

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WR 2001 - 12 - DWR

IN THE MATTER OF LICENSE 3066 (APPLICATION 763)
TEMPORARY CHANGE IN PLACE OF USE AND
POINT OF DIVERSION INVOLVING THE TRANSFER OF WATER
UP TO 5,475 ACRE-FEET OF WATER
UNDER RECLAMATION DISTRICT 108'S
WATER RIGHT LICENSE 3066 (APPLICATION 763)

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

1.0 SUBSTANCE OF PETITION

On April 10, 2001,

Reclamation District 108
c/o Luther Hintz, Operations Manager
975 Wilson Bend Road
Grimes, CA 95950

filed with the State Water Resources Control Board (SWRCB), Division of Water Rights (Division), a Petition for Temporary Change involving the transfer of 5,475 acre-feet of water under Water Code section 1725 et seq. The petition asks that 5,475 acre-feet of water be transferred to users within the Contra Costa Water District (CCWD), North Bay Aqueduct (NBA), State Water Project (SWP) and Central Valley Project (CVP). The temporary change would continue for a period beginning from the date of this order and continuing through October 31, 2001 (last day of diversion season under License 3066).

A portion of water diverted under License 3066 (Application 763) is currently being evapotranspired (ET) by terrestrial weed species within the boundaries of Reclamation District 108 (RD108). In order to conserve water and thus operate in a more efficient manner, RD108 is actively preventing weed growth along their supply canals through physical (discing and chaining) and chemical (herbicides and sterilants) operations. The result of such operations is water conservation of its appropriated rights. Pursuant to Water Code sections 1725 and 1011, RD108 is entitled to transfer appropriated water that would have been consumed in the absence of this water conservation effort.

2.0 BACKGROUND

2.1 SUBSTANCE OF THE RD108 LICENSE

License 3066 was issued to RD108 on February 24, 1950. The license authorizes RD108 to divert up to 500 cubic feet per second (cfs) from February 1 to October 31 of each year for irrigation purposes.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer is currently diverted under License 3066. This license allows the direct diversion of 500 cfs for the period from February 1 to October 31 for irrigation. In the absence of the proposed transfer, the water would remain available for direct diversion for use by RD108.

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 (CEQA - 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(a)(2).

To the extent that the water conservation efforts of weed control reduce consumptive use, river flows would increase to the benefit of fishery resources. Terrestrial wildlife could be affected by the weed control efforts as could water quality in the adjacent canals. However, the petitioner claims the weed control program has been in place on a rotating basis for years and no additional efforts will be taken during the year of the transfer. Also, all existing regulations will be followed with regard to herbicide use. Therefore, this transfer will not cause any additional impacts to fish and wildlife. Additional pumping in the Delta will result from this transfer. Delta pumping at the proposed points of diversion is regulated under Water Right Decision 1641 and the biological opinions issued by the federal fishery agencies under the Endangered Species Act. The transfer will be conditioned upon compliance with these existing regulations.

5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

The SWRCB received comments from the Department of Water Resources (DWR), United States Bureau of Reclamation (USBR), the Department of Fish and Game (DFG) and the California Sportfishing Protection Alliance (CSPA).

- **DWR expressed concern about:**

- (A) the delineation of acreage subject to weed abatement by different weed species,
- (B) percent coverage of weeds along the acreage subject to abatement,
- (C) accounting for precipitation events during the time period where ET savings are claimed,
- (D) whether manual or chemical methods of weed control actually reduce consumption of water,
- (E) the differentiation between a standard weed abatement program undertaken by all agricultural users and the proposed abatement program, and
- (F) the presence of a monitoring program to ensure the water is conserved during the transfer period.

- **USBR expressed concern about:**

- (A) injury to legal users of water,
- (B) a contractual agreement between USBR and Natomas,
- (C) the inclusion of carriage water losses across the Delta if CVP facilities are used and
- (D) the removal of vegetation that was planted to stabilize the banks and prevent erosion resulting from Reclamation's Water Conservation Program.

- **USBR and DWR expressed a common concern over:**

the use of a 3 acre-foot/acre ET rate,

- **DFG and CSPA expressed a common concern about:**

Environmental impacts of removing vegetation within RD108 and the identification of a destination so that site specific environmental impacts can be addressed.

5.1 SWRCB RESPONSE TO DEPARTMENT OF WATER RESOURCES COMMENTS

The SWRCB response to the comments presented above are as follows:

- (i) **Acreage Subject to Weed Abatement**

RD108 has provided the Board with a map depicting highlighted canals which are subject to the proposed abatement action. A sample diagram with mathematically correct calculations showing the levee tops and sides was also provided which RD108 used to calculate the net acreage subject to abatement.

