

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2000 - 16 DWR

IN THE MATTER OF PERMITS 1267 AND 2492 (APPLICATIONS 1651 AND 2778)
TEMPORARY CHANGE INVOLVING THE TRANSFER OF
UP TO 10,000 ACRE-FEET OF WATER
FOR USE BY THE ENVIRONMENTAL WATER ACCOUNT, UNDER
OROVILLE-WYANDOTTE IRRIGATION DISTRICT'S PERMITS 1267 AND 2492

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On September 27, 2000,

Oroville-Wyandotte Irrigation District
c/o Steven C. Onken
P.O. Box 581
Oroville, CA 95965-0581

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725 et seq. If approved, the Oroville-Wyandotte Irrigation District (OWID) would transfer up to 10,000 acre-feet (af) of water to the Environmental Water Account (EWA). The water would be stored in Oroville Reservoir for use within the Central Valley Project (CVP) and the State Water Project (SWP) service areas and wildlife refuges. If approved, the temporary change would be effective for a period not to exceed one year.

1.1 Description of the Transfer OWID proposes to transfer up to 10,000 af of water under Permits 1267 and 2492 (Applications 1651 and 2778) to EWA. To facilitate the transfer, OWID proposes to release an additional 10,000 af of water currently stored in the Little Grass Valley Reservoir and Sly Creek Reservoir and allow it to spill from the Ponderosa Reservoir directly into Oroville Reservoir during December of 2000. The water would remain in storage in Oroville Reservoir for use by EWA within the CVP and SWP service areas and wildlife refuges. Water would be delivered to these service areas via releases from Oroville Reservoir to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta and rediversion at the Clifton Court Forebay.

2.0 BACKGROUND

2.1 Substance of OWID's Permits OWID holds Permits 1267 and 2492 (Applications 1651 and 2778). Permit 1267 authorizes the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River between October 1 and July 1. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) between April 1 and July 1. The point of diversion to storage for Permit 1267 is located at the Little Grass Valley Dam. Points of rediversion include the South Fork Diversion Dam, Sly Creek Dam, Lost Creek Dam, Forbestown Dam, and Ponderosa Dam. The water is

used for irrigation and domestic purposes within the authorized place of use as shown on map dated May 8, 1922 on file with the SWRCB, and for recreational purposes within the Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir.

Permit 2492 authorizes the diversion to storage of up to 25,000 af of water per annum from Lost Creek between October 1 and June 1. Permit 2492 also authorizes the direct diversion from Lost Creek of up to 50 cfs between April 1 and June 1. The point of diversion for Permit 2492 is located at the Sly Creek Dam and the point of rediversion is located at the Lost Creek Dam. The water is used for irrigation and domestic purposes within the authorized place of use as shown on map dated May 8, 1922 on file with the SWRCB, and for recreational purposes within the Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir

2.2 Place of Use and Purposes of Use under the Proposed Transfer The service areas of the SWP (as shown on map attached to the petition) and CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of Permits 1267 and 2492. Municipal, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under Permits 1267 and 2492.

2.3 Points of Rediversion under the Proposed Transfer The proposed transfer would temporarily add the Oroville Dam and the Clifton Court Forebay as points of rediversion for Permits 1267 and 2492.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer was stored under provisions of Permits 1267 and 2492. In the absence of this transfer, the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future marketing to other buyers or use by OWID.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed temporary change of water rights involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change. However, approval of the petition will include conditions to ensure that no legal user of water is injured during future refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this transfer.

4.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The proposed temporary change in place of use, purpose of use, and point of rediversion involves water that was previously stored. However, the approval of the petition will include conditions to ensure that no unreasonable effects on fish, wildlife or other instream beneficial uses are caused

by future refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this transfer.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

The SWRCB received timely comments on the proposed change in water rights from the Central Delta Water Agency (CDWA) and The Environmental Action and Resource Center (EARC).

1. CDWA asserts that this proposed temporary transfer of water rights under the subject permits violate Water Code section 1392. Section 1392 prohibits the assignment of value (other than the permit fees paid to the State) of any permit for the purposes of the sale of any right granted, issued, or acquired. Therefore, the Division interprets CDWA's comments as asserting that Section 1392 prohibits the transfer of permitted water rights so conditioned.

