

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0037-DWR

IN THE MATTER OF LICENSES 1405 & 1572 (APPLICATIONS 2948 & 2952)

**PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 17,941 ACRE FEET OF WATER
FROM RECLAMATION DISTRICT NO. 756 AND
DELTA FARMS RECLAMATION DISTRICT NO. 2026
TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
UNDER LICENSES 1405 & 1572 (APPLICATIONS 2948 & 2952)**

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

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

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) a Petition for Temporary Change under Water Code section 1725, et seq. The petition, submitted by Delta Wetlands Properties (DWP) on behalf of Reclamation District No. 756 and Delta Reclamation District No. 2026, requests the transfer of up to a total of 17,941 acre-feet (af) of water to the Metropolitan Water District of Southern California (MWD). 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. DWP proposes to transfer up to a total of 17,941 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 4,189 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 Banks Pumping Plant or the Jones Pumping Plant for delivery to MWD. DWP's petition states that the maximum combined increase in rate of diversion at both the Banks Pumping Plant and the Jones Pumping Plant 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 Banks Pumping Plant and the Jones Pumping Plant are posted online with the copy of the public notice for this transfer at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

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.

1.2 Proposed Temporary 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.

1.3 Concurrent Petition for Temporary Urgency Change. On February 5, 2009, the State Water Board issued Order WR 2009-0003-DWR conditionally approving temporary urgency changes under Licenses 1405 and 1572 for the same action as requested in the subject petition for temporary change. This Order supercedes Order WR 2009-0003-DWR. Electronic copies of Order WR 2009-0003-DWR are available at:
http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009/wro2009_0003.pdf

1.4 Availability of Water for Transfer. 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 the notice, as shown above. The petitioner indicated that the fallowing program will result in no substantial change to the land on Bouldin Island and Webb Tract other than occasional disking 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.

In response to Condition 1 of Order WR 2009-0003-DWR, DWP submitted two documents describing the fallowing program on Bouldin Island and Webb Tract: Exhibits 1 and 2. Exhibit 1 is a methodology for estimating the conserved water associated with the fallowing program on Bouldin Island and Webb Tract. Exhibit 2 is a water transfer program identifying specific measures to implement the methodology and other measures necessary to prevent injury to other legal users of water and unreasonable impacts on fish, wildlife, and other instream beneficial uses. These documents are available for viewing online at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

1.5 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). DFG staff was consulted during development of the fallowing and monitoring program and did not identify any concerns regarding impacts to fish, wildlife, or other beneficial uses. Additionally, DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of Petitioner's Water Rights. License 1405 (Application 2948) authorizes the direct diversion of up to 71.56 cfs of 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 5,115.491 acres located on Webb Tract.

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

2.2 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the State Water Project (SWP) and the Central Valley Project (CVP) water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized the Department of Water Resources (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. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. Since the computer model used for this analysis does not accurately represent local discharges in the southern Delta, the model tends to underestimate the measured salinity. If the actual salinity were to exceed the values contained in D-1641, diversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated February 26, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on February 28, 2009. Timely comments were submitted by the Department of Water Resources (DWR). These comments and the State Water Board responses are summarized below.

3.1 Comments of the Department of Water Resources. DWR noted that Order 2009-0003-DWR includes several conditions that DWP must meet prior to transferring water, including the preparation of a plan to assure that the transfer will not injure other legal users of water (including DWR) or unreasonably impact fish, wildlife, or other instream beneficial uses. DWR requested that any approval of the subject petition include these conditions. DWR stated that it was working with DWP to prepare a following and monitoring plan to aid in real-time assessment of the 'transferable water' and would forward a copy of the executed plan to the State Water Board upon its completion.

State Water Board Response: The fallowing and monitoring program contained in Exhibits 1 and 2 (as described in Section 1.4, above) was prepared in coordination with DWR. Representatives of DWR's staff have reviewed the fallowing and monitoring program and indicated to State Water Board staff that it is sufficient to protect the State Water Project and Central Valley Project from injury. Compliance with the fallowing and monitoring program is required by this Order.

3.2 Comments of the United States Bureau of Reclamation. USBR requested that any approval of the proposed temporary change include conditions requiring the following:

- a. Prior to initiating the transfer, the petitioner must submit to the Division of Water Rights (for approval) a description of the fallowing actions, a description of how consumptive use savings will be measured, and actions taken to monitor fallowed fields to ensure the accuracy of the estimates of consumptive use savings, taking into account any impacts from weed growth and evaporation of water from bare fields; and
- b. The transfer shall only occur during balanced conditions in the Delta.

