

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

DIVISION OF WATER RIGHTS

WATER TRANSFER APPROVAL (TEMPORARY TRANSFER)

**TRANSFER FROM
THE DEPARTMENT OF WATER RESOURCES
UNDER PERMITS 16478 AND 16479 (APPLICATIONS 5630 AND 14443)
VIA EXCHANGE OF 5,000 ACRE-FEET OF STATE WATER PROJECT AND CENTRAL VALLEY
PROJECT WATER INVOLVING ALAMEDA COUNTY WATER DISTRICT, THE ALAMEDA
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 AND
CONTRA COSTA WATER DISTRICT**

SOURCES OF EXCHANGE WATER: Feather River, Italian Slough, Sacramento-San Joaquin Delta Channels

COUNTY FROM WHICH EXCHANGE WATER OBTAINED FROM STORAGE: Kern

COUNTY FROM WHICH EXCHANGE WATER MADE AVAILABLE: Contra Costa

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 TRANSFER PETITION

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has processed a petition for temporary transfer of water. On November 26, 2014, the Department of Water Resources (DWR) requested the transfer by filing a petition for temporary change under Water Code Section 1725, et seq. The transfer would facilitate the exchange of up to 5,000 acre-feet (af) of DWR State Water Project (SWP) water and U. S. Bureau of Reclamation Central Valley Project (CVP) water involving Alameda County Water District (ACWD), Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7) and Contra Costa Water District (CCWD).

1.1 Description and Reason for the Exchange

To facilitate the transfer, the following changes to DWR's permits 16478 and 16479 (Applications 5630 and 14443) are requested: Temporary addition of Contra Costa Water District's (CCWD's) Rock Slough, Old River and Middle River Intakes as points of diversion/re-diversion.

The transfer has been identified as an exchange. This transfer involves an exchange between the SWP and CVP. Up to 5,000 af of SWP water previously banked by ACWD and Zone 7 in the Semitropic Water Storage District and Cawelo Water District groundwater banking programs will be pumped into the California Aqueduct for use within the SWP place of use downstream of the pump-in location during fall and winter of 2014/15. An equivalent amount of SWP water will be diverted by CCWD. This portion of the exchange necessitates adding CCWD's points of diversion to the DWR permits. SWP water will be used by CCWD in its service area.

To complete the exchange, CVP water allocated to CCWD will be provided to ACWD and Zone 7 at the SWP Delta Pumping Facility Banks Pumping Plant (Banks) Reclamation intends to file a separate petition requesting this change during the summer of 2015 to complete the exchange.

ACWD and Zone 7, located in Alameda County, have long-term SWP water supply contracts with DWR. Both agencies also participate in groundwater banking programs within Kern County to store SWP water during years when sufficient supply is available for recovery in dry years. ACWD and Zone 7 participate in the Semitropic Water Storage District groundwater banking program. Recovery of the banked SWP water is typically accomplished through direct pumping or an exchange with Kern County Water Agency (KCWA). Both recovery options have limitations during peak demand periods in critically dry years such as 2014 when allocations are historically low and SWP pumping from the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) is severely limited.

In the case of direct recovery, water is pumped from the groundwater banking facility and discharged into the California Aqueduct. An equivalent amount of SWP water is delivered to ACWD and Zone 7 through the South Bay Aqueduct (SBA). The current capacity of the direct recovery facilities is not sufficient to meet peak demands of all banking partners in a year with such severely limited SWP allocations. In the case of recovery through an exchange with KCWA allocated SWP water, SWP water stored in the banking program is assigned to KCWA and an equivalent amount of allocated KCWA SWP water is delivered to ACWD and Zone 7 through the SBA. In 2014, KCWA had insufficient allocated SWP supplies to meet the demand for recovery of banked water. Zone 7 also participates in a groundwater banking program with Cawelo Water District which has similar limitations on the retrieval of stored water.

CCWD is a CVP contractor located in central and eastern Contra Costa County. CCWD relies on diversions from the Delta for its water supply. CCWD obtains water under a long-term supply contract with Reclamation for CVP water and diverts water under its own water rights. In absence of this exchange, CCWD would need to release some of its previously stored CVP contract water from Los Vaqueros Reservoir in order to meet the water supply demands within its service area during this winter.

2.0 BACKGROUND

Information on DWR's water rights involved in this transfer is available online through the Division's eWRIMS electronic database. The transfer has been reviewed by Division staff to ensure that the transfer quantities and season are within the scope of the existing rights and that the source of transfer water is an authorized source under the water rights.

2.1 Place of Use and Points of Diversion

The present place of use of water diverted under DWR's permits is the SWP place of use shown on maps on file with the State Water Board. The CCWD service area is entirely within the SWP place of use. Thus, no change in place of use is necessary.

