

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

**WR ORDER 2002-0007-DWR**

---

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 5,000 ACRE-FEET OF WATER  
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES  
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

---

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE  
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On May 21, 2002,

Department of Water Resources  
c/o Nancy Quan, Chief  
Project Water Contracts Branch  
P.O. Box 942836  
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. Temporary changes under Water Code section 1725 may be effective for a period up to one year.

**1.1 Description of the Transfer** State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). DWR proposes a change in place of use to facilitate the transfer of up to 5,000 acre-feet (af) of Tulare's SWP water to WWD. Vista Verde Farms (VVF) and Venture Farms (VF) own property (3,461 acres for VVF and 875 acres for VF) located within both Tulare's and WWD's service area. These landowners wish to exchange up to 5,000 af of SWP water currently scheduled for use within Tulare's service area to their landholdings in WWD. The total allotment of irrigation water within the area of interest would be approximately 1.6 acre-feet per acre (af/ac) for VVF lands in WWD and 3.8 for VF lands in WWD. In the absence of the proposed transfer, the water would be used by the aforementioned parties on lands located within the Tulare Lake Basin Water Storage District.

**2.0 BACKGROUND**

**2.1 Substance of DWR's Permit** Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds; and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife

enhancement, and to generate incidental power. The subject 5,000 af of SWP water is either stored in San Luis Reservoir or will be stored under provisions of DWR's permits, conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act. Instantaneous release rates from San Luis Reservoir may increase due to the proposed transfer.

**2.2 Place of Use under the Proposed Transfer** DWR's petition requested that WWD's service area (as shown on WWD's Generalized Depth to Shallow Groundwater, October 2001 submitted with the petition) be temporarily added to the place of use of Permit 16482.

### **3.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE**

The Division received timely comments from the Central Delta Water Agency (CDWA), on behalf of itself, the South Delta Water Agency (SDWA), and Alex Hildebrand. CDWA's comments and the SWRCB's response are summarized below.

CDWA opposed the proposed transfer on the basis that "the delivery of water over and above levels that existed prior to the implementation of the San Luis Unit of the CVP constitute an unreasonable use of water in violation of California Constitution Article 10, section 2." CDWA asserted that "the application of supplemental water to the WWD area will add water to a hydrologic regime which is causing water logging of the WWD lands along the trough of the valley (sometimes referred to as drainage impacted lands) and which is providing a groundwater gradient which causes saline waters to enter the San Joaquin River." CDWA concluded that the increase in salinity of San Joaquin River water resulting from the proposed transfer would injure themselves, SDWA, and Alex Hildebrand.

**SWRCB Response:** Approximately 42,000 acres within the northern portion of WWD (north of Township 16S, MDB&M) have been identified as areas with potential for surface and subsurface drainage to the San Joaquin River. Though DWR's petition requested the temporary addition of all of WWD's service area to the place of use under Permit 16482, only 4,336 acres are scheduled to receive water. These areas are located south of the potential drainage areas (within Township 17S, Range 15E and Township 19S, Range 18E, MDB&M). Within these areas of WWD, surface drainage and groundwater gradients trend away from the San Joaquin River. Therefore, the application of water to these specific areas within WWD should not significantly increase salinity concentration within the San Joaquin River and injure downstream users such as CDWA, SDWA, and Alex Hildebrand. Accordingly, this order will authorize the addition of only Township 17S, Range 15E and Township 19S, Range 18E, MDB&M, to the place of use under Permit 16482.

### **4.0 AVAILABILITY OF WATER FOR TRANSFER**

The water proposed for transfer consists of a portion of Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District.

Additionally, in response to comments from CDWA asserting that the proposed transfer would result in an increase in salinity concentrations in the San Joaquin River causing injury to itself, SDWA, and Alex Hildebrand, this order limits the place of use to specific areas within WWD which do not have significant potential for either surface drainage to or groundwater gradients towards the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

## **5.0 ENVIRONMENTAL CONSIDERATIONS**

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits, and conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries under the Endangered Species Act. Therefore, the diversion of this water would have no significant adverse effect on any natural streamflow or hydrologic regime.

**5.1 Environmental Issues within WWD** In general, land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's Generalized Depth to Shallow Ground Water, October 2001 indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are among the lands that do not cause surface water problems due to agricultural drainage.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

## **6.0 SWRCB'S DELEGATION OF AUTHORITY**

On May 16, 2002, the SWRCB adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

## **7.0 CONCLUSIONS**

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

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer 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 filed for temporary change in the place of use under the Department of Water Resources' Permitted Application 17512 for the transfer of up to 5,000 af of water is approved.

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

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement with the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use are temporarily changed as follows:  
  
SWP's permitted Application 17512 -- The authorized place of use is expanded to include Township 17S, Range 15E and Township 19S, Range 18E, MDB&M.
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer/exchange, but no later than October 1, 2003, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should include the following information:

- a. Specific locations where the transferred water was used;
  - b. The monthly amounts of water each location received; and
  - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.  
  
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.
  7. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act

authorized under this temporary transfer, the permittee shall obtain authorization for an incidental

take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

8. 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.

Original signed by

*Edward C. Anton, Chief  
Division of Water Rights*

Dated: July 25, 2002