

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMIT 2452 (APPLICATION 3544)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 200 ACRE-FEET OF WATER
FROM MONTAGUE WATER CONSERVATION DISTRICT
TO THE CITY OF MONTAGUE**

SOURCE: Shasta River

COUNTY: Siskiyou

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 1, 2020, Montague Water Conservation District (MWCD or Petitioner) 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. MWCD proposes to transfer up to 200 acre-feet (AF) of water under water right Permit 2452 (Application 3544) from June 1 through December 31, 2020 to the City of Montague (City) to assist the City in critically dry hydrologic conditions this year.

To facilitate this transfer, MWCD requests the following changes to Permit 2452:

(1) adding a point of diversion located on the Shasta River, at North 2,503,900 feet, East 6,416,000 feet, being within NW¼ of SW¼ of Section 34, T45N, R6W, MDB&M, (2) adding the City of Montague as an additional place of use, and (3) adding municipal use to the purpose of use.

In the absence of the proposed temporary change, the 200 AF of water would remain in storage within Dwinnell Reservoir pursuant to MWCD's Permit 2452. The temporary changes approved pursuant to Water Code section 1725 would be effective until December 31, 2020.

2.0 BACKGROUND

MWCD is an irrigation district that owns and operates the Dwinnell Reservoir (also known as Lake Shastina) on the Shasta River. MWCD releases water from Dwinnell Dam to either the Cross Canal for conveyance to the Shasta River or to the Main Irrigation Canal for irrigation delivery. MWCD's water rights in the Shasta River watershed include the following:

- a. Permit 2452 (Application 3544) has a priority date of July 23, 1923. Permit 2452 provides the right to divert to storage up to 35,000 acre-feet per year (afa) from the Shasta River in Dwinnell Reservoir. The season of diversion is October 1 of each year to June 15 of the succeeding year, and the purpose of use is Irrigation.
- b. Permit 2453 (Application 3555) has a priority date of July 30, 1925. Permit 2453 provides the right to divert to storage up to 14,000 afa from Parks Creek for rediversion by storage in Dwinnell Reservoir. The season of diversion is October 1 of each year to June 15 of the succeeding year, and the purpose of use is Irrigation.
- c. Permit 2581 (Application 4909) has a priority date of February 4, 1926. Permit 2581 provides the right to directly divert 2.3 cubic feet per second (cfs) from the Little Shasta River. The season of diversion is January 1 to December 31 of each year, and the purpose of use is Domestic and Industrial.

MWCD also extracts percolating groundwater from three wells, referred to as the Flying L Wells, in the vicinity of Dwinnell Dam that discharge to a cold-water habitat near the Shasta River. The Flying L Wells typically produce up to 6.5 cfs of water with release temperatures ranging from 12.8-13.0 degrees Celsius.

Shasta River water rights have been adjudicated and are described in Shasta River Decree No. 7035 (Shasta River Decree) dated December 29, 1932. Diversions pursuant to the Shasta River Decree are managed by the Shasta Valley Watermaster District (Watermaster). MWCD entered into a Prior Right Agreement with the prior right holders when Dwinnell Reservoir was constructed to provide water from Dwinnell Reservoir in lieu of prior rights up to a cumulative total of 3,382 afa. Upon demand, MWCD releases water from Dwinnell Reservoir into the Shasta River to satisfy the Prior Right Agreement.

On December 19, 2013, MWCD entered into a Settlement Agreement with Klamath Riverkeeper and the Karuk tribe. Some of the Petitioner's interim obligations under the Settlement Agreement that are relevant to the proposed change include:

- a. Providing 2,250 AF of water each year for instream flow purposes during a dry year. This water allotment is to be released under a schedule developed by the parties to the Settlement Agreement in consultation with fisheries agencies, as described in the Settlement Agreement; and,
- b. Maintaining a minimum pool of 2,000 AF in storage in Dwinnell Reservoir on October 1 of each year. This water allotment is to be maintained in order to allow MWCD to meet the water supply needs of the City and potential instream flow releases after October 1.

MWCD must satisfy the demands of the Prior Right Agreement as a first priority under the Settlement Agreement.

