

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0003-DWR

**IN THE MATTER OF LICENSES 1405 & 1572 (APPLICATIONS 2948 & 2952)
PETITIONS FOR TEMPORARY URGENCY CHANGES
INVOLVING THE TRANSFER OF UP TO 10,333 ACRE-FEET OF WATER
FROM RECLAMATION DISTRICT NO. 756 AND
DELTA FARMS RECLAMATION DISTRICT NO. 2026
TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

**ORDER APPROVING TEMPORARY URGENCY CHANGES IN PLACE OF USE,
PURPOSE OF USE, AND POINTS OF DIVERSION**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITIONS

On December 31, 2008,

Reclamation District No. 756
and Delta Farms Reclamation District No. 2026
c/o Delta Wetlands Properties
Peter J. Kiel
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816-5905

filed with the State Water Resources Control Board (State Water Board) two Petitions for Temporary Urgency Change under Water Code section 1725, et seq. The petitions, submitted by Delta Wetlands Properties (DWP) on behalf of Reclamation District No. 756 and Delta Reclamation District No. 2026, request the transfer of up to a total of 17,941¹ acre-feet (af) of water to the Metropolitan Water District of Southern California (MWD). The petitions state that MWD is suffering an urgent need for additional water to meet its municipal needs during this statewide drought.

1.1 Current Dry Conditions: 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 declared a statewide drought and issued Executive Order S-06-08 (Executive Order).

¹ The petition requests a total of 17,941 af of water to be transferred between May 1, 2009 and September 30, 2009. Orders approving petitions for temporary urgency change may be effective for a maximum of 180 days. This order is effective through July 31, 2009. The amount of water scheduled for transfer through July 31, 2009 is 10,333 af. Accordingly, this order only approves 10,333 af for transfer. The petitioner must receive additional State Water Board authorization to transfer the remaining 7,608 af.

1.2 Description of Temporary Urgency Change: DWP proposes to transfer up to a total of 17,941² af of water under Licenses 1405 and 1572 (Applications 2948 and 2952) to MWD during the months of May through September 2009. To make water available for transfer, DWP proposes to fallow about 5,426 acres of land on Bouldin Island (served by License 1405) and 4,198 acres on Webb Tract (served by License 1572). In 2008, the 5,426 acres of land on Bouldin Island were planted with 4,295 acres of corn, 640 acres of rice, and 310 acres of tomatoes, with 181 acres left fallowed. In 2008, the 4,198 acres of land on Webb Tract were planted with corn. Based on this information, DWP has estimated that fallowing land on Bouldin Island will make 10,401 af of water available for transfer and that fallowing land on Webb Tract will make 7,540 af of water available for transfer. DWP proposes that the water made available for transfer be diverted at either the Jones Pumping Plant or the Banks Pumping Plant for delivery to MWD. DWP's petition states that the maximum combined increase in rate of diversion at both the Jones and Banks Pumping Plants pursuant to the proposed transfer is 107.4 cubic feet per second (cfs). Maps showing the locations of Bouldin Island, Webb Tract, the locations of existing siphons and pumps on both Bouldin Island and Webb Tract, and the locations of the Jones and Banks Pumping Plants are posted online with the copy of this Order Approving Temporary Urgency Change in Place of Use, Purpose of Use, and Points of Diversion (Order) at: http://www.waterrights.ca.gov/application/transfers_tu_orders.html

In the absence of this transfer, DWP would have undergone normal planting operations on Bouldin Island and Webb Tract and diverted water under Licenses 1405 and 1572 for use within these areas.

1.3 Crop Fallowing: DWP's petitions include information regarding estimated evapotranspiration of applied water (ETAW) for the crop types planted on Bouldin Island and Webb Tract in 2008. The ETAW estimates are broken down to show the monthly ETAW for the various crop types for May through September. These estimates are contained in an attachment to the subject petitions which is available for viewing online with the copy of this Order as shown above. The petition states that the fallowing program will result in no substantial change to the land on Bouldin Island and Webb Tract other than occasional discing to control weeds, as necessary. Additionally, in an email to State Water Board staff, the petitioner stated that during fallowing, water levels within canals on Bouldin Island and Webb Tract will be regulated such that the depth to groundwater remains at levels that would have been maintained in the absence of this transfer, approximately 3 to 5 feet below the field ground surface.

Since this order is only effective through July 31, 2009, the transfer total consists of the monthly ETAW estimates for May, June, and July. The total for both Bouldin Island and Webb Tract for these months is 10,333 af.

