

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

DIVISION OF WATER RIGHTS

WR ORDER 2007-0040-DWR

**IN THE MATTER OF PERMIT 19400 (APPLICATION 25727)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 644 ACRE-FEET OF WATER
FROM THE NATOMAS CENTRAL MUTUAL WATER COMPANY
TO THE SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT**

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

1.0 SUBSTANCE OF PETITION

On August 17, 2007,

Natomas Central Mutual Water Company
c/o Dee Swearingen, General Manager
2601 West Elkhorn Boulevard
Rio Linda, CA 95673

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Sacramento Regional County Sanitation District's (SRCSD) Lower Northwest Interceptor (LNWI), a sanitary sewer pipeline, would be temporarily added to the authorized place of use under Natomas Central Mutual Water Company's (NCMWC) Permit 19400 (Application 25727). The proposed temporary change would facilitate the transfer of up to 644 acre-feet (af) of water for testing and flushing of the LNWI from the date of approval of this petition through April 1, 2008.

1.1 Description of the Transfer. SRCSD operates the Sacramento Regional Wastewater Treatment Plant (SRWTP) located in Elk Grove, CA, and provides sanitary sewer service to a large portion of the greater metropolitan Sacramento area. SRCSD is expanding its sanitary sewer service area to provide service to portions of northern Sacramento County (including the Natomas area) and West Sacramento. In order to serve the expanded area, SRCSD constructed the LNWI, an approximately 20-mile-long, 5 to 10-foot-diameter, sanitary sewer pipeline which extends from Natomas south through West Sacramento and then trends east across the Sacramento River, terminating at the SRWTP. Further information regarding the LNWI project is available for viewing on the internet at www.lowernorthwest.com.

Normal pipeline operations require testing and flushing flows delivered at the intake to the LNWI intake. The LNWI intake is located within Reclamation District 1000's (RD1000) East Drainage Canal, just northwest of the Interstate 5 and Interstate 80 interchange in northern Sacramento County and within NCMWC's service area. NCMWC holds several water rights with the State Water Board and water supply contracts with the United States Bureau of Reclamation which authorize it to divert water from the Sacramento River for agricultural and municipal and industrial uses within its service area. NCMWC has submitted this petition to provide the testing and flushing flows for the LNWI under Permit 19400. NCMWC has received approval for

two previous temporary changes to facilitate the delivery of testing and flushing flows to the LNWI¹.

NCMWC proposes to deliver up to 644 af of water to the SRCSD for industrial use (testing and flushing) within the LNWI from the date of approval of this petition through April 1, 2008. Water would be pumped from RD1000's East Drainage Canal into the LNWI and used for testing and flushing throughout the length of the pipeline. Once used to test or flush the LNWI, the transfer water would be treated at the SRWTP and discharged to the Sacramento River as a small portion of the SRWTP's effluent. A map showing the location of the LNWI is available for viewing on the Division's website with the copy of this notice at www.waterrights.ca.gov/application/tempurgnotices.htm. Table 1, below, shows the monthly amounts, monthly average diversion rate in cubic feet per second (cfs), and maximum 24-hour average diversion rate in cfs for each month during the proposed transfer period.

Table 1

| <u>Year</u> | <u>Month</u> | <u>Amount (af)</u> | <u>Average Rate (cfs)</u> | <u>Maximum Rate (cfs)</u> |
|-------------|--------------|--------------------|---------------------------|---------------------------|
| 2007 | November | 92 | 1.55 | 23.2 |
| 2007 | December | 92 | 1.55 | 23.2 |
| 2008 | January | 92 | 1.55 | 23.2 |
| 2008 | February | 92 | 1.55 | 23.2 |
| 2008 | March | 92 | 1.55 | 23.2 |
| 2008 | April | 46 | 0.77 | 23.2 |

Legend: Amount = monthly volume of water
Average Rate = monthly average diversion rate
Maximum Rate = maximum 24-hour average diversion rate

1.2 Place of Use and Purpose of Use Under the Proposed Transfer. The LNWI pipeline would be added to the place of use under Permit 19400. A map showing the location of the LNWI is available for viewing on the Division's website at www.waterrights.ca.gov/application/tempurgnotices.htm.

1.3 Water Conservation. Under normal operations, NCMWC uses water diverted under Permit 19400 for rice decomposition. Approximately 50 to 60 percent of the acreage planted in rice within NCMWC's service area is inundated during parts of October, November, and December of each year for rice decomposition (this process is referred to as reflooding). During the reflooding period, NCMWC employs a closed irrigation system, and (under normal operations) water used for reflooding is not allowed to return to the Sacramento River. NCMWC's petition states that the demand for applied water for rice decomposition is 1.4 af per acre over November and December. Since 1999, NCMWC has performed reflooding operations on an average of 6,843 acres each year. NCMWC's petition states that approximately 5,500 acres will require reflooding in 2007. NCMWC's petition states that the difference between the amount of acreage requiring reflooding in 2007 and the recent average amount of acreage requiring reflooding results in a reduction of approximately 1,302 af of water required for diversion under Permit 19400. NCMWC's petition states that a portion of this reduced water demand will be used to supply the LNWI pursuant to the proposed temporary change.

1.4 Other Agency Consultation. Prior to submitting the subject petition for temporary change, NCMWC contacted the Central Valley Regional Water Quality Control Board (Central Valley Board) and the Department of Fish and Game (DFG) to solicit their comments regarding the proposed temporary change. During the petition process for NCMWC's previous similar water transfers, both DFG and the Central Valley Board did not oppose the proposed water transfers. Neither DFG nor the Central Valley Regional Board have commented on the proposed temporary change.

