

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

DIVISION OF WATER RIGHTS

ORDER WR 2008-0035-DWR

**IN THE MATTER OF LICENSE 2652 (APPLICATION 2212)
PETITION FOR TEMPORARY URGENCY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE-FEET OF WATER
FROM THE UNITED STATES BUREAU OF RECLAMATION'S ORLAND PROJECT
TO AREAS WITHIN THE ORLAND-ARTOIS WATER DISTRICT**

ORDER APPROVING TEMPORARY URGENCY CHANGE IN PLACE OF USE

BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On July 18, 2008,

Ms. Louise Lindgard
U.S. Bureau of Reclamation
Division of Resources Management
Water Rights and Acreage Limitation Branch, MP-460
2800 Cottage Way
Sacramento, CA 95825

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a petition for Temporary Urgency Change pursuant to Water Code section 1435 et seq. In its petition, the U.S. Bureau of Reclamation (USBR) proposes to deliver 10,000 acre-feet (af) of water stored in Stony Gorge Reservoir on Stony Creek, which is normally intended for delivery to the Orland Project, to the Orland-Artois Water District (District), a Central Valley Project (CVP) contractor. According to the USBR, the District is suffering an urgent need for additional water to meet the water needs of permanent crops during this statewide drought.

1.1 Current Dry Conditions: In explaining the urgent need for the proposed temporary urgency change, the USBR's petition states:

"The District is a water short district. Any cut, regardless of percentage, necessitates the immediate need for additional water from another source. The District's 2008 CVP water supply, for irrigation purposes, has been cut to 40% of the contract total, from 52,967 acre-feet to 21,187 acre-feet. The District has 26,918 acres under contract. Therefore, the acre-feet per acre (af/ac) unit duty for the District, with the 40% allocation, is 0.78 (21,187 acre-feet / 26,918 acres). This amount is not sufficient to irrigate permanent crops which require anywhere from 2.5 to 2.7 af/ac. The District has 15,000 acres of permanent crops consisting primarily of almonds, walnuts, prunes, and vineyards.

The water provided under this action would be used to irrigate the permanent crops in the District. Many more acres of trees are not being irrigated sufficiently to produce a crop, but to keep the trees

alive. Usually when mature trees are stressed they never fully recover, and their future production will decline. In addition, mature trees pulled due to insufficient surface and groundwater include 41 acres of prunes, 150 acres of almonds, and 300 acres of vineyard. Orders for 150 acres of new almond trees had to be cancelled.

Landowners with wells are noticing a decline in the groundwater of about 40 feet. These landowners are lowering wells where they can or drilling new wells. Currently the waiting list for a new well is between 1 and 1½ years.”

Current dry conditions have resulted in rationing of water to the District, which threatens the health of permanent crops.

1.2 Description of Temporary Urgency Change: Under License 2652 (Application 2212), the USBR has the right to divert to storage up to 50,200 af of water per year into Stony Gorge Reservoir for the irrigation of lands within the Orland Project. The USBR proposes to deliver up to 10,000 af of this to the District. The water, which currently is stored in Stony Gorge Reservoir on Stony Creek, will be available for rediversion at either the North Canal or South Canal (existing points of rediversion under License 2652) and further conveyed into the Tehama-Colusa Canal for delivery to the District. A temporary change in the place of use under License 2652 is needed to add the area of the District that is served by the Tehama-Colusa Canal. The petition requests that the proposed change take effect immediately and be effective through December 31, 2008.

The petition states that the 10,000 af of water that the USBR intends to deliver to the District will not be needed by the Orland Project during 2008 and that no additional water will be diverted from the Sacramento River as a result of the proposed change. The minimum storage at Stony Gorge Reservoir for 2008 with the proposed temporary urgency change is expected to be approximately 25,000 af. This figure is within the normal range of minimum storage elevations for Stony Gorge Reservoir. In the absence of the proposed temporary urgency change, the water would remain in storage for future use sometime after 2008.

1.3 Proposed Temporary Changes: USBR’s petition requests the temporary addition of the 26,918 acres served by the District (pursuant to its CVP contract) to License 2652. The 26,918 acres to be added under the proposed temporary change are shown on map submitted with the petition, which is available for viewing online at: <http://www.waterrights.ca.gov/hearings/wro2008.html>.

