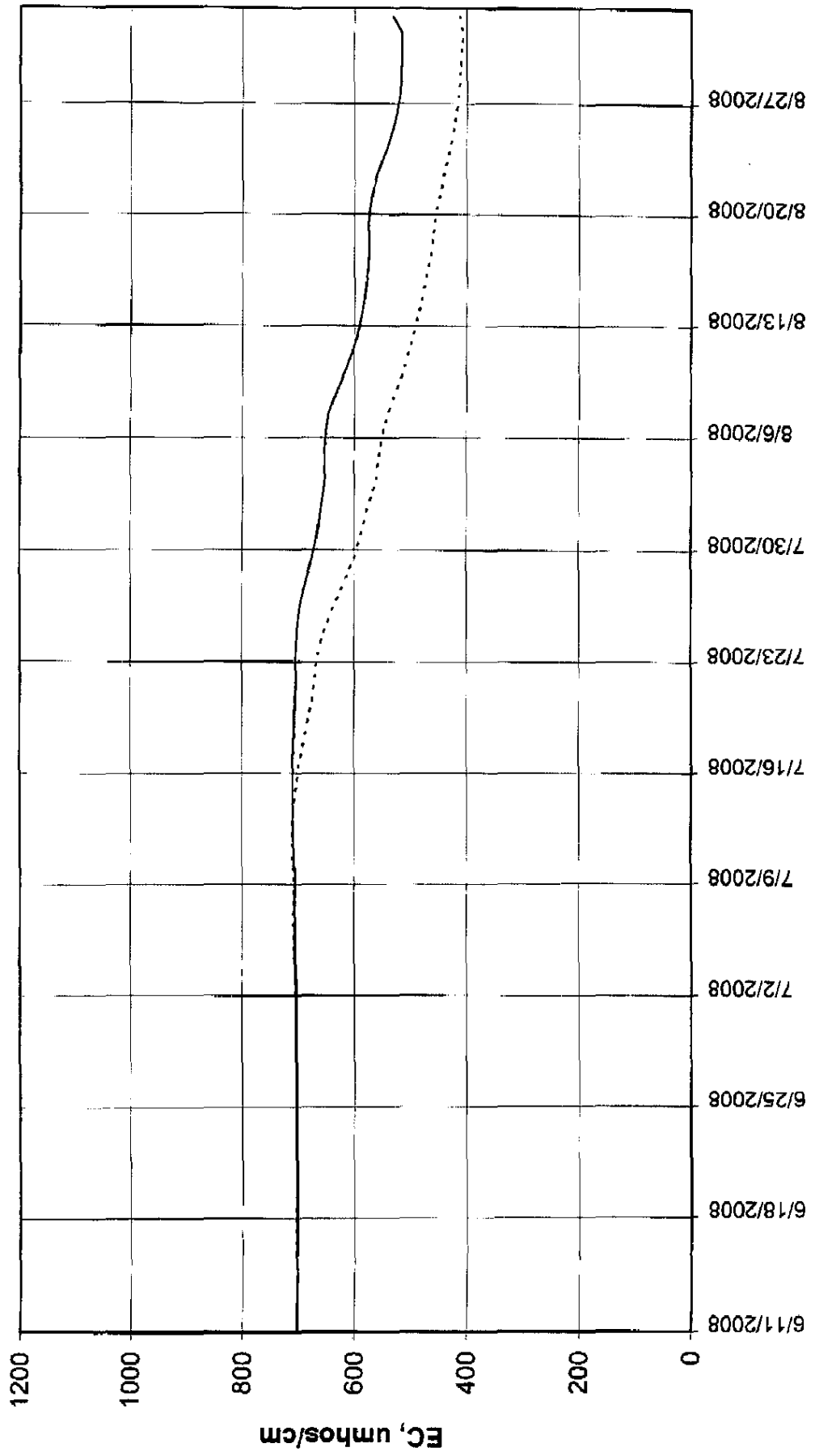
#### **Petition is in the Public Interest**

As stated above, the combination of a critically dry year and a recent court ruling that seriously curtailed the Projects' ability to export water during the winter and spring has led the Governor to proclaim a statewide drought and issue an Executive Order. DWR, along with federal and state agencies, has been directed to take immediate actions to facilitate transfers and implement operations designed to alleviate harmful impacts to San Joaquin Valley agriculture. This petition for change seeks to further the above directives and is subsequently in the public interest.