SWRCB Response: Water Code sections 109(a) & (b), 475, and 480 indicate the State's policy as encouraging voluntary transfers of water between water users. These sections also require appropriate State Agencies (including, but not limited to, the State Water Resources Control Board and the Department of Water Resources) to assist willing parties in performing voluntary transfers of water. Therefore, considering the intent of the State Legislature (as delineated in the Water Code) to allow (and encourage) the voluntary transfer of water, the SWRCB does not interpret Water Code section 1392 (which is included in every permit issued under Division 2, Part 2, Chapter 6 of the Water Code) as prohibiting the voluntary transfer of water.

2. EARC asserts that Lake Oroville is contaminated with "recognizable quantities" of MTBE (methyl-tert-butyl-ether). Since this proposed transfer of water rights includes the storage of the subject water in Lake Oroville, EARC asserts that the transfer water will be contaminated with MTBE. EARC recommends that an alternate water storage facility to Lake Oroville be used for this transfer. EARC also recommends that thorough testing be performed on water in Lake Oroville prior to allowing any further water storage therein.

SWRCB Response: According to Mr. Steve Onken, Power Division Manager of OWID, the delivery of water stored in Little Grass Valley Reservoir and Sly Creek Reservoir to the majority of OWID's place of use would require said water be transported through Lake Oroville. Since the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future marketing to other buyers or use by OWID absent the proposed transfer, the physical action of storing water in Lake Oroville under this transfer of water rights will not have a significant impact on the water quality of the subject water.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On April 29, 1999, the SWRCB adopted Resolution 99-031, continuing the delegation of authority to approve petitions for temporary changes to the Chief of the Division of Water Rights, provided the necessary statutory findings can be made.

7.0 CONCLUSIONS

The SWRCB 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.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the places of use, purpose of use, and points of rediversion under Oroville-Wyandotte Irrigation District's Permitted Applications 1651 and 2778 for the transfer of up to 10,000 af of water is approved.

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

1. The transfer/exchange is limited to the period commencing on the date of this Order and continues for one year.
2. The place of use of OWID's Permitted Applications 1651 and 2778 is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the SWP (as shown on map attached to the petition) and CVP (as shown on map 214-208-12581 on file with Application 5626).

3. The Oroville Dam and the Clifton Court Forebay are temporarily added as points of rediversion to OWID's Permitted Applications 1651 and 2778. Water diverted at the Clifton Court Forebay in accordance with this order shall comply with the terms and conditions set forth in Tables 1, 2, and 3 of Water Right Decision 1641.
4. Municipal, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under OWID's Permitted Applications 1651 and 2778.
5. The refill agreement between OWID and DWR (dated December 6, 2000) shall govern the conditions under which refill occurs for the transferred storage allowed in this order, except that Projects Owed Water (POW), as defined in the agreement, is not allowed to accrue whenever Water Right Terms 91 (as modified below) is in effect. OWID shall be responsible for knowing when this term is in effect.

Water Right Term 91:

No refill of storage resulting from this change order is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

- a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water

quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

- b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.
6. Within 60 days of the completion of the transfer/exchange, but no later than March 1, 2002, the permittee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order and refill of storage resulting from this Order.

The report shall include the following information:

1. The timing and rate of transferred water through the Delta;
2. General locations where the transferred water was used;
3. The monthly amounts of water each location received;
4. The daily release rates of the transferred water from Little Grass Valley Reservoir, Sly Creek Reservoir, and Ponderosa Reservoir; and
5. The daily values of the 2000 Transfer Water Balance, as defined in the refill agreement between OWID and DWR dated December 6, 2000.

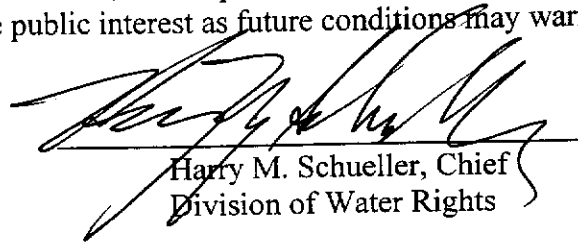
Should the amount of the 2000 Transfer Water Balance exceed zero at the time of this report, the permittee shall submit subsequent annual reports until the 2000 Water Transfer Balance reaches zero. These reports shall contain the daily values of the 2000 Transfer Water Balance.

7. 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 SWRCB 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 SWRCB 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.

8. 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.

9. 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.



Harry M. Schueller, Chief
Division of Water Rights

Dated:

12/8/00