

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

ORDER WR 2008-0047-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 7,000 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 DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 8, 2008,

Department of Water Resources
c/o Robert B. Cooke, Chief
State Water Project Analysis Office
1416 Ninth Street, Suite 1620
PO 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) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir under the provision of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and WWD. These parties have requested that up to 7,000 acre-feet (af) of SWP water currently scheduled for use on their lands within Tulare's service area be transferred for use on their lands located within WWD. The petition requests that the proposed temporary change be effective from the date of this Order through April 30, 2009. DWR submitted this petition for temporary change in place of use to facilitate this exchange.

In the absence of the proposed temporary change, the 7,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of

each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 7,000 af of SWP water is either stored in San Luis Reservoir or will be stored under provisions of DWR's permits (set forth in State Water Resources Control Board Revised Decision 1641) and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Thus, the transfer of up to 7,000 af to WWD should have no effect on any natural streamflow or hydrologic regime. Release rates from San Luis Reservoir may increase due to the proposed transfer.

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 located within Township 17S, Range 15E and Township 20S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated June 12, 2008) was provided via regular mail to interested parties and by publication in the Fresno Bee on June 18, 2007. Central Delta Water Agency (CDWA) submitted timely comments to the proposed temporary change. CDWA's comments and the State Water Board's response are summarized below.

3.1 Comments of the Central Delta Water Agency CDWA notes that during the hearings prior to the State Water Board's adoption of Decision 1641, evidence was presented showing that even without direct surface water discharge to the San Joaquin River, high groundwater elevations within WWD result in increased salinity in the San Joaquin River due to both groundwater accretions and increased flow through surface drains. CDWA recommends that the proposed transfer be conditioned upon meeting the southern Delta salinity objectives, specifically at the Brandt Bridge and Old River at Middle River compliance locations.

State Water Board Response

The State Water Board concurs with CDWA's assertion that increased groundwater elevations within WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River. However, this process would take up to 10 to 20 years for water applied today to accrete to the San Joaquin River and be measured within the southern Delta. Accordingly, the proposed temporary change will not impact salinity in the southern Delta during the period of the change.

Regarding potential future increases in salinity due to the proposed temporary change, due to critically dry conditions in 2008, the amount of water delivered to WWD (including the proposed transfer) is approximately 60% of the average annual deliveries for the years 2000 through 2007. CVP allocations for 2009 are currently 10%. Thus, even with the proposed temporary change, the amount of water delivered to WWD in 2008 and 2009 will be significantly below the average annual deliveries for the years 2000 through 2007. Accordingly, the proposed temporary change will not result in a significant future increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations.

Future water uses should be restricted to those that do not have significant potential to increase salt loads to the San Joaquin River.

4.0 REQUIRED FINDINGS OF FACT

4.1 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. (Wat. Code, § 1725.) The water available for the transfer 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 Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 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).) The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. 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.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses 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 must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 which 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 Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, 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 some 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 map, Generalized Depth to Shallow Ground Water, October 2007, indicates that irrigation of most lands within WWD's service area have not been shown to cause drainage or selenium problems. The lands scheduled to receive the water from this transfer are located such that they do not directly drain to the San Joaquin River.

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 7,000 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 through April 30, 2009.
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 Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (on file with the State Water Board under Application 17512 and available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
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 June 30, 2009, 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 vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Victoria A. Whitney,
Deputy Director for Water Rights*

Dated: December 16, 2008