

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 3755 (APPLICATION 5754)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 2,000 ACRE-FEET OF WATER
FROM GILSIZER SLOUGH LLC
TO THE SAN LUIS AND DELTA-MENDOTA WATER AUTHORITY**

SOURCE: East Borrow Pit of Sutter Bypass

COUNTY: Sutter

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 10, 2020, Gilsizer Slough LLC (Gilsizer Ranch 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. Gilsizer Ranch proposes to transfer up to 2,000 acre-feet (AF) of water under water right License 3755 (Application 5754) from May through September 2020 to the San Luis and Delta-Mendota Water Authority (Authority).

The transfer water is proposed to be made available at the proposed additional points of diversion and point of rediversion by groundwater substitution for surface water under Gilsizer Ranch's License 3755. To facilitate this transfer, Gilsizer Ranch requested to add the following to License 3755: (1) the Central Valley Project's (CVP) CW "Bill" Jones Pumping Plant (Jones Pumping Plant) and the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) as points of diversion, (2) the San Luis Reservoir as a point of rediversion, (3) a portion of the service area of the CVP as an additional place of use, and (4) municipal, industrial, and domestic uses.

Gilsizer Ranch's transfer indicates the quantity of surface water proposed to be made available by groundwater substitution involves the use of groundwater pumped upon overlying lands in exchange for a like amount of surface water that will remain instream for diversion at the proposed points of diversion and rediversion. Absent the proposed transfer, Gilsizer Ranch states they would have diverted the total transfer amount of 2,000 AF of surface water from the East Borrow Pit of the Sutter Bypass under License 3755. The proposed transfer does not involve any construction or other physical changes to Gilsizer Ranch's facilities.

License 3755, which has a priority date of November 12, 1927, authorizes the direct diversion of up to 13.7 cubic feet per second from the East dredge cut, currently referred to as the East Borrow Pit, of the Sutter Bypass from about April 1 to about October 1 of each year for irrigation purposes. The authorized points of diversion for License 3755 are in Sutter County and located by the California Coordinate System, Zone 2, NAD 83, being within 3755. The authorized place of use consists of 687 acres within Sections 2, 11, 12 and 13, T13N, R2E, and Section 18, T13N, R3E, all within MDB&M.

2.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

On April 20, 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 April 20, 2020, the Petitioner noticed the project via publication in the Appeal-Democrat newspaper. On April 20, 2020, the Petitioner mailed the notice via first class mail to interested parties. The comment deadline was May 20, 2020. Comments were timely received from Mr. Richard Morat, the California Department of Fish and Wildlife, and the U.S. Bureau of Reclamation (Reclamation).

3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code section 1725, "a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if 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, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses." (Wat. Code, § 1725.)

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).)

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).

4.0 REQUIRED FINDINGS OF FACT

4.1 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 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.”

4.2 Annual Reports of Licensee

The water proposed for transfer consists of up to 2,000 AF (less a streamflow depletion loss) of surface water made available through increased groundwater pumping. However, from 2008 to 2018, the maximum annual amount of water reported to the State Water Board for diversion and use in the Reports of Licensee under License 3755

was 1,572 AF. An identical amount of 1,572 was reported for each year during this period except for lesser amounts in 2014, 2015, and 2016 due to drought conditions. Further, an identical amount of 262 AF of water was reported for every month of reported diversion (April through September), except for 2014, 2015, and 2016 due to drought conditions. These Reports of Licensee create two areas of uncertainty related to the proposed transfer.

First, no evidence is available to indicate that Gilsizer Ranch would expand their water use from the consistently reported value of 1,572 AF to 2,000 AF for the 2020 water year. Additionally, the irrigated acreage reported in the 2017, 2018, and 2019 Reports of Licensee was 262 acres. This provides an annual water use of 6 feet of water per irrigated acre, which is significantly higher than typical crop duties.

Second, the reporting of identical values for every month of diversion between 2008 and 2018, besides the drought years of 2014, 2015, and 2016, raises questions over whether the data are accurately reported and can be relied upon to make a determination of what water would have been consumptively used. The purpose of use under License 3755 is irrigation, and thus water use would be expected to range both with stages of crop development throughout a growing season and due to variations in climatic conditions between months within a year, and between years. For example, differing temperatures should lead to differing consumptive water use (through evapotranspiration) of crops over time.

The 2019 Report of Licensee (2019 Report) for License 3755 stated the total amount diverted and used was 1,730 AF, with monthly diversion amounts of 262 AF for the months of April, May, August, and September, and 341 AF for the months of June and July. However, 1,730 AF is inconsistent with the information in the Measurement Data Files submitted for the 2019 Report, which show multiple months of zero diversions and a total diversion amount of 7.35 AF. Therefore, the 2019 Report cannot be relied upon to demonstrate that Gilsizer Ranch would have diverted 1,730 AF in the absence of the transfer. The magnitude of the discrepancy between the information in the Measurement Data Files and the 2019 Report also creates further uncertainty in the monthly reported values, given that the Measurement Data Files are generated by measurement devices that have been certified by a licensed engineer.

Each of the issues described above results in an uncertainty that precludes an evaluation of whether the water proposed to be transferred would be consumptively used in the absence of the transfer. In summary, Gilsizer Ranch: 1) consistently reported annual water use significantly below the requested transfer amount, 2) reported diversion amounts so consistent as to be questionable in accuracy, and 3) submitted data from measuring devices that indicated a significant difference between reported values and measured values. No other information was provided by Gilsizer Ranch to demonstrate what water would have been used absent the transfer, and no transfer proposal has been submitted to the Department of Water Resources or

Reclamation with additional information pertaining to how water would have been consumptively used in the absence of the transfer. No amounts of conserved water were reported in the above-mentioned reports.

In light of the above, I cannot make the finding required by Water Code section 1726, subdivision (e) that the water proposed for transfer would have been consumptively used in the absence of the proposed temporary change.

5.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution No. 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 No. 2012-0029.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition submitted by Gilsizer Ranch under License 3755 for temporary changes in the point of diversion, place of use, and purpose of use, to authorize the transfer of up to a total of 2,000 AF of water to the San Luis and Delta-Mendota Water Authority is denied. All existing terms and conditions of License 3755 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
ERIN RAGAZZI, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUN 15 2020