(ii) Percent Coverage Of Weeds Along The Proposed Acreage

During an unannounced field visit last year, the Division witnessed first-hand the extent of coverage on unabated acreage. Division staff estimated a 98-100% coverage of weeds in the absence of any abatement action. Based on our first-hand evidence, SWRCB staff has no reason to doubt that in the absence of a weed abatement program, weeds would occupy close to 100% coverage.

(iii) Precipitation Events

DWR expressed concern over weeds absorbing water from precipitation events during the transfer period. Under the proposed transfer, RD108 is required to complete the transfer by the end of its direct diversion season which ends on October 31 under License 3066. Since precipitation events are very rare during the transfer period, the reduction in conserved water would be minimal.

(iv) Water Consumption after Weed Abatement Procedures are Implemented

DWR noted that some methods of abatement may not reduce consumption of water. While it is true that weeds do grow back after disking and manual operations, it must be noted that the disking and manual operations are performed with regular frequency during the transfer period and thus new growth is prevented because of the frequency of these operations.

(v) Differentiation between Standard Weed Abatement and Supplemental Weed Abatement

As the Division understands, standard weed abatement would apply only to the acreage where crops are growing. Supplemental weed abatement, which is abatement along non-agricultural acreage, is the type proposed for this transfer. In the absence of this supplemental abatement, weeds would grow along the non-agricultural acreage near the supply and drainage canals and thus absorb water.

(vi) Presence of a Monitoring Program

DWR proposed that a monthly monitoring program be implemented to ensure compliance with the terms of any proposed transfer. Since the Division does not have the resources to implement a monthly compliance program for every transfer authorized, the Division may make unannounced field visits to ensure compliance.

5.2 SWRCB RESPONSE TO USBR COMMENTS

The SWRCB response to USBR's comments are as follows:

(i) Injury to Legal Users of Water

USBR asserts that water would have to be released from CVP reservoirs to support the transfer if weed abatement activities do not conserve water. This would make less water available to CVP users.

Weeds consume water in order to grow. If RD108 implements its weed abatement activities and weeds are prevented from proliferating, water is conserved. If CVP users are short of supply water, that is a CVP issue and not related to the savings that RD108 has generated from its abatement activities.

(ii) Private Contractual Issues

USBR possesses a contract with RD108 which restricts how much water can be diverted dependent on the CVP water supply. Since this is a private contractual issue between RD108 and USBR, the contract has no bearing on whether the Division approves or denies the proposed transfer petition. As a result, this objection is not accepted.

(iii) The Inclusion of a Carriage Water Loss If CVP Facilities Are Used

If CVP facilities are used to transport water across the Delta then the facility operator will determine any carriage water losses and fees and not the Division. A carriage water loss and fee is not a valid objection to the proposed transfer and is not accepted.

(iv) Removal of Vegetation Earmarked for Bank Stabilization

USBR indicates that RD108 has received grant funding to stabilize selected banks by planting vegetation and thus preventing erosion. According to a memorandum submitted by Reclamation District 108's Lewis Blair, the native grass planting program is a special project and is not, or ever will be, part of a weed abatement activity.

5.3 SWRCB RESPONSE TO COMMON COMMENTS

The SWRCB response to the common comments are as follows:

(i) Use Of 3 Acre-Foot/Acre Evapotranspiration Rate

While it is obvious that different weed species will absorb different amounts of water during their lifespan, it is worth noting that some species probably absorb more than 3 acre-foot/acre of water. Thus, the use of a 3 acre-foot/acre evapotranspiration rate is a

conservative average. Statements provided last year by Dr. Lars Anderson , a weed specialist from UC Davis, indicate that the use of a 3 acre-foot/acre ET value is a conservative estimate for terrestrial weed species.

(ii) **Environmental Impacts To Riparian Habitat And Degradation Of Water Quality**

In the absence of the transfer, RD108 will continue its weed abatement operations to prevent weed migration into the neighboring farmland. This abatement has occurred in the past and will be continued in the future. Whether the transfer is approved or not, concerns about the loss of riparian habitat due to weed abatement should be evaluated at the time the weed abatement program is developed.

With respect to water quality, any increased flows as a result of the transfer will not degrade water quality since additional volume serves to dilute any contaminants present in the stream. Water quality could be jeopardized if leakage of chemicals (as a result of herbicide and sterilant usage) into the supply and drainage canals is not prevented. Terms have been included in the order which require the petitioner to adhere to all instructions on chemical usage.

Lastly, DFG and CSPA noted that the transfer may have adverse effects on the Giant Garter Snake and Swainson's Hawk. Since both of these species are endangered or threatened, RD108 shall consult with DFG and CSPA to resolve any potentially adverse effects.