1.4 Department of Fish and Game Consultation: USBR and the State Water Board have consulted with the Department of Fish and Game (DFG) regarding the proposed temporary urgency change. Representatives of DFG did not identify any mitigation measures necessary to prevent unreasonable impacts to fish, wildlife, or other instream beneficial uses.

1.5 Operations Information: The petitioner submitted historical information regarding the total volume of water supplied to the District between 2000-2007, as well as the projected total volume of water intended for delivery to the District for 2008, assuming this petition is approved. The average volume of water supplied to the District between 2000-2007 was 53,164 af of water. The projected supply of water for the year of 2008 (assuming this petition is approved) is 41,887, which is approximately 80% of the average yearly total for the years 2000 through 2007. The petition also notes that the areas within the District that would receive water pursuant to the proposed temporary urgency change are currently served by the CVP and no new land will be put into production as a result of the change.

The petition also states that USBR and Orland Unit Water Users Association have entered into an agreement (Contract No. 14-06-200-1020A, dated June 26, 1964) whereby the parties operate Stony Gorge and East Park Reservoirs (two Orland Project reservoirs) and Black Butte Reservoir (a CVP reservoir) as a single integrated unit so as to maximize the full storage potential of all three reservoirs. Thus, USBR expects that refill of Stony Gorge Reservoir resulting from the proposed temporary urgency change will not adversely impact CVP operations or CVP users.

2.0 SUBSTANCE OF USBR'S LICENSE

License 2652 authorizes the diversion to storage of up to 50,200 af of water in Stony Gorge Reservoir from November 1 through about May 1 of the following year for rediversion at the North and South Canals. The authorized purpose of use is irrigation of 20,648.8 acres located within Glenn and Tehama Counties, as shown on map on file with the State Water Board under Application 2212. The 10,000 af of water proposed for delivery to the District is currently stored in Stony Gorge Reservoir pursuant to provisions of License 2652. Releases of water pursuant to the proposed temporary urgency change are subject to requirements of the biological opinion issued by the National Marine Fisheries Service on the effects of Lower Stony Creek Water Management on Winter-run Chinook salmon, Spring-run Chinook salmon, Fall/late Fall-run Chinook salmon, and Steelhead. The petition states that the proposed temporary urgency change will not alter the rate or timing of diversions by the Orland Project nor impact the ability of USBR or the Orland Unit Water Users Association to maintain minimum flows in lower Stony Creek.

3.0 PUBLIC NOTICE

The State Water Board may issue a temporary change order in advance of public notice. (Wat. Code, § 1438, subd. (a).) The State Water Board will comply with the noticing requirements as soon as practicable.

4.0 REQUIRED FINDINGS OF FACT

Pursuant to Water Code section 1435, subdivision (b), the State Water Board must make the following findings prior to issuing a temporary change order:

1. The petitioner has an urgent need to make the proposed change.
2. The proposed change may be made without injury to any other lawful user of water.
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses
4. The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

4.1 The Licensee Has an Urgent Need to Make the Proposed Change: Pursuant to Water Code section 1435, subdivision (c), an urgent need to make a proposed change exists when the State Water Board concludes that the proposed temporary urgency change is necessary to further the constitutional policy that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented.

On June 4, 2008, citing two straight years of below-average rainfall and significant restrictions on diversions from the Delta due to various factors including federal court actions to protect fish species, Governor Schwarzenegger issued Executive Order S-06-08 declaring a statewide drought. In explaining the urgent need for the proposed temporary urgency change, the USBR's petition states:

"The District is a water short district. Any cut, regardless of percentage, necessitates the immediate need for additional water from another source. The District's 2008 CVP water supply, for irrigation purposes, has been cut to 40% of the contract total, from 52,967 acre-feet to 21,187 acre-feet. The District has 26,918 acres under contract. Therefore, the acre-feet per acre (af/ac) unit duty for the District, with the 40% allocation, is 0.78 (21,187 acre-feet / 26,918 acres). This amount is not sufficient to irrigate permanent crops which require anywhere from 2.5 to 2.7 af/ac. The District has 15,000 acres of permanent crops consisting primarily of almonds, walnuts, prunes, and vineyards.

The water provided under this action would be used to irrigate the permanent crops in the District. Many more acres of trees are not being irrigated sufficiently to produce a crop, but to keep the trees alive. Usually when mature trees are stressed they never fully recover, and their future production will decline. In addition, mature trees pulled due to insufficient surface and groundwater include 41 acres of prunes, 150 acres of almonds, and 300 acres of vineyard. Orders for 150 acres of new almond trees had to be cancelled.

