

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

DIVISION OF WATER RIGHTS

CORRECTED ORDER WR 2008-0034-DWR

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH SUTTER WATER DISTRICT
TO SEVERAL STATE WATER CONTRACT AGENCIES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINT OF DIVERSION, PLACE OF USE,
AND PURPOSE OF USE**

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 11, 2008,

South Sutter Water District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. South Sutter Water District's (SSWD) petition requests the transfer of up to 10,000 acre-feet (af) of water to several State Water Contract agencies (hereinafter collectively referred to as the SWC Agencies) for use within the State Water Project (SWP) service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. SSWD proposes to transfer up to 10,000 af of water under License 11118 (Application 14804) to the SWC Agencies. The SWC Agencies involved in this water transfer are the Dudley Ridge Water District, the Kern County Water Agency, the Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, the San Bernardino Valley Municipal Water District, the Antelope Valley East Kern Water Agency, the Palmdale Water District, and the Tulare Lake Basin Water Storage District. To facilitate the transfer, SSWD proposes to release 10,000 af of water currently stored in Camp Far West Reservoir to the Bear River thence the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta for rediversion at the Clifton Court Forebay or the Barker Slough Pumping Plant.

SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. The petition states that in the absence of this transfer, the subject 10,000 af of water would either remain in storage within Camp Far West Reservoir or be released for use within SSWD.

1.2 Proposed Temporary Changes. The proposed transfer would temporarily add the Clifton Court Forebay and the Barker Slough Pumping Plant as points of redirection under License 11118. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) would be temporarily added to the place of use of License 11118. Municipal, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under License 11118.

1.3 Availability of Water for Transfer. SSWD's petition states that its landowners receive their base water supply from groundwater pumping and receive supplemental water from Camp Far West Reservoir. The petition states that landowners will not change their cropping patterns due to the transfer. SSWD anticipates that as a result of the proposed transfer up to 10,000 additional af of groundwater pumping could occur. SSWD, the SWC Agencies, and Department of Water Resources (DWR) have entered into an agreement for storage and conveyance of the water transferred pursuant to the proposed temporary changes (Transfer Agreement). Appendix A of the Transfer Agreement includes procedures for monitoring surface water releases and groundwater pumping and its impacts. Appendix A also identifies a third-party action plan which includes a series of steps that will be taken to ensure that the possible increase in groundwater pumping as a result of the 2008 pilot water transfer does not cause significant, unmitigated impacts to other parties.

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). Prior to issuance of the public notice for the proposed temporary change, representatives of DFG contacted Division staff regarding several temporary changes within the northern Sacramento Valley (including the subject change). DFG staff did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of SSWD's Permits. License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per annum from the Bear River between October 1 and June 30. License 11118 also authorizes the direct diversion from the Bear River of up to 330 cubic feet per second (cfs) between May 1 and September 1 of each year. The point of diversion to storage for License 11118 is located at the Camp Far West Dam. Additionally, the Camp Far West Diversion Dam (located about one mile downstream of the Camp Far West Dam) is an authorized point of direct diversion and redirection to storage.

The water is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net of 59,000 acres within a gross area of 65,796 acres within SSWD, a net of 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside its boundaries served under contract), and a power generation plant located on SSWD's conveyance canal.

In order to protect fish resources downstream of the Camp Far West Diversion Dam, SSWD is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 and March 31 of the succeeding year. Additionally, SSWD (with other parties within the Bear River watershed) has entered into an agreement (referred to as the Bear River Agreement) with DWR to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This agreement requires SSWD to make up to 4,400 af of water available to DWR during dry and critical water years. SSWD's petition states that the water intended for transfer is in addition to the water released to DWR pursuant to the Bear River Agreement. Additional information regarding the Bear River Agreement is on file with the State Water Board under Application 14804.

2.2 Southern Delta Salinity. In Revised Decision 1641 (D-1641) the State Water Board added water quality objectives for the protection of agricultural beneficial uses (including salinity objectives at three southern Delta locations) to the SWP and the Central Valley Project (CVP) water rights. These objectives

are contained in Table 2, located on page 182 of D-1641. Additionally, in D-1641 the State Water Board authorized DWR and the United States Bureau of Reclamation (USBR) to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the Projects meet all other provisions of their permits to perform JPOD operations. DWR and USBR anticipate that salinity at the southern Delta salinity compliance locations will exceed the current objectives this summer (and possibly fall).

Order WR 2008-0029-EXEC allows JPOD operations to occur based on the following condition:

All other provisions of the above permits are met, provided, however, if the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take this summer or fall in order to meet the objectives, and (ii) the use of JPOD will not unreasonably affect salinity in the southern Delta.

Petitions for temporary change (such as the subject petition) which add either the Clifton Court Forebay or the Jones Pumping Plant as points of redirection to water rights other than those of the SWP or CVP are not considered JPOD operations. The impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Clifton Court Forebay or the Jones Pumping Plant as points of redirection to water rights other than those of the SWP or CVP, however, are similar to the impacts of JPOD operations. In the absence of other equivalent measures, the orders approving these petitions include conditions similar to those required of JPOD operations. For some period of SSWD's proposed temporary change, it is likely that the southern Delta salinity objectives will be exceeded. Accordingly, this Order includes the following condition to allow this transfer to occur if it will not unreasonably affect salinity in the southern Delta during the period of the proposed temporary change.

Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the following exception:

If the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take during the period of this temporary change in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay as a point of redirection to License 11118 pursuant to this Order will not unreasonably affect salinity in the southern Delta, then the redirection of water at the Clifton Court Forebay under License 11118 may occur.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated May 23, 2008) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 24, 2008.

4.0 REQUIRED FINDINGS OF FACT

Availability of Water for Transfer

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 Section 1011. (Wat. Code, § 1725 and § 1726.) The water proposed for transfer was stored by SSWD under provisions of License 11118.

In light of the above, I find in accordance with Water Code section 1726(e) that the water proposed for transfer pursuant to this order would have been stored by the permittee in the absence of the proposed temporary change.

No Injury to Other Legal Users of Water

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 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).) SSWD anticipates that as a result of the proposed transfer up to 10,000 additional af of groundwater pumping could occur. Appendix A of the Transfer Agreement identifies a third-party action plan which includes a series of steps that will be taken to ensure that the possible increase in groundwater pumping as a result of the 2008 pilot water transfer does not cause significant, unmitigated impacts to other parties. This Order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to potential water level or water quality impacts associated with the addition of the Clifton Court Forebay as a point of rediversion to License 1118. As conditioned herein, the transfer can occur if the southern Delta water quality objectives are exceeded, and there are no additional reasonable control measures the SWP or CVP could take this summer and fall to meet them and if the rediversion of water at Clifton Court Forebay resulting from this order will not unreasonably affect salinity in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this order meets the requirement of Water Code section 1745.10(b). That section requires that the groundwater use has been approved by the water supplier from whose service area the water is to be transferred and the water supplier has determined that the transfer will not create or contribute to conditions of long-term overdraft in the affected groundwater basin.

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

Water Code section 1729 exempts temporary changes involving the transfer of water 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. (Wat. Code, § 1727, subd. (b)(2).)

DFG was contacted regarding the proposed temporary change and did not identify any concerns regarding fish, wildlife, and other instream beneficial uses and did not file comments on the proposed temporary change. Rediversion of water at the Clifton Court Forebay pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations.

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

5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, granting the authority to act

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and points of redirection under South Sutter Water District's (SSWD) License 11118 (Application 14804) to facilitate the transfer of up to 10,000 af of water is approved.

All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following conditions:

1. The transfer/exchange of water is limited to the period from the date of this Order through July 25, 2009.
2. The place of use of License 11118 is temporarily changed as follows:

The authorized place of use is expanded to include the service area of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629).
3. The Clifton Court Forebay, and the Barker Slough Pumping Plant are temporarily added as points of redirection under License 11118. Rediversion of water at the Clifton Court Forebay and the Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the operators with the Delta Smelt Biological Opinion and other applicable biological opinions, and any court orders applicable to these operations.

Rediversion of water at the Clifton Court Forebay pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion, by DWR and USBR, with the following exception:

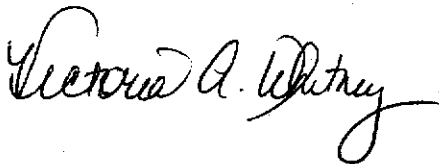
If the southern Delta water quality objectives are exceeded, and the State Water Board's Executive Director has found that (i) no additional reasonable control measures exist that the SWP or CVP could take during the period of this temporary change in order to meet the objectives, and (ii) the addition of the Clifton Court Forebay as a point of redirection to License 11118 pursuant to this Order will not unreasonably affect salinity in the southern Delta, then the redirection of water at the Clifton Court Forebay under License 11118 may occur.

4. Municipal, industrial, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under License 11118.
5. During the period of the transfer, permittee shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the petitioner.
6. Licensee shall implement and comply with the Groundwater and Surface Water Monitoring and Reporting Program identified in Exhibit A of the Agreement among the Department of Water Resources, Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, Metropolitan Water District of Southern California, San Bernardino Valley Municipal Water District, Antelope Valley East Kern Water Agency, Palmdale Water District, Tulare Lake Basin Water Storage District and South Sutter Water District for Storage and Conveyance of 2008 Transfer Water which governs the monitoring and reporting of groundwater and surface water conditions within the District during the 2008 Pilot Water Transfer.

7. By September 1, 2009, SSWD shall provide to the Chief of the Division of Water Rights a report describing the transfer of water approved by this order. This report shall include the following information:
 - a. The daily average release rates and corresponding volumes of the transferred water from CampFar West Reservoir, reported on a daily basis;
 - b. The daily average pumping rate and corresponding volume of water pumped at the Clifton Court Forebay and the Barker Slough Pumping Plant; and
8. 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.
9. 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 prior to commencing transfer of water. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. 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.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: **JUL 31 2008**