

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

ORDER WR 2009-0026-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 8,000 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 January 22, 2009,

Department of Water Resources
c/o Robert B. Cooke, Chief
State Water Project Analysis Office
1416 Ninth Street, Suite 1620
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 (Reclamation) 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 8,000 acre-feet (af) of SWP water currently stored in San Luis Reservoir and scheduled for use on their lands within Tulare's service area be transferred for use on their lands located within WWD. DWR submitted this petition for temporary change in place of use to facilitate this exchange.

In the absence of the proposed temporary change, the 8,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare.

1.2 Additional Information In response to an inquiry from the Department of Fish and Game regarding water use within Tulare during the proposed change, DWR submitted additional information regarding cropping patterns for Newton Farms and Hansen Ranches/Vista Verde Farms between 2005 and 2008. The information submitted indicates that for each of these years the same amount of total acreage within these districts has been irrigated, though crop types have varied. DWR also states that surface water from the Kings River (stored in Pine Flat Reservoir) has been purchased by Newton Farms and Hansen Ranches/Vista Verde Farms for use in 2009 within their lands in Tulare.

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 8,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (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 8,000 af to WWD will have no effect on any natural streamflow or hydrologic regime in the Delta or San Luis Creek. 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 February 4, 2009) was provided via regular mail to interested parties and by publication in the Fresno Bee on February 17, 2009. 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 asserts that the use of water within WWD is an unreasonable use of water under Article 10 section 2 of the California Constitution. CDWA states that no drainage outlet and disposal channel for the San Luis Unit of the CVP has been constructed. CDWA states that in February 2009, DWR and Reclamation (collectively referred to as the Projects) violated the conditions of their permits by not meeting the Delta Outflow objective in order to save cold water for protection of salmon. CDWA states that the proposed transfer should not be allowed unless the Projects have shown they have retained sufficient water in storage to meet the conditions of their permits through dry periods. CDWA concludes that the delivery of water without compliance with applicable permit conditions induces and subsidizes export water area use. In this case, CDWA asserts that the delivery of water to WWD is detrimental to the sustainability of agricultural uses along the west side of the San Joaquin Valley and all agricultural uses within the Delta.

CDWA also states that SWP water should be made available first to SWP contractors instead of to WWD, a federal water contractor, since there are currently SWP contractors in need of water.

3.2 State Water Board Response CDWA's assertions regarding compliance with Delta Outflow objectives and subsidy of export water area use are general concerns related to the underlying operations of the SWP and CVP. These concerns are not related to the temporary change, which will have no effect on the rate or timing of diversions from the Delta or storage in San Luis Reservoir.

With regard to the delivery of water to WWD pursuant to this Order, the State Water Board understands that agricultural deliveries to 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. Regarding potential future increases in salinity due to the proposed temporary change, due to critically dry conditions in 2009, WWD's CVP allocation is currently 0%. Thus, even with the proposed temporary change (and other potential transfers to WWD), the amount of water delivered to WWD in 2009 will be significantly below the average annual deliveries for the years 2000 through 2008. 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. Thus, the State Water Board will not include conditions in this order to address CDWA's concerns regarding the underlying operations of the SWP and CVP and general impacts of the delivery of water to WWD.

Finally, SWP contractors were provided notice of this petition and no SWP contractor filed comments in response. Accordingly, CDWA's concern that SWP water be delivered to SWP contractors currently in need of water, as opposed to WWD, was not raised by any SWP contractors.

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.) "[C]onsumptively used' means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion. (*Ibid.*) The water available for the transfer consists of a portion of Tulare's SWP entitlement under Permit 16482 and is currently stored in San Luis Reservoir under provisions of DWR's permit 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 remain in storage until it is delivered for use within Tulare's service area. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR's permit.

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. Although agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River within 10 to 20 years, due to critically dry conditions in 2009, the amount of water delivered to WWD in 2009 will be significantly below the average annual deliveries for the years 2000 through 2008. 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. In addition, the State Water Board will require as a condition of approval that WWD implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area.

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 to fish, wildlife, or 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 currently stored in San Luis Reservoir under provisions of DWR's permit 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. 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 2008, 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.

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

5.0 STATE WATER RESOURCES CONTROL BOARD'S 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 change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore 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.

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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 8,000 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 March 30, 2010.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District (Tulare), 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 May 30, 2010, the permittee shall provide to 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:

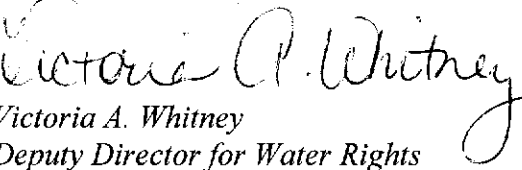
- a. Specific locations where the transferred water was used;
 - b. The monthly amounts of water each location received; and
 - c. The average application rate of water in the locations.
6. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges 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


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **APR 03 2009**