State Water Board Response: The fallowing and monitoring program contained in Exhibits 1 and 2 (as described in Section 1.4, above), prepared in coordination with DWR, addresses issues contained in a., above. Compliance with the fallowing and monitoring program is required by this Order. It is unclear, per b above, why transfers should only be allowed to occur when conditions in the Delta are balanced. Since it is extremely unlikely that conditions in the Delta will not be balanced during the period of the proposed transfer (July through September) this issue is essentially moot. If USBR intends to make similar comments regarding future petitions for temporary change, USBR should explain how the change would injure the CVP when conditions in the Delta are not balanced.

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 or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) The water proposed for transfer pursuant to these temporary 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. Since both Bouldin Island and Webb Tract are below sea level, the use of crop ETAW (evapotranspiration of applied water) estimates to calculate the amount of water made available through fallowing may overestimate the amount of water conserved. In coordination with DWR, DWP has prepared a fallowing and monitoring program (contained in Exhibits 1 and 2, described in Section 1.4 of this Order) to ensure that the consumptive use savings of the fallowing program is estimated accurately, taking into consideration evapotranspiration and evaporation on fallowed fields. Compliance with this program is required by this Order.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this order would be consumptively used in the absence of the proposed 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 article 1 of 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).) In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. The water proposed for transfer pursuant to these temporary changes consists of water made available through fallowing of Bouldin Island and Webb Tract. 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. In coordination with DWR, DWP has prepared a plan (contained in Exhibits 1 and 2, described in Section 1.4 of this Order) to ensure that the fallowing does not injure other legal water users, including the State Water Project or Central Valley Project. Compliance with this plan is required by this Order. In addition, I will require as a condition of this approval that MWD submit written confirmation that MWD has agreed to reduce its 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. 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. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water.

4.3 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). (Pub. Resources Code, § 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. Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant 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). 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 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions submitted by Delta Wetlands Properties (DWP) for temporary changes in the place of use, purpose of use, and point of rediversion under Reclamation District No. 756's License 1405 (Application 2948) 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 17,941 acre-feet (af).

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

1. State Water Resources Control Board Order 2009-0003-DWR is revoked.
2. The transfer/exchange of water is limited to the period from the date of this Order through September 30, 2009.
3. Licensee shall implement and comply with the following and monitoring plan described in *Estimating Conserved Water Associated with Fallowing on Bouldin Island and Webb Tract*, dated February 19, 2009 and *Delta Wetlands 2009 Water Transfer Program, Webb Tract and Bouldin Island*, dated March 13, 2009.
4. Prior to diverting water at either the Banks Pumping Plant or the Jones Pumping Plant, petitioner shall submit written confirmation that MWD has agreed to reduce its State Water Project (SWP) Table A deliveries in 2009 to the extent that the Deputy Director determines, based on the following and monitoring plan described in *Estimating Conserved Water Associated with Fallowing on Bouldin Island and Webb Tract*, dated February 19, 2009 and *Delta Wetlands 2009 Water Transfer Program, Webb Tract and Bouldin Island*, dated March 13, 2009, that the amount of water actually saved through fallowing was less than the amount of water transferred.
5. 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.
6. 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 (measured as a three-day average) at the Banks Pumping Plant and the Jones Pumping pursuant to this change is 107.4 cubic feet per second.

Diversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies 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, with the exception of the three interior southern Delta salinity compliance locations.

7. Domestic, power generation, municipal, industrial, salinity control, and water quality control are temporarily added as purposes of use under Licenses 1405 and 1572.
8. 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.

9. By December 1, 2009, the petitioner shall provide the Deputy Director for Water Rights a report describing the conservation and transfer of water 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;
 - c. The daily amounts of water delivered to MWD pursuant to this Order;
 - d. Final estimates of the amount of water actually conserved through following; and
 - e. A summary of any SWP Table A water forgone due to differences between the amount of water delivered to MWD and the amount of water saved through following.

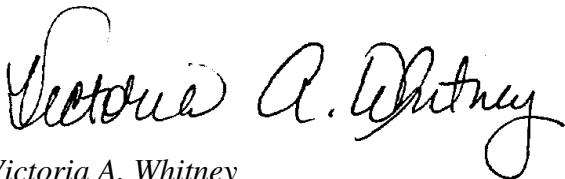
10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water 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.

11. 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.

12. 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: June 23, 2009