

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

**DIVISION OF WATER RIGHTS**

**ORDER WR 2008-0031-DWR**

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**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)  
PETITION FOR TEMPORARY URGENCY CHANGE  
INVOLVING THE TRANSFER OF UP TO 4,000 ACRE-FEET OF WATER  
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES  
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

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**ORDER APPROVING TEMPORARY URGENCY CHANGE IN PLACE OF USE**

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On June 19, 2008,

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 (State Water Board), Division of Water Rights (Division) a Petition for Temporary Urgency Change pursuant to Water Code Section 1435, et seq. If approved, portions of 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) Permit 16482 (Application 17512). Temporary urgency changes filed pursuant to Water Code section 1435 may be effective for a period of up to 180 days.

**1.1 Current Dry Conditions.** On June 4, 2008, citing two straight years of below-average rainfall and significant restrictions on diversions from the Delta due to various factors, including federal court actions to protect fish species, 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 serious drought conditions and water delivery limitations that currently exist in California. Importantly, it directs DWR to, among other things: 1) facilitate water transfers to respond to potential emergency shortages and water quality degradation; and 2) coordinate and implement SWP operations and water exchanges to alleviate critical impacts to San Joaquin Valley agriculture.

On June 12, 2008, after assessing the full impact that the severe water shortages have had on San Joaquin Valley agriculture, Governor Schwarzenegger issued a Proclamation, proclaiming a state of emergency within the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern. 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. Relevant to this petition, the Governor's proclamation directs DWR to do the following:

1. along with the State Water Board, expedite the processing of water transfer requests;
2. in cooperation with USBR, make operational changes to 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 CVP.

The Governor's Proclamation also directed the State Water Board to expedite the processing and consideration of water rights urgency change petitions filed by DWR and other agencies to facilitate water transfers to the San Joaquin Valley. To illustrate the urgent need for immediate action, the petition provides the following example:

Due to the extremely dry conditions and the impacts of the Delta smelt remedial actions imposed on the Projects' operations by the Wanger Decision, 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.

The water proposed for transfer pursuant to this temporary urgency change will be used on land within Hansen-Vista Verde and Newton Farms for irrigation of permanent crops. These lands are located within Fresno County. The rationing of CVP supply in WWD threatens the health of those permanent crops.

**1.2 Pending Petition for Temporary Change.** On May 8, 2008, DWR submitted to the State Water Board a petition for temporary change requesting the transfer of up to 7,000 acre-feet (af) of SWP water from the Tulare Lake Basin Water Storage District (Tulare) service area to land within WWD in accordance with Water Code Section 1725, et seq. The comment period for the public notice of that petition expires on July 18, 2008. The 4,000 af requested under this petition is included in the quantity requested by DWR in its May 8, 2008 petition. The above-noted reduction in CVP water supplies has created an urgent need for supplemental water in advance of the date at which water might be available under DWR's May 8, 2008 petition.

**1.3 Description of the Proposed Temporary Urgency Change.** State Water Project (SWP) water is stored in San Luis Reservoir under the provision of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including Tulare. Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. These parties have requested that up to 4,000 af of SWP water currently scheduled for use on their lands within Tulare's service area be transferred for immediate use on their lands located within WWD. The petitioner indicated that no additional groundwater will be pumped within Tulare as a result of this transfer. Since the petitioner has already filed a petition for temporary change to achieve this transfer, the proposed

temporary urgency change would be effective for a period of 180 days from the date of this Order, or when the State Water Board has made a determination regarding the previous petition for temporary change.

In the absence of the proposed temporary urgency change, the water would be used by the aforementioned parties on their lands located within Tulare.

**1.4 Place of Use under the Proposed Transfer.** DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for DWR's May 8, 2008 petition posted on the Division of Water Rights' website at [www.waterrights.ca.gov/Water Transfers Program](http://www.waterrights.ca.gov/Water%20Transfers%20Program)

## **2.0 BACKGROUND**

**2.1 Substance of DWR's Permit.** Permit 16482 was issued to DWR on September 26, 1972. 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 Clifton Court Forebay and the Tracy Pumping Plant, located within the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), are authorized points of diversion/rediversion under Permit 16482. Water diverted under Permit 16482 may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power within the SWP service area. The subject 4,000 af of SWP water is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Revised Decision 1641 (D-1641), and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. The proposed transfer may result in temporary increases in the instantaneous release rate from San Luis Reservoir.

