

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMIT 16479 (APPLICATION 14443)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 15,225 ACRE-FEET OF WATER
FROM THE DEPARTMENT OF WATER RESOURCES TO WESTLANDS WATER DISTRICT**

SOURCES: Feather River, Italian Slough, and Sacramento-San Joaquin Delta Channels

COUNTIES: Fresno and Kings

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 8, 2014, the Department of Water Resources (DWR) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a petition for temporary change under Water Code Section 1725, et seq. DWR requests to transfer up to 15,225 acre-feet (af) of water to Biggs-West Gridley Water District (Biggs) and thence to Westlands Water District (Westlands). The transfer would begin July 1, 2014 and would be completed by September 30, 2014.

1.1 Description of the Transfer

Biggs diverts water at Thermalito Afterbay on the Feather River under pre-1914 appropriative water rights and a water right settlement agreement between DWR and the Joint Board dated May 27, 1969 (Settlement Agreement). The individual districts within the Joint Board, through a 1970 Joint Operations Agreement, are entitled to divert water under the Settlement Agreement. DWR makes releases from Lake Oroville to Thermalito Afterbay for the districts consistent with the terms of the Settlement Agreement. The water available to the Joint Board under the Settlement Agreement is comprised of water available under the districts' pre-1914 water rights and water developed under DWR's Feather River water rights.

Transfer of Biggs' pre-1914 water is outside of the jurisdiction of the State Water Board, and is not evaluated in this order. DWR is conveying the pre-1914 transfer water, along with water made available to Biggs for transfer as a result of releasing stored water from Lake Oroville pursuant to DWR Permit 16479, to Westlands. DWR will make stored water available at times when the natural flow of the Feather River is not sufficient to supply the transfer water under Biggs' pre-1914 rights due to the critically dry hydrologic conditions in the Feather River watershed. Westlands is located outside the State Water Project (SWP) authorized place of use. The addition of the Westlands service area to the SWP place of use will allow DWR to deliver the transfer water made available through crop idling undertaken by growers within Biggs during the 2014 irrigation season.

2.0 BACKGROUND

Permit 16479 was issued to DWR on August 24, 1951, authorizing DWR to collect to storage 3,500,000 af of water between September 1 and July 31 and directly divert 1,360 cubic feet per second (cfs) by direct diversion between January 1 and December 31 of each year, provided the quantity appropriated from the Sacramento-San Joaquin Delta Channels shall not exceed 6,185 cfs by

direct diversion and 42,100 af by storage to be diverted and collected from January 1 to December 31 of each year. Authorized sources under Permit 16479 are the Feather River, Italian Slough, and Sacramento-San Joaquin Delta Channels. The water may be used for irrigation, domestic, municipal, industrial, recreation, salinity control, fish and wildlife enhancement, and to generate incidental power.

The transfer of 15,225 af of water will be subject to provisions of DWR's permit (set forth in the State Water Board's Water Right Decision 1641 (D-1641) and modified by Water Right Order 2008-0029 EXEC), and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

Biggs diverts water from Thermalito Afterbay under the terms of the Settlement Agreement. Biggs entitlement under the Settlement Agreement for 2014 is 160,950 af. Biggs is an agricultural district whose land is primarily devoted to the production of rice. Growers within Biggs have agreed to idle land that would have been planted in rice in the absence of the transfer thereby reducing the amount of water it will divert under the Settlement Agreement. Under the transfer conveyance agreement executed between DWR, Biggs, and Westlands, DWR will convey the transfer water through the SWP to Westlands' service area. Conveyance of the transfer water will result in a slight increase in streamflow from Thermalito Afterbay to the Banks Pumping Plant.

2.1 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within Westlands to the place of use of Permit 16479. Westlands' service area is shown on the map prepared by DWR, which was submitted with the petition.

2.2 Governor's 2014 Proclamation of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor reiterates direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), section 13247 of the Water Code is suspended. Water Code section 13247 requires state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

On January 29, 2014, DWR and Reclamation jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code section 1435 et seq., to temporarily modify requirements in their water right permits and license for the SWP and Central Valley Project (CVP) for the next 180 days in response to drought conditions. An order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, February 28, March 18, April 9, April 11, April 18, and May 2, 2014. The Order restricted exports in the Delta at the SWP and CVP pumping facilities to health and safety needs of no more than 1,500 cfs, with the exception of transfers. Any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flows, or transfers.