Landowners with wells are noticing a decline in the groundwater of about 40 feet. These landowners are lowering wells where they can or drilling new wells. Currently the waiting list for a new well is between 1 and 1 ½ years.”

Based on this information, I find that without the proposed temporary urgency change, the potential for irretrievable loss of crops exists. The licensee has an urgent need to make the proposed change.

4.2 No Injury to Other Legal Users of Water and No Increase in Amount the District is Entitled to Use: The water proposed for transfer pursuant to this temporary urgency change consists of water previously stored pursuant to License 2652. In the absence of the proposed temporary urgency change, the water would remain in storage for future use by the Orland Project sometime after 2008. Since USBR and the Orland Unit Water Users Association have entered into an agreement whereby the parties operate Stony Gorge and East Park Reservoirs (Orland Project reservoirs), and Black Butte Reservoir (a CVP reservoir), as an integrated unit, the refill of Stony Gorge Reservoir resulting from the proposed temporary urgency change should not adversely impact CVP operations or CVP users. Accordingly, I find that the proposed change may be made without injury to any other lawful user of water.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses: The water proposed for delivery to the District is currently stored in Stony Gorge Reservoir pursuant to provisions of License 2652. Releases of water pursuant to the proposed temporary urgency change are subject to requirements of the biological opinion issued by the National Marine Fisheries Service on the effects of Lower Stony Creek Water Management on Winter-run Chinook salmon, Spring-run Chinook salmon, Fall/late Fall-run Chinook salmon, and Steelhead. The petition states that the proposed temporary urgency change will neither alter the rate or timing of diversions by the Orland Project nor affect the ability of USBR or the Orland Unit Water Users Association to maintain minimum flows in lower Stony Creek. DFG was consulted regarding the proposed temporary urgency change and did not identify any mitigation measures necessary to prevent unreasonable impacts to fish, wildlife, or other instream beneficial uses.

In light of the above, I find in accordance with Water Code section 1435, subdivision (b)(3) that the proposed temporary urgency change will have no unreasonable effect on fish, wildlife or other instream beneficial uses.

4.4 The Proposed Change is in the Public Interest: Based on the discussion in sections 4.1, 4.2, and 4.3, above, I find in accordance with Water Code section 1435, subdivision (b) (4) that the proposed temporary urgency change is in the public interest.

5.0 ENVIRONMENTAL CONSIDERATIONS

Because of the drought conditions and water supply shortages this year, approval of the proposed change will not result in an increase in the USBR's operations and deliveries to the District relative to operations and deliveries since 2000. Based on information contained in the petition, projected total water deliveries for all of 2008 (assuming approval of this petition) will be approximately 80% of the average total annual volume of water delivered to the District for the period from 2000 through 2007. The proposed temporary urgency change will neither alter the rate or timing of diversions by the Orland Project nor impact the ability of USBR or the Orland Unit Water Users Association to maintain minimum flows in lower Stony Creek. Areas within the District that will receive water pursuant to the proposed temporary urgency change are currently served by the CVP and no new land will be put into production

ORDER

NOW, THEREFORE, IT IS ORDERED that the USBR's petition for a temporary urgency change under the USBR's License 2652 is approved subject to the terms and conditions herein. The temporary urgency change is effective commencing on the date of this Order through December 31, 2008, although one reporting term imposed in this Order will extend beyond that date.

All existing terms and conditions of License 2652 remain in effect, except as temporarily amended by the following provisions:

1. The place of use under License 2652 is temporarily amended to include the 26,918 acres served by the District pursuant to its CVP contract. This area is shown on a map submitted with the petition, available for viewing online at: <http://www.waterrights.ca.gov/hearings/wro2008.html>.
2. During the period of the transfer, licensee 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.
3. By March 1, 2009, the licensee shall provide the Deputy Director for 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. The average release rates and corresponding volumes of the transferred water from Stony Gorge Reservoir.
 - b. The average diversion rate and corresponding volume of water diverted from the North and South Canals pursuant to this change.
4. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary urgency 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.

5. 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 & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this temporary urgency change, 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 urgency change authorized under this Order.

6. 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

Original signed by James W. Kassel for

Victoria A. Whitney, Chief
Division of Water Rights

Dated: August 8, 2008