## **3.0 PUBLIC NOTICE**

The State Water Board may issue a temporary change order in advance of public notice. (Wat.Code § 1438.) The State Water Board will comply with the noticing requirements as soon as practicable and retains jurisdiction to modify this order based on any comments or objections that it may receive in response to the public notice.

## **4.0 REQUIRED FINDINGS OF FACT**

Chapter 6.6 of Part 2, Division 2, of the Water Code, commencing at section 1435, provides that any permittee (or licensee) who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulation, at California Code of Regulations, title 23, section 791(e), provides that the State Water Board shall follow as nearly as possible the procedures for changes in point of diversion, place of use, or purpose of use when processing petitions for other types of changes in water right permits and licenses. Accordingly, the procedures under section 1435 are applicable to changes to terms and conditions of water right permits and licenses.

The State Water Board must make the findings specified in section 1435(b) when issuing a temporary change order pursuant to Chapter 6.6. The required findings are:

1. The permittee has an urgent need to make the proposed change.
2. The proposed change may be made without injury to any other lawful user of water.
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

**4.1 The Permittee has an Urgent Need to Make the Proposed Change.** Pursuant to Water Code section 1435 (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary urgency change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented.

Current dry conditions, in combination with court-ordered pumping reductions, have significantly reduced SWP and CVP contract supplies. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists.

Based on these factors I find that the proposed temporary urgency change is necessary to the water resources of the State to beneficial use to the fullest extent of which they are capable and that waste of water be prevented. Additionally, I find that the petitioner has exercised due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

**4.2 No Injury to Other Lawful Users of Water.** The water proposed for transfer pursuant to this temporary urgency change consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta.

In general, irrigated 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 map, Generalized Depth to Shallow Ground Water, October 2007, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

In light of the above, I find in accordance with Water Code section 1435(b)(2) that the proposed temporary urgency change will not injure other lawful users of water.

**4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses.** In accordance with Water Code section 1435, the State Water Board must consider potential impacts on fish, wildlife, and other instream beneficial uses.

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by D-1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In light of the above, I find in accordance with Water Code section 1435(b)(3) that the proposed temporary urgency change will have no unreasonable effect on fish, wildlife, or other instream beneficial uses.

**4.4 The Proposed Change is in the Public Interest.** Based on the discussion contained in Sections 4.1, 4.2, and 4.3, above, I find in accordance with Water Code section 1435(b)(4) that the proposed temporary urgency change is in the public interest.

**5.0 ENVIRONMENTAL CONSIDERATIONS**

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by D-1641 and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area. The proposed temporary change will not alter the rate or timing of export pumping from the Delta. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime. Governor Schwarzenegger has proclaimed a state of emergency in the counties of Sacramento, San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and Kern due to the dry conditions. Without the proposed temporary urgency change, the potential for irretrievable loss of crops exists within Fresno County.

Accordingly, approval of the proposed change is exempt from the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15301. In addition, approval of the proposed change is exempt from CEQA pursuant to Public Resources Code sections 21080, subdivision (b)(3) and 21172 because the change is necessary to minimize damage to crops in the San Joaquin Valley.

**6.0 STATE WATER 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 urgency change to the Chief of the Division of Water Rights where no objections are outstanding. This order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2007-0057.

**7.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435; and therefore I find as follows:

1. The permittee has an urgent need to make the proposed temporary change.
2. The proposed temporary change will not operate to the injury of any other lawful user of water.
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The petitioned change is in the public interest.

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## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary urgency change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 4,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as temporarily amended by the following provisions:

1. The temporary urgency change to facilitate the transfer/exchange of water pursuant to this Order is limited to a period of 180 days commencing on the date of this Order, or when the State Water Board has made a determination regarding the pending petition for temporary change under Permit 16482 filed by DWR on May 8, 2008.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District, describing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for DWR's May 8, 2008 petition posted on the Division of Water Rights website at [www.waterrights.ca.gov/Water Transfers Program](http://www.waterrights.ca.gov/Water%20Transfers%20Program)).
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. By February 1, 2009, 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 also 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 temporary urgency 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.

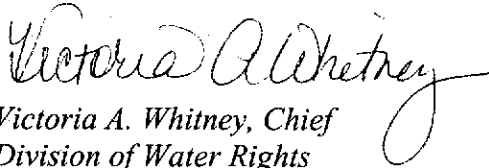
The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

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 urgency change, 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 urgency change 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.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: **JUL - 3 2008**