6.0 TRANSFER ALLOCATION

The petitioner requested that an evapotranspiration rate of 3 acre-feet/acre be applied to 1825 abated acres for a total amount of transferable water equaling 5,475 acre-feet. Since the transfer is only valid from the order issuance date forward, the SWRCB has prorated the amount requested.

The amount authorized for transfer under the submitted petition was calculated to be 3,642 acre-feet. This amount was determined by adding up the conserved water amounts specified by the petitioner in Attachment 1, Page 7 of the submitted petition for the time period beginning June 15, 2001 and ending October 2001 . This calculation was obtained using an irrigation season evapotranspiration rate of 3 acre-feet/acre and the entire 1825 abated acres.

7.0 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary change in the point of diversion and place of use under Reclamation District 108's License 3066 of up to 3,642 acre-feet of water is approved.

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

1. Reclamation District 108's petition to transfer water under License 3066 (Application 763) is approved for an amount not to exceed 3,642 acre-feet. The transfer shall be completed within the time frame and diversion rates specified in License 3066.
2. The transfer shall be carried out between the issuance date of this order and October 31, 2001.

The rate of diversion shall be consistent with the rate at which Reclamation District 108's savings due to weed control accrue. The rate of diversion for water transferred under this order, when taken together with any other simultaneous direct diversions under License 3066, shall not exceed a direct diversion rate of 500 cubic feet per second. With the written consent of DWR and the USBR, RD108 may transfer the savings at a time and rate that deviate from the time when and the rate at which the savings accrue, provided that the transfer is completed within one year of the date of this order.

3. For the purposes of this transfer, the place of use shall be temporarily changed as follows:

The authorized place of use is temporarily expanded to include the Contra Costa Water District service area as referenced on maps on file with the SWRCB from Applications 5626, 5628, 9363, 9364, 9366, 9367, 13370, 15374, 15375, 16767, 17374, 17376, 18721 and 21637. In addition, the authorized place of use is also temporarily expanded to include the State Water Project place of use associated with the North Bay Aqueduct service area as shown on maps on file with the SWRCB from Applications 17514A and 17515A.

4. For the purposes of this transfer, License 3066 is temporarily amended to include the following additional points of diversion:

A point of diversion on the North Bay Aqueduct, located at N216,400 E2,064,900 California Coordinate System of 1927, Zone 2; being within the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of projected section 20, T5N, R2E, MDB&M; and

Points of Diversion within the Contra Costa Water District defined as:

- (A) Rock Slough – Within the SE¼ of NE¼ of projected section 33, T1N, R3E, MDB&M; and,
- (B) Old River – Within NW¼ of SW¼ of projected section 23, T1N, R3E, MDB&M

A point of diversion corresponding to the Harvey O. Banks Pumping Plant within the NW¼ of SE¼ of Projected Section 20, T1S, R3E, MDB&M.

A point of diversion corresponding to CVP Pumping Plant within the SW¼ of SW¼ of Projected Section 31, T1S, R4E, MDB&M.

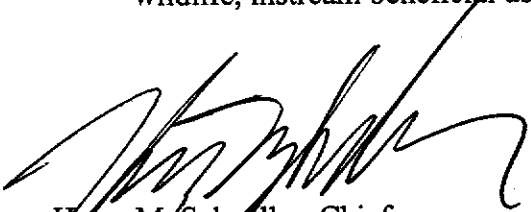
- 5. The right to transfer water in accordance with this order is subject to Reclamation District 108's continued implementation of its weed control program, as that program is described in the temporary change petition. Compliance with the conditions set forth in this order will be determined from information provided by the petitioner and unannounced field investigations by Division staff.
- 6. Within 60 days of the completion of the transfer/exchange, but no later than January 1, 2002, the licensee shall provide the Chief of the Division of Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should include the following information:

- 1. General locations where the transferred water was used;
 - 2. The monthly amounts of water each location received; and
 - 3. The average application rate of water in the locations.
- 7. Weed control efforts related to this transfer shall be done in a manner consistent with the label directions and guidance from the Department of Pesticide Regulation for any herbicide use and best management practices to reduce chemical and sediment runoff into adjacent waterways as may be established by the Regional Water Quality Control Board.
 - 8. Licensee shall comply with all existing operation standards at the point of diversion including those contained in Water Right Decision 1641, other applicable water right permits, Licenses or Orders, and applicable conditions set forth in biological opinions established under the state or federal Endangered Species Acts.
 - 9. 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.

10. 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 Licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
11. RD108 shall notify DFG and CSPA of any potential adverse effects of the habitat of the Giant Garter Snake and Swainson's Hawk before abatement activities are undertaken. If an abatement activity has the potential to harm the habitat of the above named species, RD108 shall notify DFG and CSPA and obtain approval prior to any abatement activity.
12. 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: