

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 1387 (APPLICATION 138)
OF CARMICHAEL WATER DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
1,889 ACRE-FEET OF WATER TO SANTA CLARA VALLEY WATER DISTRICT AND
STATE WATER CONTRACTORS**

**ORDER DENYING TEMPORARY CHANGE IN POINT OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

SOURCE: American River

COUNTY: Sacramento

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On May 5, 2021, the Carmichael Water District (Carmichael or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change (Petition) involving the transfer of water under water right License 1387 (Application 138), pursuant to Water Code section 1725 et seq. Pursuant to the petition, Carmichael seeks to transfer up to 1,889 acre-feet (af) of water to the Santa Clara Valley Water District (SCVWD) and State Water Contractor (SWC) agencies participating in the State Water Project's (SWP) Dry Year Transfer Program from July 2021 to November 2021. The SWC agencies include: Dudley Ridge Water District, Central Coast Water Authority, County of Kings, San Geronio Pass Water Agency, Metropolitan Water District of Southern California, San Gabriel Valley Water Company, Antelope Valley East Kern Water Agency, Zone 7 Water Agency, San Bernardino Valley Municipal Water District, Santa Clara Valley Water District, County of Napa Flood Control and Water Conservation District, Palmdale Water District, Santa Clarita Valley Water District, Kern County Water Agency, and Alameda County Water District (hereinafter collectively referred to as SWC Agencies).

2.0 PETITION FOR TEMPORARY CHANGE INVOLVING TRANSFER

2.1 Description of the proposed temporary changes

In order to facilitate the transfer, Carmichael proposes to temporarily add the following to License 1387: (1) SWP's Harvey O. Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, (2) North Bay Aqueduct Intake via Barker Slough as a point of diversion, (3) San Luis Reservoir as a point of rediversion, (4) a portion of the service area of the State Water Project as an additional place of use; and (5) add municipal and industrial purposes of use.

Carmichael proposes to transfer water to SCVWD and the SWC Agencies through groundwater substitution. Carmichael will pump up to 1,889 af of groundwater in lieu of using surface water under License 1387. Sacramento Suburban Water District will pump up to 9,260 af of groundwater to replace surface water that would have been used under Carmichael License 1387 and the City of Sacramento Permits 11358, 11359, 11360, and 11361. Absent the proposed temporary transfer, Carmichael would divert the entire quantity of surface water proposed for transfer from the American River pursuant to License 1387 to meet its irrigation and domestic demands.

2.2 Summary of Carmichael's License 1387

License 1387 authorizes year-round direct diversion of up to 15 cubic feet per second from the American River in Sacramento County for irrigation and domestic uses. The water is placed to beneficial use within 4,500 acres of Carmichael's district boundaries.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 10, 2021, Governor Gavin Newsom declared a State of Emergency for the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought. The signed proclamation modifies noticing requirements and notice duration for temporary transfers of water. As such, the Division noticed Carmichael's petition on May 14, 2021 to the Division's website and via the State Water Board's electronic subscription mailing list pursuant to modified Water Code section 1726(d).

The comment deadline was June 1, 2021. Timely comments to the petition were received from the California Department of Fish and Wildlife, Mr. Richard Morat, U.S. Bureau of Reclamation, and the Central Delta Water Agency. Carmichael provided responses to the comments by letters to the Division dated June 7, 2021 and June 10, 2021. The responses are available in the record for License 1387.

4.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water 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 water, or reduction in return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

5.0 WATER UNAVAILABLE FOR TRANSFER UNDER LICENSE 1387

The State Water Board has developed a methodology to identify when supply and demand data indicate that water is unavailable for diversion by water right holders in the Sacramento-San Joaquin Watershed, referred to as the Water Unavailability Methodology for the Delta Watershed, or Methodology. This Methodology was most recently updated on June 15, 2021; a summary report describing the Methodology (titled “Water Unavailability Methodology for the Delta Watershed”), as well as the dataset used to implement the Methodology (titled “wua_spreadsheet_061621.xlsx”), are available at the following website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_to_ols_methods/delta_method.html. Based on the available data and Methodology, the information available to the State Water Board indicates that available supplies in the Sacramento River watershed are insufficient to support diversion of any post-1914 water right, which includes License 1387. On June 15, 2021, the State Water Board mailed a *Notice of Unavailability of Water for Post-1914 Water Right Holders and Warning of Impending Water Unavailability for Pre-1914 and Riparian Claimants in the Sacramento-San Joaquin Delta Watershed* (Notice of Unavailability) to water users including Carmichael to notify them that the State Water Board’s best available information indicated that there is insufficient water for diversions under post-1914 rights.

Further, transferable water is limited to the extent of the surface water direct diversion rights of the water right holder at the time of the transfer. It is unclear whether water would be lawfully diverted and consumptively used in the absence of the transfer given that the Methodology indicates supplies are insufficient meet the priority of License 1387.

The evidence, including the Methodology and related dataset and the information supplied by Carmichael, shows that diversions pursuant to License 1387 could injure senior diverters in the Sacramento River watershed.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, 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 2012-0029.

7.0 CONCLUSION

Given the information available to the State Water Board as described in Section 5.0, the State Water Board is unable to make the findings required by Water Code section 1727, subdivision (b)(1), that this transfer will not injure any legal user of water.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition submitted by the Carmichael Water District under License 1387 for temporary changes in the point of diversion, place of use, and purpose of use, to authorize the transfer of up to a total of 1,889 af of water to the Santa Clara Valley Water District and State Water Contractor Agencies is denied. All existing terms and conditions of License 1387 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
Jule Rizzardo, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUNE 29, 2021