Approval of the change in D-1641 to allow the conveyance of these water supplies through JPOD and transfer operations at the SWP or CVP during the summer months will not exacerbate the otherwise existing water supply or water quality conditions in the Delta or adversely effect the environment. Instead, it will provide needed water in other regions of California during this critically dry year. DWR believes it is in the public interest to allow the temporary urgency change so the conveyance of this water can reduce the severity of the water supply shortages this year.

# ATTACHMENT 1

# Forecasted Daily EC @ San Joaquin River at Brandt Bridge

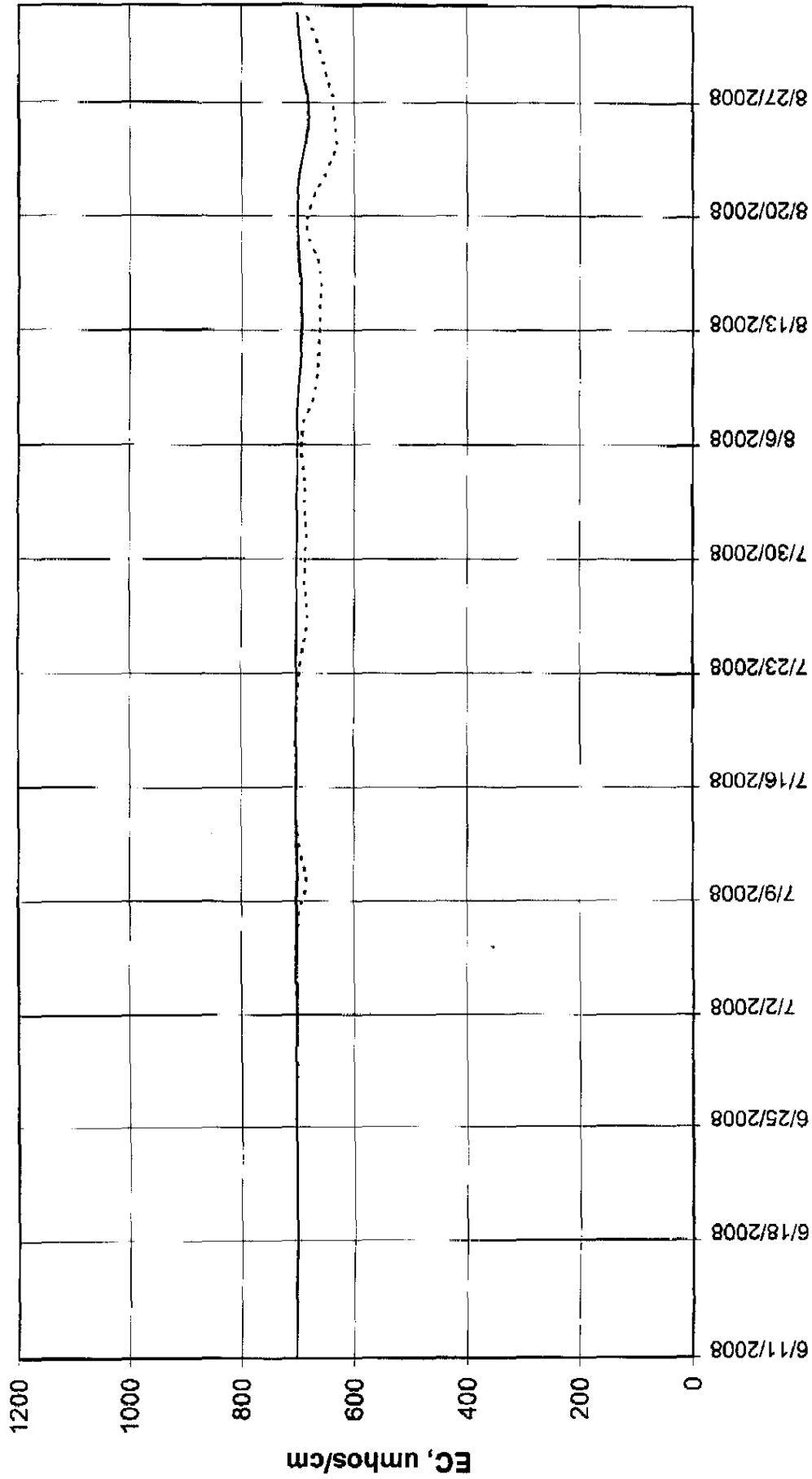