On May 27, 2014, the State Water Board issued curtailment notices for those diverting water in the Sacramento-San Joaquin watersheds with post-1914 water rights. However, releases of water collected to storage prior to issuance of the curtailment notice, such as in the case of this transfer, are not subject to curtailment.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 19, 2014, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, on May 19, 2014, the Petitioner noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties. No comments or objections to the transfer were filed.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Petitioner filed the petition for temporary transfer of water pursuant to Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for this project.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) 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).) The independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code section 1727 evaluation.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored

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 calculation of water made available for transfer through crop idling is based on the reduction in evapotranspiration on the idled acreage. Transfer water will accrue in Lake Oroville or be made

available at the point of transfer during the transfer window on the same pattern as the water would have been consumptively used had the idled acreage been planted to rice in 2014. DWR limits the quantity of transfer water from crop idling that it will convey through the Delta pumps to the reduction in consumptive use on the same pattern as the water would have been used had the land been planted to rice to avoid a reduction in the quantity of water available for diversion by other legal users downstream of Thermalito Afterbay. Therefore, only an amount of water that would have been consumptively used will be transferred.

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.

5.2 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).)

The petition states that the transfer/exchange will not result in a change in the timing or pattern of SWP diversions or a measureable increase in return flow. This is explained in Section 5.1.

In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. In the absence of the proposed transfer, growers in Biggs' service area would plant rice similar to the previous years' cropping patterns. The transfer water made available through fallowing is calculated using the appropriate evaporation of applied water (ETAW) value for rice.

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

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

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

The change requested by DWR will not result in unreasonable impacts to fish and wildlife or the environment. The SWP water conveyed for the transfer is water that will be released from storage at Lake Oroville and exported at Banks Pumping Plant (Banks). Banks is operated in conformance with the provisions of DWR's water rights permits governing SWP operations. In the absence of the transfer, growers within Biggs would have planted the idled fields to rice in 2014, and the quantity to be transferred would have been consumptively used within the district. None of the water would have been available to other downstream users or would have contributed to streamflow. DWR limits the quantity of transfer water from crop idling to the reduction in consumptive use on an irrigation pattern to avoid a reduction in the quantity of water available for diversion by other legal users of water downstream of Thermalito Afterbay. Conveyance of the transfer water will result in a slight increase in streamflow from Thermalito Afterbay to Banks.

The surface water foregone will be exported from the Sacramento/San Joaquin Delta at Banks. All water exported at Banks is pumped in accordance with the criteria contained in D-1641 and the BOs. DWR and the U.S. Bureau of Reclamation (Reclamation) will continue to meet the objectives specified in D-1641, as modified by Water Right Order 2008-0029 EXEC, or as modified by any subsequent orders in effect at the time of the export, as well as the requirements contained in the BOs. The quantity of transfer water to be conveyed through the Delta, including other currently planned

transfers, is well within the quantities analyzed in the environmental documents issued for the BOs.

The exchanges will not result in a measurable change in quantity or quality of return flows. There will be no increase in CVP allocation to Westlands as a result of the proposed transfer. The transfer is similar to water transfers conducted by Biggs in prior years including 2009, 2010, and 2012. No adverse impacts were identified as a result of those transfers.

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.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, 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 2010-0029.

7.0 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 transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 15,225 af of water under Permit 16479 is approved.

All existing terms and conditions of Permit 16479 remain in effect, except as temporarily amended by the following provisions:

1. a. The transfer/exchange is limited to the period commencing on July 1, 2014 and ending September 30, 2014, but shall be further limited to the land fallowing period. The fallowing period is defined as the averaged irrigation season for rice in the Biggs district for the five year period preceding the transfer.

b. The transfer period is further limited to the period allowed pursuant to any applicable BOs or ESA consultations (or informal consultations) related to transfers at State and federal Delta pumps. Permittee is responsible, under its water right, for meeting all requirements of the applicable ESA for its diversion period allowed pursuant to the BOs or consultation prior to transfer of water. Such documentation may include an electronic link to any transfer BOs or ESA consultations, informal ESA consultations, opinions, or other documents issued by the California Department of Fish and Wildlife, NMFS and/or USFWS.

2. The place of use under Permit 16479 is temporarily amended to include the service area of Westlands as shown on the map prepared by DWR, which was submitted with the petition.
3. Rediversion of water at Banks is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in and consistent with the April 8, 2014 CVP and SWP Drought Operations Plan and the State Water Board's SWP-CVP Order issued January 31, 2014 and subsequently amended.
4. Rediversion of water at Banks is subject to compliance by the operators with the objectives currently required of DWR set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641, or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Order item 3. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
5. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. In addition, Westlands shall implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River. 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.
6. The State Water Board has issued a notice curtailing direct diversion and collection to storage of water pursuant to Permit 16479. Therefore, the transfer is limited to water collected to storage prior to issuance of the curtailment notice.
7. The Petitioner is responsible for providing the Deputy Director for Water Rights a monthly report under its water right describing the conservation and transfer of water pursuant to this Order. The report shall include the following:
 - a. The daily average rate of water diverted and daily volume of water diverted at the Banks Pumping Plant pursuant to this Order;
 - b. The daily amounts of water delivered to Biggs, thence Westlands pursuant to this Order; and
 - c. Final measurement of the amount of water actually conserved through fallowing.
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 & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 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.
11. The temporary changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. The temporary changes approved in this Order shall automatically expire 180 days after the date of its issuance or unless it has been revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUN 09 2014