1.4 Proposed Temporary Urgency Changes: The proposed transfer would temporarily add the Banks Pumping Plant and the Jones Pumping Plant as points of diversion under Licenses 1405 and 1572. MWD's service area would be temporarily added to the place of use of Licenses 1405 and 1572. Domestic, power generation, municipal, industrial, salinity control, and water quality control would be temporarily added as purposes of use under Licenses 1405 and 1572.

1.5 Department of Fish and Game Consultation: DWP forwarded a copy of its proposal to the Department of Fish and Game (DFG) for review. DFG staff have not identified any potential impacts to fish, wildlife, or other instream beneficial uses from the proposed temporary urgency changes, but expressed a preference that tilling of fallowed fields be minimized.

1.6 California Environmental Quality Act: DWP prepared notices of exemption for the proposed temporary urgency changes. These notices are available for viewing online with the copy of this Order as shown above.

² Ibid.

2.0 BACKGROUND

2.1 Substance of DWP's Licenses: License 1405 (Application 2948) authorizes the direct diversion of up to 71.56 cfs of water between March 1 and November 1 of each year for irrigation purposes. License 1405 includes movable points of diversion located on the San Joaquin River, the South Fork Mokelumne River, Potato Slough, and Little Potato Slough. The authorized place of use under License 1405 consists of 6,006 acres located on Bouldin Island.

License 1572 (Application 2952) authorizes the direct diversion of up to 63.94 cfs of water between March 1 and November 1 of each year for irrigation purposes. License 1572 includes movable points of diversion located on the San Joaquin River, Old River, False River, Fisherman's Cut, and an unnamed dredger cut located on the west side of Webb Tract. The authorized place of use under License 1572 consists of about 5,115 acres located on Webb Tract.

Both Licenses 1405 and 1572 contain a term stating that the diversions therein may be regulated by the State Water Board in periods of water scarcity.

2.2 Curtailment: The San Joaquin valley water year type index as calculated from the January 1, 2009 snow survey is "Critical". The State Water Board may send out notices (often referred to as "curtailment letters") to water right holders indicating that there is no water available for diversion pursuant to their water rights.

3.0 PUBLIC NOTICE

The State Water Board may issue a temporary urgency 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 COMMENTS REGARDING THE PETITION

The Department of Water Resources (DWR) submitted comments to Delta Wetlands regarding the proposed temporary urgency change. DWR did not object to the proposed temporary urgency changes, but DWR stated that conditions were necessary to prevent injury to the State Water Project (SWP) resulting from the change. DWR noted that the elevation of the fields on both Bouldin Island and Webb Tract is about 15 feet below sea level. DWR stated that there is the potential for significant lateral movement of groundwater through the levees surrounding Bouldin Island and Webb Tract resulting in relatively high groundwater table. During previous similar fallowing transfers, DWR found that the high groundwater table supports weed growth on idled fields. In some cases, DWR found that the weed growth resulted in higher ETAW than the crops that were fallowed. Additionally, DWR noted that recent studies show that significant evaporation may occur from bare ground. DWR stated that water consumed during weed growth on idled fields (or evaporation from bare fields) will reduce the amount of water conserved by fallowing.

DWR also noted that DFG has previously expressed concerns that plowing idled fields during the growing season may impact ground-nesting birds. Restrictions in plowing may result in increased weed growth, reducing the amount of water conserved through fallowing (and available for transfer). Finally DWR noted that the United States Bureau of Reclamation has not been consulted regarding these temporary urgency changes.

DWR proposed the following conditions to ensure that the proposed temporary urgency changes will not injure other legal users of water:

1. The development of the anticipated reduction in consumptive use from the fallowing of crop acreage on the two islands in a manner acceptable to DWR;

2. The development of a specific plan for maintaining the idled fields free of weed growth and the monitoring of the real time net water savings during the year in a manner acceptable to DWR;
3. The payment of the costs associated with DWR staff verifying the execution of the weed growth prevention program and the water savings evaluation program; and
4. Agreement that any reduction from the estimated water savings to the actual water savings will be deducted from MWD's SWP Table A deliveries in 2009.

5.0 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 urgency 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.

5.1 The Petitioner Has an Urgent Need to Make the Proposed Changes: 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, Governor Schwarzenegger declared a statewide drought. Storage in California's major reservoirs is low. The petition states that Lake Oroville, the principal storage reservoir for the SWP, is at 28 percent of capacity, and 44 percent of average storage for this time of year. Continuing dry conditions and court-ordered restrictions on Delta water exports are limiting water deliveries to farms and urban areas. DWR estimates that it will only be able to deliver 15 percent of its State Water Project water contract total this year to the Bay Area, San Joaquin Valley, Central Coast and Southern California. MWD is an SWP contractor located in Southern California.