Forecast Period 06/03/08 thru 09/01/08

— Base Run    ···· Alternative Run



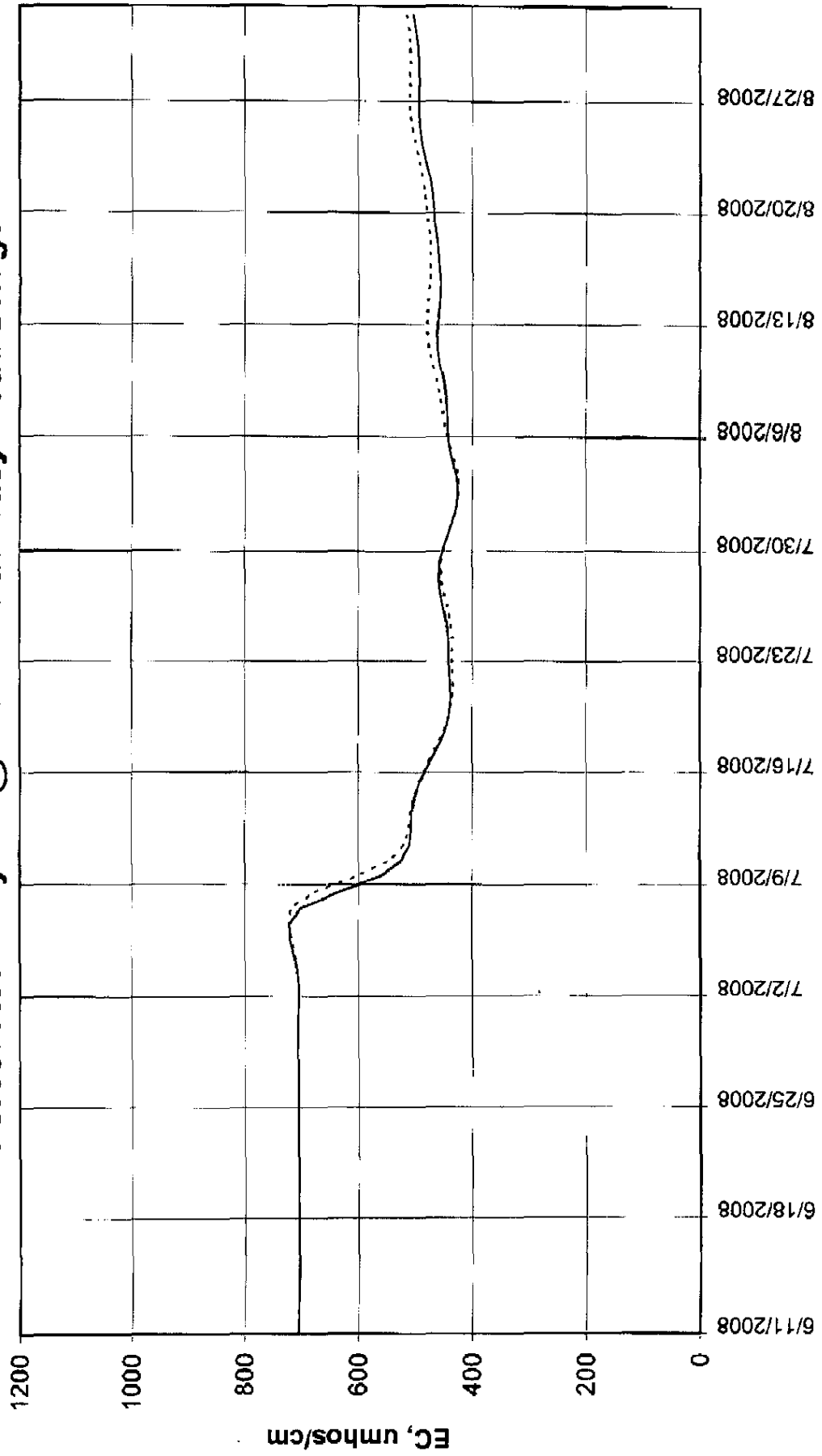
# Forecasted Daily EC @ Old River near Middle River



Forecast Period 06/03/08 thru 09/01/08

— Base Run    ···· Alternative Run

# Forecasted Daily EC @ Old River at Tracy Road Bridge



Forecast Period 06/03/08 thru 09/01/08

— Base Run ..... Alternative Run

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Web: http://www.waterrights.ca.gov

ENVIRONMENTAL INFORMATION FOR PETITIONS

Petition for Change

Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

Multiple horizontal lines for providing a description of proposed changes or work remaining to be completed.