DWR's petition requests the temporary addition of CCWD's Rock Slough Intake, Old River Intake, and Middle River Intake at Victoria Canal as points of diversion/re-diversion to DWR's permits. The proposed new points of diversion/rediversion are shown on maps 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 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 and San Joaquin River watersheds with post-1914 water rights.

On November 19, 2014, the State Water Board temporarily lifted the water right curtailments for post-1953 permits and licenses in the Sacramento and San Joaquin River watersheds. Curtailments may be re-instated at any time and scope of any future curtailment may vary. This Order does not authorize diversion of water if a water right is curtailed. Previously stored water may still be exchanged.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On December 8, 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 electronic subscription mailing list. In addition, on December 8, 2014, DWR noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties. Comments were timely received from one party, the Friant Water Authority.

3.1 Comments of Friant Water Authority (Friant)

The three main comments of Friant are: (1) the proposed change is contrary to law since DWR is a junior water user and is not entitled to water supplies when the senior water user has not been satisfied, (2) the proposed change does not best serve the public interest because allowing DWR to take this water out of priority while 15 communities on the east side of the San Joaquin Valley remain without adequate supplies is not in the public interest, and (3) the proposed change injures the prior rights of the Friant Division contractors to the extent it allows DWR to usurp the senior priority of the Friant Division.

Friant has indicated it would dismiss its comments if the following conditions are imposed:

1) recognizing the United States' vested priority obligation to provide substitute water to the Exchange Contractors before any CVP water supply is developed, 2) confirming that the United States has no

CVP water to share with DWR under the Coordinated Operating Agreement until it has satisfied its vested priority obligation to provide substitute water supply to the Exchange Contractors, and 3) prohibiting DWR from claiming any water under the Coordinated Operating Agreement when the United States has failed to satisfy its vested priority obligation to the Exchange Contractors.

State Water Board's Response:

The State Water Board has considered the comments and has reviewed the information in the record in evaluating the proposed transfer.

The proposed exchange is a one-for-one exchange between SWP and CVP water. The submitted petition involves pumping of up to 5,000 af of previously stored SWP water from groundwater banking facilities to the California Aqueduct for use within the SWP place of use downstream of the pump-in location during the fall and winter of 2014/2015. An equivalent amount of SWP water will be diverted by CCWD at its Old and Middle River intakes and delivered to the CCWD service area. A separate petition will need to be filed for the proposed exchange of CVP water from CCWD to ACWD and Zone 7. DWR states that Reclamation intends to file a separate petition requesting the changes necessary to allow the diversion of CVP water at Banks during the summer of 2015 required to complete the exchange. Granting approval to the portion of the exchange authorized in this Order does not guarantee that the Reclamation portion of the exchange will be pursued or that the State Water Board will authorize such an exchange. The State Water Board will evaluate the merits of such a request if and when it is submitted.

The gravamen of Friant's objection does not appear to be with the exchange itself, which will not change how much water will be pumped from the Delta by the CVP or the SWP. The exchange will only change where the water is pumped, and will not cause a net increase in pumping from the Delta. Friant argues that the water that DWR seeks to move through the exchange does not belong to it. Friant hasn't submitted any evidence, however, to support this argument. The water that DWR proposes to pump from groundwater banking facilities is SWP water that was previously stored by ACWD and Zone 7. Friant hasn't submitted any evidence that when this water was diverted to storage, DWR's diversions were inconsistent with its priority of right and caused injury to Reclamation. Similarly, Friant has not submitted any evidence that DWR's prospective diversions, with or without the exchange, will be inconsistent with its priority of right or cause injury to Reclamation. The exchange does not authorize the parties to divert water in a manner inconsistent with their respective priorities of right. The exchange must comply with D-1641, relevant biological opinions (BOs), and any other pertinent regulatory restrictions. Therefore, Friant's comments are not pertinent to the exchange and lack merit.

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.

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 an exchange 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 Exchange Only Involves Water That Would Have Been Consumptively Used or Stored

Before approving a temporary change due to an exchange of water, the State Water Board must find that the exchange 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.”

In the absence of the exchange, the previously stored SWP water of ACWD and Zone 7 would remain in the Semitropic Water Storage District and Cawelo Water District groundwater bank. ACWD and Zone 7’s typical recovery would be accomplished through direct pumping or an exchange with Kern County Water Agency. In the absence of the exchange, CCWD would divert its allocated CVP water supplies at its Rock Slough Intake, Old River Intake, and Middle River Intake at Victoria Canal or obtain stored water from its Los Vaqueros Reservoir.