Based on this information I find that the petitioner has an urgent need to make the proposed changes.

5.2 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 these temporary urgency changes consists of water made available through fallowing of Bouldin Island and Webb Tract. In the absence of the proposed transfer, Bouldin Island and Webb Tract would be planted with crops (mostly corn) similar to its 2008 cropping patterns. In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. Transfers which involve fallowing of crops typically use estimates of the crop's ETAW to calculate the amount of water made available. Since both Bouldin Island and Webb Tract are below sea level, the use of crop ETAW estimates to calculate the amount of water made available through fallowing may overestimate the amount of water conserved. This Order contains conditions requiring DWP to work with DWR and the United States Bureau of Reclamation to develop a plan to ensure that the fallowing does not injure other legal water users, including the SWP or Central Valley Project. This plan shall include the following to protect other legal users of water:

- a. Methodology for estimation of water made available through fallowing, taking into consideration potential evapotranspiration and evaporation on fallowed fields;
- b. Specific measures to control weed growth on fallowed fields;
- c. Specific measures to monitor fallowed fields to determine the actual amount of water saved through fallowing.

The plan must be submitted to and approved by the Deputy Director for Water Rights before any water may be transferred pursuant to this approval. In addition, I will require as a condition of this approval that MWD submit written confirmation that MWD has agreed to reduce MWD's SWP Table A deliveries in 2009 to the extent that the Deputy Director determines that the amount of water actually saved through fallowing was less than the amount of water transferred. The State Water Board reserves jurisdiction to modify or revoke this approval as necessary in light of any new information presented in the future regarding the consumptive use savings that will be achieved through implementation of the fallowing program. (See Wat. Code, § 1440.) Finally, if the State Water Board issues any notice curtailing the use of water pursuant to Licenses 1405 or 1572, the diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is prohibited.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of diversion to Licenses 1405 and 1572.

5.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses: DFG staff have not identified any potential impacts to fish, wildlife, or other instream beneficial uses from the proposed temporary urgency changes, but expressed a preference that tilling of fallowed fields is minimized. Since tilling (or discing) of fallowed fields is necessary to prevent injury to other legal users of water, this Order requires DWP to consult with DFG (in addition to DWR) while preparing the aforementioned fallowing plan. DWP shall consult with DFG regarding potential impacts to ground-nesting birds and other wildlife due to the fallowing proposed on Bouldin Island and Webb Tract. DWP shall also consult with DFG to determine the appropriate water levels within canals on Bouldin Island and Webb Tract to maintain habitat.

Additionally, diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the SWP and CVP project 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. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant 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 1435, subdivision (b)(3) that the proposed temporary urgency changes will have no unreasonable effect on fish, wildlife or other instream beneficial uses.

5.4 The Proposed Change is in the Public Interest: Based on the discussion in sections 5.1, 5.2, and 5.3, above, I find in accordance with Water Code section 1435, subdivision (b)(4) that the proposed temporary urgency changes are in the public interest.

6.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT COMPLIANCE

The proposed temporary urgency changes would involve the fallowing of 5,426 acres of land on Bouldin Island and 4,198 acres on Webb Tract, and diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant. The fallowing program is exempt from the California Environmental Quality Act (CEQA) as a Class 4 minor alteration in the condition of land which does not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. (Cal. Code Regs., tit. 14, § 15304.)

The proposed diversion of water at the Banks Pumping Plant and the Jones Pumping Plant would be in addition to pumping of water under SWP and CVP water rights and other water transfers. Total annual pumping at the Banks Pumping Plant and the Jones Pumping Plant for the years 2000 through 2008 has averaged 5.5 million acre-feet per year. Due to low upstream reservoir storage and continued dry conditions, it is unlikely that more than 3.5 million acre-feet of water will be pumped this year. The

proposed temporary urgency change will not cause an increase in annual total pumping at the Banks Pumping Plant and the Jones Pumping Plant above the annual average total pumping for the years 2000 through 2008. Accordingly, approval of the proposed changes is exempt from CEQA pursuant to California Code of Regulations, title 14, section 15301.