See Attachment No. 1a



ENVIRONMENTAL INFORMATION FOR PETITIONS

d. Have you contacted the California Department of Fish and Game concerning your project?  YES  NO  
If YES, name and telephone number of contact: \_\_\_\_\_

4. ENVIRONMENTAL DOCUMENTS

a. Has any California public agency prepared an environmental document for your project?  YES  NO  
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: DEPT. OF WATER RESOURCE

b. If NO, check the appropriate box and explain below, if necessary:  
 The petitioner is a California public agency and will be preparing the environmental document.\*  
 I expect that the SWRCB will be preparing the environmental document.\*\*  
 I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.\* Public agency: \_\_\_\_\_

See Attachment No. \_\_\_\_\_

\* Note: When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

\*\* Note: CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER N/A

a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?  YES  NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

See Attachment No. \_\_\_\_\_

b. Will a waste discharge permit be required for your project?  YES  NO  
Person contacted: \_\_\_\_\_ Date of contact: \_\_\_\_\_

c. What method of treatment and disposal will be used? \_\_\_\_\_

See Attachment No. \_\_\_\_\_

6. ARCHEOLOGY Petition for Change involves no construction

a. Have any archeological reports been prepared on this project?  YES  NO  
b. Will you be preparing an archeological report to satisfy another public agency?  YES  NO  
c. Do you know of any archeological or historic sites located within the general project area?  YES  NO

ENVIRONMENTAL INFORMATION FOR PETITIONS

If YES, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

See Attachment No. \_\_\_\_\_

**7. ENVIRONMENTAL SETTING N/A Petition for Change involves no construction or change in points of diversion or redirection**

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- Along the stream channel immediately downstream from the proposed point(s) of diversion.
- Along the stream channel immediately upstream from the proposed point(s) of diversion.
- At the place(s) where the water is to be used.

**8. CERTIFICATION**

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: June 16, 2008 Signature: Cathy Cretcher

## Attachment 1a

### Requested Change

The Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) request that the State Water Resources Control Board (SWRCB) modify the D-1641 permit term relating to our Joint Point of Diversion (JPOD) operations. The existing term would be changed by adding the underlined language shown below:

“All other provisions of the above permits are met, provided, however, if the southern delta water quality objectives are exceeded, and the SWRCB Executive Officer has found that (i) the exceedance is the result of actions beyond the control of the SWP and CVP, and (ii) the use of JPOD will not adversely affect salinity in the southern delta, then JPOD may occur.”

(See D-1641 permit term 2.a(4) at page 156 for DWR water rights permits and D1641 permit term 1.a(4) at page 150 for Reclamation water rights permits and license.)

### JPOD Operations and Transfers

DWR and USBR may convey SWP and CVP water at each others' Delta pumping plant, commonly termed Joint Point of Diversion (JPOD) operations, subject to water right permit conditions in SWRCB Decision 1641. D-1641 specifically conditions JPOD operations as follows:

1. JPOD is not authorized when the Delta is in excess conditions and such diversion causes the location of X2 to shift east (upstream) of: (a) Chipps Island during the months of February through May, or (b) east of Collinsville during the months of January, June, July, and August or, (c) east of Collinsville and Delta smelt are present at Contra Costa Water District's (CCWD) point of diversion under Permits 20749 and 20750 (Application 20245) in December.
2. JPOD diversions that cause the Delta to change from excess to balanced conditions will be junior in priority to CCWD Permits 20749 and 20750.

3. Reclamation and DWR prepare water level, water quality response plans for all stages of JPOD operations and prepare a fishery response plan for Stage 2 and 3 JPOD operations.
4. All provisions of Reclamation's and DWR's water right permits subject to JPOD conditions must be met.  
(See D-1641, pp, 150-158).

As noted above, JPOD operations are subject to a Water Quality Response Plan (WQRP),<sup>1</sup> a Water Level Response Plan, and a Fishery Response Plan that have been approved by the SWRCB Executive Director or Chief of the Division of Water Rights. It is important to note that the requested change will not affect DWR and USBR's ability or willingness to comply with the aforementioned plans when operating JPOD. If the requested change is approved, the Projects will continue to comply with all provisions of the plans; the only difference would be that it would clarify that the authority to use JPOD would no longer be conditioned on the status of salinity in the southern delta when the conditions causing the salinity are outside the control of the Projects and JPOD or transfer operations would not result in an increase in the otherwise existing salinity levels.