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

5.2 No Injury to Other Legal Users of the Water

Before approving a temporary change to allow an exchange of water, the State Water Board must find that the exchange 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 proposed exchange is a one-for-one exchange and will not result in any net change in diversions from the Delta. The exchange authorized under this Order would result in a slight decrease in the amount pumped at Banks and a slight increase in the amount pumped at the CCWD’s Old and Middle River intakes. There will be no net increase in pumping from the Delta and no increase in allocations of SWP or CVP water to ACWD, Zone 7 or CCWD.

This exchange does not seek to modify existing requirements on DWR and Reclamation to operate in conformance with D-1641 and all other applicable regulatory restrictions governing SWP and CVP operations.

In the absence of the exchange, the water would have remained in the Semitropic Water Storage District and Cawelo Water District groundwater bank. Without the exchange, CCWD would use its CVP water within CCWD’s service area which would be unavailable to downstream users.

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 the water.

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

Before approving a temporary change due to an exchange 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).)

There will be no net change in diversions from the Delta due to this exchange. The exchange will not result in a measurable change in quantity or quality of return flows.

The exchange authorized in this Order is subject to all existing terms and conditions of DWR's water rights, regulatory restrictions regarding CCWD's points of diversion, and any other applicable regulation restrictions in effect at the time the water is diverted.

In light of the above, I find in accordance with Water Code Section 1727, subdivision (b)(2) that the proposed exchange 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 2012-0029.

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 exchange 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 regarding Department of Water Resources Permits 16478 and 16479 (Applications 5630 and 14443) is approved, with the conditions listed below. The water right holder must comply with all existing terms and conditions of the affected water right(s), and must also comply with the exchange conditions listed below.

1. The exchange of water is limited to the period commencing on the date of this Order and continuing for one year.
2. The exchange is limited to up to 5,000 af.
3. The exchange place of use is the SWP service area place of use shown on the map(s) on file with the State Water Board under DWR Application 5626.
4. Exchange water may be diverted/re-diverted at the following location(s):

Rock Slough Intake: SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 33, T2N, R3E, MDB&M; Old River Intake: NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 31, T1N, R4E, MDB&M; and Middle River Intake at Victoria Canal: NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 9, T1S, R4E, MDB&M.

5. This Order does not authorize the entirety of the exchange described in the petition. If Reclamation wishes to pursue the remaining portion of the exchange on the behalf of CCWD, ACWD and Zone 7, Reclamation will need to file a separate petition to request the changes necessary to allow the diversion of CVP water at Banks in summer 2015. Any future petition will be evaluated on its own merits.
6. Diversions and re-diversions of DWR under this exchange are subject to compliance with D-1641, or any future State Water Board Order or decision implementing Bay-Delta water quality objectives. Diversion and re-diversion of water is also subject to compliance by DWR with all applicable BOs and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations. All diversions under this exchange at the CCWD facilities are subject to conformance with the biological opinions issued to CCWD for operation of those facilities as well as any other regulatory restrictions affecting diversion of water at the CCWD facilities.

Petitioner shall provide documentation of the diversion period allowed pursuant to the BO's or Endangered Species Act (ESA) consultations prior to exchange 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 California Department of Fish and Wildlife, National Marine Fisheries Service or U.S. Fish and Wildlife Service.

7. This exchange may be subject to instream conveyance losses, which reduce the total authorized transfer quantity identified herein. DWR and/or Reclamation will determine the conveyance loss.
8. If at any time prior to, or during the period of the exchange, the State Water Board issues a notice curtailing the use of water pursuant to the water rights involved in the exchange, the exchange shall only proceed if relying upon previously stored water.
9. Irrespective of whether the water rights involved in the exchange allow water to be accounted for on a 30-day or other averaged basis, all exchange volumes and exchange credit shall be accounted for on a mean daily basis.
10. DWR is responsible for providing the Deputy Director for Water Rights a monthly report describing the status of the exchange of water pursuant to this Order. The report shall include the total amount of water removed from the groundwater banks to date and for given month reported on; daily average rate of water released from storage or direct diversion foregone at original point of diversion and the daily amounts of water delivered to CCWD pursuant to this Order. If any of the above required information is in the possession of DWR and has not been provided in time for inclusion in a monthly report, the information shall be provided to the Deputy Director for Water Rights within 30 days of receipt.
11. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this exchange 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.

12. 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 ESA (Fish and Game Code Sections 2050 to 2097) or the federal ESA (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 prior to commencing transfer of water.

Permittee shall be responsible for meeting all requirements of the applicable ESA for the temporary exchange authorized under this Order.

13. I reserve authority to supervise the 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:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JAN 20 2015