Currently, the City is not an authorized place of use under MWCD's permits for water storage at Dwinnell Reservoir. MWCD filed a long-term change petition in 2015 seeking, among other changes, authorization to supply water to the City under Permit 2452 for municipal use. In 2014, MWCD also faced drought conditions and received approval of a temporary urgency change petition (2014 TUCP) to modify Permit 2452. The 2014 TUCP added the City's intake as a point of rediversion, added municipal and fish and wildlife preservation and enhancement as purposes of use, added the City's boundaries to the place of use, and added direct diversion as a method of diversion. An additional groundwater well was also constructed during this time that discharges cold water into the Cross Channel to mix with water released from Dwinnell Dam to avoid warm water temperature impacts to fisheries.

2.1 Purpose of the Transfer

This petition seeks a temporary change to transfer water only under Permit 2452 and not under MWCD's other two surface water rights. The purpose of the proposed transfer is to address the City's water supply crisis this year. Normally, the City obtains its water supply from the Little Shasta River under MWCD's water right Permit 2581 when water is available for diversion. However, MWCD typically is not able to divert water from the Little Shasta River under Permit 2581 from April to November due to its relatively low priority under the Shasta River Decree. When water is not available under Permit 2581, MWCD has historically provided water from Dwinnell Reservoir to the City through its Main Canal, when MWCD is releasing water to the Main Canal for delivery to its irrigation customers. Water deliveries to the City from Dwinnell Reservoir are timed to occur in conjunction with deliveries to irrigation customers due to the high conveyance loss rate that occurs when moving water in the Main Canal without irrigation deliveries.

The northern region of California is experiencing critically dry hydrologic conditions this year. Dwinnell Reservoir only contained 13,150 AF of water as of April 1, 2020, while the average amount usually in storage is approximately 33,000 AF during this time of

the year. Siskiyou County declared a local emergency related to drought conditions on April 7, 2020, and MWCD declared a local drought emergency on April 14, 2020. Due to the local drought this year, MWCD will not release water from Dwinnell Reservoir to the Main Canal for irrigation use. However, the City must rely on MWCD's release from Dwinnell Reservoir for municipal supply, as this is the City's only water source when water is not available under Permit 2581. Delivery of water to the City via the Main Canal requires pulse flows at a total of 2,400 AF to 3,000 AF, which is almost 10 times of the amount needed for the City's municipal supply during this drought. MWCD will potentially run out of water this year to supply the City if it is limited to delivering water via the Main Canal.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

On May 6, 2020, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's electronic notification system. In addition, on May 5, 2020, the Petitioner mailed the notice via first class mail to interested parties. On May 6, 2020, the Petitioner noticed the project via publication in the Siskiyou Daily News. The comment deadline was June 5, 2020, and no objections were received.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water 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 water or return flows.

- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.
(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*)

The State Water Board also 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 considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).

6.0 REQUIRED FINDINGS OF FACT

6.1 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 Water Code section 1725, 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 Water Code 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 is stored in Dwinnell Reservoir pursuant to the terms of Permit 2452. Due to the drought conditions of this year, MWCD has ceased delivery for irrigation on May 18, 2020 to conserve water stored in Dwinnell Reservoir and to make it available for municipal supply for the City. Therefore, in the absence of the proposed change, the 200 AF of water proposed for the transfer would remain in storage in Dwinnell Reservoir due to drought conditions constraining the ability of MWCD to deliver the water for irrigation.

In light of the above, and in accordance with Water Code section 1726, subdivision (e), water proposed for transfer pursuant to this Order would have been consumptively used or stored in the absence of the proposed temporary change.

6.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water, 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 water proposed for transfer consists of surface water previously diverted to storage in Dwinnell Reservoir, which will be preserved for delivery to the City for municipal use. The releases from storage pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream of Dwinnell Reservoir. MWCD is required to release water to meet its existing obligations to downstream right holders and other requirements below Dwinnell Reservoir; approval of the transfer does not change these obligations. This order includes a condition requiring compliance with all existing agreements and obligations.

