

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0038-DWR

IN THE MATTER OF LICENSE 1718 (APPLICATION 575)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 3,500 ACRE-FEET OF WATER
FROM RIVER GARDEN FARMS COMPANY
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES

ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 10, 2009,

River Garden Farms Company
c/o Maja K. Haium
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. River Garden Farms Company's (RGF) petition requests the transfer of up to 3,500 acre-feet (af) of water for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas. The transfer will be administered by the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. RGF proposes to transfer up to 3,500 af of water under License 1718 (Application 575) to DWR's 2009 DWB. To facilitate this transfer, RGF will pump additional groundwater and reduce its direct diversion (referred to as groundwater substitution) from the Sacramento River by 19 cfs between July and October. The petition states that the groundwater wells proposed for additional pumping meet criteria established by DWR for these types of transfers. At times when pumping capacity is available in the Delta, the additional 19 cfs of flow in the Sacramento River would be available for diversion/rediversion at the Banks Pumping Plant or the Jones Pumping Plant. Water would be used within the SWP and/or CVP service areas (administered by DWR's 2009 DWB). The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. The petitioner submitted a copy of the *Groundwater Management Plan Reclamation District No. 787* (Plan) and correspondence with Yolo County regarding the groundwater substitution plan for this transfer. RGF is the major landowner in Reclamation District 787. The Plan

identifies an operational yield for the local groundwater basin and provides for groundwater substitution transfers. Based on this information, the petition states that the groundwater substitution associated with this transfer is consistent with the Plan. Additionally, the petitioner submitted a letter from the County of Yolo indicating that the proposed groundwater substitution will not cause adverse impact to the affected groundwater basin. This information is posted online with the public notice for this petition at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and the United States Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers, including the subject transfer, and submitted the following statement regarding DWB transfers which include groundwater substitution.

“The well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. Groundwater pumping within the Sacramento basin will affect streamflow to some extent during the recovery period. To minimize impacts during the period of the transfer, any well within 2 miles of a watercourse must be cased to 150'. Groundwater in the Sacramento Valley will impact streamflow at some point in time. Impacts to the [SWP and CVP] occur at times when the refill occurs during balanced conditions. DWR estimates that streamflow impacts resulting from pumping to replace transferred water to be 12%. To account for this impact, the Drought Water Bank will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts.”

The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

2.0 BACKGROUND

2.1 Substance of RGF's License. License 1718 (Application 575) authorizes the direct diversion of up to 32 cfs of water from the Sacramento River between March 1 and October 31 of each year for irrigation purposes. Two authorized points of diversion for License 1718 are located near Knights Landing on the Sacramento River and the authorized place of use consists of 3,508.2 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the Banks Pumping Plant and the Jones Pumping Plant as points of diversion under License 1718. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 1718. Domestic, municipal, industrial, power generation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 1718.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the longer term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated March 26, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on March 27, 2009. No comments were received.

4.0 REQUIRED FINDINGS OF FACT

4.1 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, § 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the proposed groundwater pumping and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of 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).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.3 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The additional groundwater pumping is consistent with the approved groundwater management plan for the affected area. The DWB is preparing mitigation and monitoring plans to address the impacts of additional pumping for those DWB transfers which include groundwater substitution. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of diversion to License 1718. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires groundwater use that is part of a groundwater substitution transfer to be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

4.3 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). (Pub. Resources Code, § 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).)

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of 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:

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.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 1718 (Application 575) for the transfer of up to 3,500 acre-feet of water is approved.

All existing terms and conditions of License 1718 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period from July 1, 2009 through October 31, 2009.
2. Prior to initiating the transfer of water pursuant to this Order, the petitioner shall submit to the Deputy Director for Water Rights a copy of the mitigation and monitoring plans prepared by the 2009 Drought Water Bank to address the impacts of additional pumping. Petitioner shall implement these plans as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original points of diversion authorized under License 1718 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of additional groundwater pumping.
4. The place of use under License 1718 is temporarily expanded to include the service areas of the SWP (as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on Map 214-208-12581 on file with Application 5626).
5. The Banks Pumping Plant and the Jones Pumping Plant are temporarily added as authorized points of diversion under License 1718. The maximum additional combined rate of diversion (measured as a three-day average) at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this change is 19 cubic feet per second.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

6. Domestic, municipal, power generation, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 1718.
7. Within 60 days of the completion of the transfer, but no later than December 30, 2009, RGF shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. The daily average diversion rate for water diverted pursuant to License 1718 during the

- transfer period;
- d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
- e. The daily average pumping rate of groundwater pumped by RGF in excess of that which would have been pumped in the absence of this transfer; and
- f. Groundwater elevations within the vicinity of RGF prior to the proposed transfer.

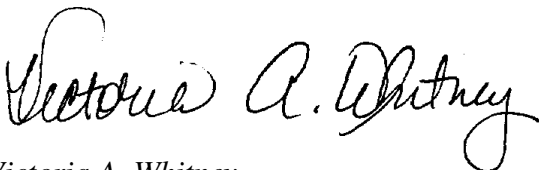
RGF shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2009, a map defining the groundwater elevations within the vicinity of RGF, until such time as these elevations correspond to pre-transfer levels.

8. 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.

9. 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.
10. 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
Deputy Director for Water Rights

Dated: **JUN 25 2009**