

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

WR ORDER 2005-0020-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 27,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

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

1.0 SUBSTANCE OF PETITION

On May 25, 2005,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. This temporary change would facilitate the sale of up to 27,000 acre-feet (af) of water from Tulare and Lower Tule River Irrigation Districts (TLTR) to WWD. Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer TLTR has agreed to sell 27,000 af of its Central Valley Project (CVP) water to WWD, however, WWD does not possess the conveyance capability to receive Friant-Kern CVP water. Kern County Water Agency (KCWA), Arvin-Edison Water Storage District (AEWSD), and Kern-Tulare and Rag Gulch Water Districts (KTRG) have an existing exchange agreement in place and have agreed to act as intermediaries to facilitate this sale.

The existing exchange agreement involves a previous sale in which KTRG purchased 27,000 af of Kern River water and entered into an exchange agreement with KCWA and AEWSD to facilitate the delivery of this water (KTRG does not possess the conveyance capability to receive water from either the Kern River or the State Water Project (SWP)). Under this existing exchange agreement, KTRG allowed KCWA to take delivery of the 27,000 af of Kern River water it purchased. KCWA agreed to deliver 27,000 af of its SWP allocation to AEWSD, and AEWSD agreed to allow 27,000 af of its Friant Kern CVP allocation to be delivered to KTRG. (Note: State Water Board approval is not required for any portion of the existing exchange.)

TLTR proposes to utilize the portion of the aforementioned existing exchange involving the delivery of 27,000 af of SWP water to AEWS to facilitate its sale of water to WWD. TLTR would allow the 27,000 af of Friant-Kern CVP water it intends to sell to WWD to be delivered to AEWS in return for AEWS allowing 27,000 af of SWP water to be delivered to WWD. This temporary change petition is required to authorize delivery of SWP water to WWD.

A map showing the locations of WWD, KCWA, AEWS, KTRG, and TLTR is available for viewing with the copy of this notice posted on the Division of Water Rights website at www.waterrights.ca.gov/WaterTransfersProgram.

In the absence of the proposed temporary change, the existing exchange agreement between KCWA, KTRG, and AEWS would proceed as described above, and TLTR would deliver the 27,000 af of Friant-Kern CVP water it intends to sell to WWD to AEWS for diversion to underground storage.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972. It authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds and San Luis Creek between January 1 and December 31. The Clifton Court Forebay and the Tracy Pumping Plant, located within the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), are authorized points of diversion/rediversion under Permit 16482. Water diverted under Permit 16482 may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power within the SWP service area. The subject 27,000 af of SWP water is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board Decision 1641 and State Water Board Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. The SWP would divert the 27,000 af of water from the southern Delta and store it in San Luis Reservoir regardless of whether its ultimate destination is AEWS or WWD. The proposed transfer may result in temporary increases in the instantaneous release rate from San Luis Reservoir.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within WWD to the place of use of Permit 16482. These areas are identified as Priority I and II areas and are shown on a map prepared by DWR on file with the Division of Water Rights.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change was provided via regular mail to interested parties and by publication in the Fresno Bee on June 10, 2005. The State Water Board did not receive any timely comments regarding the proposed temporary change.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of KCWA's SWP entitlement under Permit 16482. In the absence of the proposed transfer, KCWA would deliver the water proposed for transfer to AEWS (in accordance with the existing exchange agreement described in Section 1.1 of this Order), and WWD would use local groundwater supplies to meet its water needs. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

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 transfer involves only an amount of water that would have been consumptively used in the absence of the temporary change.

5.0 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 State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife or other instream beneficial uses, in accordance with Water Code section 1727(b)(2).

The diversion from the Delta and conveyance of the water for the transfer will have no such unreasonable effects. The water available for the transfer is either currently stored or will be stored in San Luis Reservoir.

It will be diverted from the southern Delta at Banks Pumping Plant and impounded in San Luis Reservoir whether or not the change due to the proposed transfer is approved. Because the effect on fish, wildlife, and other instream uses in the Delta would be the same in the absence of the transfer as with the transfer, I conclude that this temporary change will have no unreasonable effect on fish, wildlife, or other instream beneficial uses of water.

Further, the application and use of the water under the proposed temporary change will have no such unreasonable effects. The drainage of return flows from irrigated agriculture in the San Joaquin Valley into the San Joaquin River raises the salinity level in the river and adversely affects the beneficial uses of the river. In most cases, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has programs to encourage water conservation and reduce deep percolation. WWD's report, Generalized Depth to Shallow Ground Water, October 2004, states that irrigation of most lands within WWD's service area has not been shown to cause drainage or selenium problems. The use of water under the proposed temporary change will be restricted to areas that do not directly drain to the San Joaquin River, and will be conditioned upon the use of management practices to prevent subsurface drainage of return flow into areas downslope of WWD's service area. Given the conditions required in this order, I find that in accordance with Water Code section 1727(b)(2), the proposed transfer will have no unreasonable effects on fish, wildlife or other instream beneficial uses.

6.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727. Based on the available information, 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 27,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16482 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 continuing for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Kern County Water Agency, who is foregoing the benefit of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include the areas within WWD identified as Priority I and II area as shown on the map prepared by DWR for this transfer. The map is on file with the Division of Water Rights.
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
5. Within 60 days of the completion of the transfer, but no later than September 18, 2006, 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. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. 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 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.

7. 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.
8. 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 other legal users of water, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY STEVEN HERRERA for

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: July 20, 2005