On June 4, 2008, Governor Schwarzenegger declared a statewide drought. Storage in California's major reservoirs is low. The petition states that Lake Oroville, the principal storage reservoir for the SWP, is at 28 percent of capacity, and 44 percent of average storage for this time of year. Continuing dry conditions and court-ordered restrictions on Delta water exports are limiting water deliveries to farms and urban areas. DWR estimates that it will only be able to deliver 15 percent of its State Water Project water contract total this year to the Bay Area, San Joaquin Valley, Central Coast and Southern California. MWD is an SWP contractor located in Southern California. Accordingly the project is statutorily exempt from CEQA because it is necessary to prevent or mitigate an emergency. (Pub. Resources Code, § 21080, subd. (b)(4).)

7.0 STATE WATER BOARD DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary urgency change if no objections have been received. This Order is adopted pursuant to the delegation of authority in section 4.4.1 of Resolution 2007-0057.

8.0 CONCLUSIONS

Based on the information in the record, I find that:

1. The petitioner has an urgent need to make the proposed temporary change.
2. The proposed temporary change will not operate to the injury of any other lawful user of water.
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The petitioned change is in the public interest.

//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions submitted by Delta Wetlands Properties (DWP) for temporary urgency changes in the place of use, purpose of use, and point of rediversion under Reclamation District No. 756's License 1405 (Application 2984) and Delta Reclamation District No. 2026's License 1572 (Application 2952) to authorize the transfer of water to the Metropolitan Water District of Southern California (MWD) are approved, up to a total of 10,333 acre-feet (af). The temporary urgency changes are effective immediately through July 31, 2009, although one reporting term imposed in this Order will extend beyond that date.

All existing terms and conditions of Licenses 1405 and 1572 remain in effect, except as temporarily amended by the following provisions:

1. By April 1, 2009, petitioner shall submit to the State Water Board's Deputy Director for Water Rights a plan describing the following program on Bouldin Island and Webb Tract. DWP shall prepare this plan in coordination with the Department of Water Resources (DWR), the United States Bureau of Reclamation (USBR) and the Department of Fish and Game. This plan shall include the following:
 - a. Estimation of water made available through fallowing, taking into consideration potential evapotranspiration and evaporation on fallowed fields;
 - b. Specific measures to control weed growth on fallowed fields;
 - c. Specific measures to monitor fallowed fields to determine the actual amount of water saved through fallowing;
 - d. Measures to ensure weed control does not unreasonably affect ground-nesting birds or other wildlife; and
 - e. Measures to ensure that water levels in irrigation canals are regulated to maintain perennial aquatic and riparian habitat.

Until the Deputy Director for Water Rights approves the following plan, petitioner may not divert water at either the Jones Pumping Plant or the Banks Pumping Plant pursuant to this Order. In addition, petitioner may not divert water pursuant to this Order unless petitioner fully implements the following plan.

2. Petitioner may not transfer water to MWD pursuant to this Order unless MWD submits to the Deputy Director for Water Rights written confirmation that MWD has agreed to reduce MWD's SWP Table A deliveries in 2009 to the extent that the Deputy Director determines that the amount of water actually saved through fallowing was less than the amount of water transferred pursuant to this Order.
3. The place of use under Licenses 1405 and 1572 is temporarily amended to include the service area of the Metropolitan Water District of Southern California.
4. Domestic, power generation, municipal, industrial, salinity control, and water quality control are temporarily added as purposes of use under Licenses 1405 and 1572.
5. The Banks Pumping Plant and the Jones Pumping Plant are temporarily added as authorized points of diversion under Licenses 1405 and 1572. The maximum additional combined rate of diversion at the Banks Pumping Plant and the Jones Pumping pursuant to this change is 107.4 cubic feet per second. The monthly volume of water authorized for diversion pursuant to this change shall be consistent with the following plan approved by the Deputy Director for Water Rights.

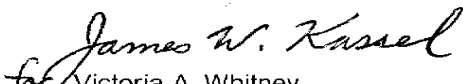
Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the SWP and CVP project operators with all applicable

biological opinions, and any court orders applicable to these operations. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also 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 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.

6. If at any time prior to, or during the period of the proposed temporary urgency change, the State Water Board issues any notice curtailing the use of water pursuant to Licenses 1405 or 1572, the diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is prohibited.
7. By December 1, 2009, the petitioner 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 the following information:
 - a. A report of the following program including information regarding measured consumptive use savings, field discing and the depth to groundwater on both Bouldin Island and Webb Tract;
 - b. The daily average rate of water diverted and daily volume of water diverted at either the Banks Pumping Plant or the Jones Pumping Plant pursuant to this Order; and
 - c. The daily amounts of water delivered to MWD pursuant to this Order.
8. 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.
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 & 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 petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency change authorized under this Order.
10. I reserve jurisdiction to modify or revoke this Order 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
Deputy Director for Water Rights

Dated: FEB 05 2009