2.0 BACKGROUND

¹ State Water Board Orders 2006-0014-DWR and 2007-0023-DWR are available for viewing at: <http://www.waterrights.ca.gov/hearings/WaterRightOrders.htm>.

2.1 Substance of NCMWC's Permit. Permit 19400 was issued to NCMWC on February 17, 1985. It authorizes NCMWC to directly divert up to 168 cfs from October 1 through April 1 of each year for irrigation use within the entire NCMWC's service area, and municipal and industrial use within Sacramento Metropolitan Airport and its Special Planning Area only. Permit 19400 authorizes direct diversion from four permanent points on the Sacramento River, two permanent points on the Natomas Cross Canal, and four variable points located on various drains within NCMWC's service area operated by RD1000. The maximum annual amount of water authorized for diversion under Permit 19400 is 10,000 af. A map showing the locations of the authorized points of diversion and the location of the authorized place of use under Permit 19400 is available for viewing on the Division's website at www.waterrights.ca.gov/application/tempurgnotices.htm.

In addition to Permit 19400, NCMWC holds five other water rights with points of diversion, purposes of use, and places of use similar to those of Permit 19400. However these water rights typically authorize the diversion of water between March and October. NCMWC's additional water rights are not part of the subject petition for temporary change.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated September 26, 2007) was provided via regular mail to interested parties and by publication in the Sacramento Bee on September 29, 2007. The Division received no timely comments regarding the proposed temporary change.

4.0 REQUIRED FINDINGS OF FACT

Availability of Water for Transfer

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, § 1725 and § 1726.) NCMWC submitted information indicating that a maximum of approximately 5,500 acres will require water for crop decomposition in 2007. NCMWC also stated that since 1999 it had applied water to an average of approximately 6,843 acres for crop decomposition. Based on this information, the reduction in acreage required for crop decomposition will result in a reduction in water demand of approximately 1,302 af.

In light of the above, I find in accordance with Water Code section 1726(e) that the water proposed for transfer pursuant to this order will be conserved pursuant to Water Code section 1011.

No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) This order limits the amount of water diverted under Permit 19400 for all uses (including the proposed transfer) to 10,000 af. Water diverted pursuant to this order will be used for testing and flushing of the LNWI pipeline and then treated at the SRWTP and released to the Sacramento River as effluent. Potential impacts to the quantity of flow in the Sacramento River due to diversion of water pursuant to this order are limited to the river reach located between NCMWC's diversion point and the SRWTP outfall. The maximum 24-hour average diversion rate for water transferred pursuant to this order is 23.2 cfs. Given the typical range of flow in the Sacramento River in November and December (approximately 5,000 – 15,000

cfs), this diversion rate represents less than one percent of the total flow in the Sacramento River. This negligible reduction in flow should not adversely impact parties with rights to divert water from the reach of the Sacramento River located between NCMWC's diversion point and the SRWTP outfall.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer will not injure any legal user of the water.

No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Public Resources Code section 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

As stated above, the proposed temporary change will result in an insignificant reduction in flow in the Sacramento River between NCMWC's diversion point and the SRWTP outfall. Additionally, DFG has previously indicated that it does not oppose the proposed temporary change.

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

5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to the delegation of authority in Resolution 2007-0057.

6.0 CONCLUSIONS

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

Based on the available evidence, I conclude that:

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.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use and purpose of use under Natomas Central Mutual Water Company's (NCMWC) Permit 19400 (Application 25727) to facilitate the transfer of up to 644 af of water is approved subject to the provisions of this order.

All existing terms and conditions of Permit 19400 remain in effect, except as temporarily amended by the following provisions:

1. The transfer of water is limited to the period from the date of this order through April 1, 2008.
2. The place of use of Permit 19400 is temporarily changed as follows:

The authorized place of use is expanded to include the Lower Northwest Interceptor (LNWI) sanitary sewer pipeline as shown on the map on file with the State Water Board under Application 25727.
3. Industrial uses (testing and flushing) are temporarily added as purposes of use under Permit 19400.
4. The total amount of water diverted pursuant to Permit 19400 between October 1, 2007 and April 1, 2008 for this transfer and all other uses authorized pursuant to Permit 19400 shall not exceed 10,000 af. The maximum daily average diversion rate for water diverted for use within the LNWI is 23.2 cubic feet per second.
5. By June 1, 2008, NCMWC shall provide to the Chief of the Division of Water Rights a report describing the diversion and use of the water transferred pursuant to this Order, as well as the conservation measure or measures utilized to make water available for transfer. The report shall include the following information:
 - a. The daily average rate of diversion of water for use within the LNWI;
 - b. The 30-day average rate of diversion and monthly volume of water diverted for use within the LNWI;
 - c. The daily average rate of diversion for use pursuant to existing authorized uses under Permit 19400;
 - d. The 30-day average rate of diversion and monthly volume of water diverted for use pursuant to existing authorized uses under Permit 19400; and
 - e. The total acres upon which water for crop decomposition was applied pursuant to Permit 19400.
6. By May 1, 2008, NCMWC shall file with the Division of Water Rights, its completed "Progress Report by Permittee" form for Permit 19400 for the year 2007, including a description of the conservation measures used to make water available for this transfer. The completed "Progress Report by Permittee" shall include total number of acres upon which water for decomposition was applied pursuant to Permit 19400 and an estimate of the amount of water saved due to the reduction in the acreage.
7. 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 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 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.

8. 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 prior to commencing transfer of water. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
9. 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.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: November 16, 2007