MWCD has flow gages at both the point of release below Dwinnell Reservoir and the point of redirection on Shasta River for monitoring the delivery of transfer water to the City. MWCD proposes to monitor flows in real-time at both locations and report flow measurement data to the Division of Water Rights on a monthly basis, or as requested, while releasing water for the City under this order. MWCD also proposes to notify the Division of Water Rights prior to releasing water from Dwinnell Reservoir for the transfer, and to provide such notice three days prior to the release if feasible, or as soon as possible. Terms are included in this order to reflect these commitments.

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

6.3 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).) In general, the proposed transfer would result in an incremental and beneficial increase in instream flows between the Petitioner's point of diversion and the point of redirection location where the water is removed from the stream system and delivered to the City. MWCD provided California Department of Fish and Wildlife (CDFW) and the North Coast

Regional Water Quality Control Board (Regional Water Board) with copies of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW submitted a letter dated June 5, 2020, supporting the transfer.

Release of stored water at Dwinnell Reservoir may have the potential to introduce water with elevated temperatures into Shasta River. MWCD has consulted with the CDFW and the U.S National Marine Fisheries Service (NMFS) regarding the proposed transfer in the context of its long-term change petition that includes the use of the point of rediversion for municipal supply delivery. CDFW indicated that it would support release of water to the point of rediversion only if the water temperature did not exceed 18 degrees Celsius at the monitoring site on the Shasta River below the outlet of the cold water habitat and the water remained in the stream between Dwinnell Dam and the proposed point of rediversion. Accordingly, MWCD proposes to use water from the Flying L Wells to cool the cumulative releases from Dwinnell Reservoir when water temperatures exceed 18 degrees Celsius at the monitoring site located on the Shasta River. MWCD will monitor the water temperature at its established monitoring site on the Shasta River below the outlet of the cold-water habitat. Terms are included in this order to ensure that no temperature effects occur as a result of the transfer.

The transfer is also subject to the Biological Opinion which was issued by NMFS in 2017 under the Federal Endangered Species Act to protect endangered and threatened fish species in the Shasta River, including coho salmon, Chinook salmon, and steelhead trout, and subject to the 2013 Settlement Agreement with the Klamath Riverkeeper and the Karuk tribe.

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

7.0 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 2012-0029.

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and based on the available evidence therefore finds as follows:

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 the 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 200 AF of water under Permit 2452 is approved.

All existing terms and conditions of Permit 2452 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through December 31, 2020.
2. Municipal use is temporarily added as purpose of use.
3. The transfer amount is limited to a total of up to 200 AF of water previously stored in Dwinnell Reservoir under Permit 2452.
4. The authorized place of use under Permit 2452 is temporarily expanded to include the service area of the City of Montague.
5. The following point of diversion (City Diversion) is temporarily added to Permit 2452:

Downstream of Dwinnell Reservoir, located on the Shasta River as follows:
California Coordinate System, Zone 1, NAD 83,
North 2,503,900 feet and East 6,416,000 feet,
being within NW¼ of SW¼ of Section 34, T45N, R6W, MDB&M.

6. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other entities or regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the Petitioner.
7. No transfer of water is authorized unless petitioner complies with all existing agreements, including obligations under the Shasta River Decree, the Prior Right Agreement, and the Settlement Agreement between MWCD, Klamath Riverkeeper, and the Karuk tribe.

8. MWCD shall not release water stored in Dwinnell Reservoir for the purpose of rediversion for delivery to the City unless water temperature at the monitoring site on the Shasta River below the outlet of the cold water habitat is at or below 18 degrees Celsius.
9. MWCD shall notify the Division of Water Rights prior to releasing water from Dwinnell Reservoir for the transfer, and shall provide such notice three days prior to the release if feasible, or as soon as possible.
10. During releases of water from Dwinnell Dam for the purpose of rediversion at the City Diversion, MWCD shall record the change in storage at Dwinnell Dam, the rate, volume of water released from Dwinnell Dam and temperature of water at its monitoring site located below the outlet of the cold water habitat, and the rate and volume of water rediverted at the City Diversion. This information shall be recorded on an hourly basis and MWCD shall provide the information to the State Water Board on a monthly basis, or as requested, for the duration of the transfer.
11. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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.

12. This Order does not authorize any act that 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 Petitioner shall obtain authorization for an incidental take permit prior to construction or operation. The Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

13. The State Water Board reserves 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

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUN 10 2020