Additionally, DWR and USBR stated in the WQRP that they will follow the WQRP when operating the Delta pumping facilities for water transfers of their own and of third parties (WQRP p. 6). Consistent with the WQRP, the SWRCB has included as a condition of the change in point of diversion for transfers of third parties that DWR satisfy the requirements for JPOD in D-1641.<sup>2</sup> Because water transfers are subject to these conditions, it is important that

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<sup>1</sup> The Water Quality Response Plan for the Use of Joint Points of Diversion Under Water Right Decision 1641 (WQRP) (dated April 2005, conditionally approved July 1, 2005, and modified by WR Order 2006-0006).

<sup>2</sup> In the SWRCB Order WR 2008-0014, approving the Yuba County Water Agency change in point of diversion for the Yuba Accord, condition 7.2.1 of the order provides: "Any water transfers under this order will be subject to DWR and USBR compliance with regulations under RD-1641, including compliance with the plans that are prerequisites for the use of Joint Points of Diversion, as well as compliance with all applicable biological opinions and any court orders. "



the JPOD conditions are modified as requested in this Petition to allow these transfers. As stated in our June 11, 2008 letter, submitted in accordance with Cease and Desist Order WR 2006-0006, DWR and USBR's ability to influence the water quality conditions in the southern Delta is limited and it is likely that the salinity objectives at the three southern Delta compliance locations will be exceeded during much of this summer's irrigation season as a result of conditions beyond the control of the Projects. Thus, without the requested clarifying change, DWR and USBR's ability to convey water purchased by other water supply agencies needed to alleviate serious water supply shortages in their respective service areas south of the Delta will be seriously compromised.

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Notice of Exemption

Form D

To: Office of Planning and Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

From: (Public Agency) Department of Water Resources
1416 Ninth Street
Sacramento CA 94236-0001

County Clerk
County of

(Address)

Project Title: Temporary Urgency Change Petition

Project Location - Specific:

Sacramento-San Joaquin Delta

Project Location - City: Sacramento

Project Location - County: Sacramento

Description of Nature, Purpose and Beneficiaries of Project:

Through the Temporary Urgency Change Petition, the Department of Water Resources (DWR) is seeking a modification of a term in Water Rights Decision 1641 that conditions the use of JPOD upon all provisions of its permits being satisfied. DWR is submitting a petition to the State Water Resources Control Board (SWRCB) asking that language be added to the term which would clarify that JPOD operations may occur even if south delta salinity objectives are not being met as long as the SWRCB's Executive Officer determines that the exceedances of the objectives is outside the control of DWR, and that the use of JPOD will not adversely affect the salinity in the south delta.

The beneficiaries of the project will be DWR and the U. S. Bureau of Reclamation, and subsequently the south-of-Delta water suppliers that are facing emergency shortages this summer due to the current drought and a recent court order significantly reducing the export of water from the Delta.

Name of Public Agency Approving Project: State Water Resources Control Board

Name of Person or Agency Carrying Out Project: Department of Water Resources

Exempt Status: (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
Categorical Exemption. State type and section number: Existing Facilities, Class 1 - Sec. 15301
Statutory Exemptions. State code number:

Reasons why project is exempt:

On June 12, 2008 after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger proclaimed a state of emergency in nine Central Valley counties. The emergency proclamation states that the emergency exemptions in sections 21080(b)(3) and 21172 of the Public Resources Code shall apply to all activities and projects ordered and directed under this proclamation, to the fullest extent allowed by law. Included in the activities listed in the proclamation is the direction to DWR to file necessary water right urgency change petitions to facilitate surface water transfers and the use of joint point of diversion by the SWP and Central Valley Project. Thus, according to the emergency proclamation, this petition is exempt from CEQA.

Additionally, changing the language of the term in D-1641 pertains to the operation of an existing public facility and would involve negligible or no expansion of an existing use.

Lead Agency Contact Person: Cathy Crothers Area Code/Telephone/Extension: (916) 653-5613

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Cathy Crothers Date: 06/16/2008 Title: Assistant Chief Counsel

Signed by Lead Agency

Signed by Applicant

Date received for filing at OPR: