

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
WR ORDER 2001-19-DWR

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TEMPORARY CHANGE INVOLVING THE TRANSFER OF  
UP TO 35,428 ACRE-FEET OF WATER FROM  
THE CALIFORNIA DEPARTMENT OF WATER RESOURCES  
TO DEL PUERTO WATER DISTRICT, PANOCHÉ WATER DISTRICT,  
SAN BENITO COUNTY WATER DISTRICT, SAN LUIS WATER DISTRICT,  
AND TRANQUILITY IRRIGATION DISTRICT  
UNDER THE CALIFORNIA DEPARTMENT OF WATER RESOURCES  
PERMIT 16482 (APPLICATION 17512)

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ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE  
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On June 4, 2001,

Department of Water Resources  
c/o Nancy Quan, Chief  
Project Water Contracts Branch  
P.O. Box 942836  
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Del Puerto Water District (DPWD), the Panoche Water District (PWD), San Benito County Water District, (SBCWD), San Luis Water District (SLWD), and Tranquility Irrigation District (TID), served by the U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP), would be temporarily added to the authorized place of use under DWR's permitted Application 17512. The temporary change would be effective through May 30, 2002.

**1.1 Description of the Transfer** The water which is covered by this petition is part of an exchange initiated in November 2000, between Kern County Water Agency (KCWA) and five south of the Delta contractors (DPWD, PWD, SBCWD, SLWD, and TID). The five CVP districts transferred 35,428 acre-feet of CVP water stored in San Luis Reservoir to the KCWA between November 2000, and April 2001. In exchange for the CVP water, KCWA agreed to make available for transfer a like amount of water in return at a later date. These Districts now request authorization to receive up to 35,428 acre-feet (af) of KCWA's State Water Project (SWP) water between June 2001 and May 2002. In the absence of this transfer, KCWA would receive the 35,428 af of water under its SWP entitlement for either use within its service area or diversion to underground storage.

## 2.0 BACKGROUND

**2.1 Substance of DWR's Permit** Permit 16482 was issued to the Department of Water Resources (DWR) on September 26, 1972, and authorizes DWR to collect up to 1,100,000 af per annum by storage, to be diverted from the Sacramento and San Joaquin watersheds; and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The 35,428 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permits, conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act. Instantaneous release rates from San Luis Reservoir may increase due to the proposed transfer.

**2.2 Place of Use under the Proposed Transfer** The service areas of DPWD, PWD, SBCWD, SLWD, and TID (as shown on map submitted with the petition) would be temporarily added to the place of use of Permit 16482.

## 3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of KCWA's SWP entitlement currently stored in the SWP portion of San Luis Reservoir under the conditions of Permit 16482. In the absence of the proposed transfer, the water would either be used within the service area of the KCWA or delivered to underground storage facilities within the Kern County area.

Portions of PWD and SLWD have been identified as having agricultural drainage problems with respect to salt loading in the San Joaquin River Watershed. Therefore, the proposed transfer could have the potential to impact downstream legal users of water with respect to a reduction in water quality. However, since the crops intended for irrigation under the proposed transfer have already been planted, these crops will be irrigated with groundwater in the absence of this transfer. Thus, the approval of this transfer should not result in an increase in the amount of water applied to crops in these districts or a resultant increase in the agricultural drainage to the San Joaquin River Watershed. Additionally, the transferees have submitted information contained in a report titled "1994 Delta-Mendota Canal Groundwater Pump-In Program" which indicated that the groundwater which would be used to irrigate crops in the absence of the proposed transfer typically contains between about 1,200 and 1,500 milligrams per liter (mg/L) of Total Dissolved Solids (TDS). DWR has submitted information indicating that the SWP water which would be used for irrigation under the proposed transfer typically contains between about 125 and 300 mg/L TDS. Thus, the proposed transfer should not result in an increased concentration of salts in drainage water that does enter the San Joaquin River Watershed from these districts.

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 and 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.

#### 4.0 ENVIRONMENTAL CONSIDERATIONS

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 SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for the transfer is currently stored in SWP's portion of San Luis Reservoir, and therefore would have no effect on any natural streamflow or hydrologic regime. The water was stored in San Luis Reservoir under provisions of DWR's permits, and conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB Order WR 98-9, and Biological Opinions issued by the USFWS and the NMFS under the Endangered Species Act.

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

#### 5.0 COMMENTS RECEIVED ON THE PROPOSED TRANSFER/EXCHANGE

Timely comments on the proposed transfer were submitted to the Division by the California Sportfishing Protection Alliance (CSPA) and the South Delta Water Agency (SDWA). These comments and the SWRCB responses are summarized below.

##### **South Delta Water Agency**

SDWA recommended that the petitioner show how increased water deliveries to the proposed placed of use (resulting from the proposed transfer) affects the concentrations of salts in their discharges. SDWA noted that the petition notice indicated that the proposed users of the transfer water have implemented programs to increase irrigation efficiency and reduce agricultural drainage (typically containing a high concentration of salts). SDWA asserted that while an increase in irrigation efficiency may reduce the volume of agricultural drainage, it may not result in a decrease in the total mass of salts discharged and thus result in injury to downstream users.

**SWRCB Response:** As stated in Section 3.0, above, the proposed transfer should not increase either the quantity of agricultural drainage entering the San Joaquin River Watershed or the concentration of salts in drainage water that does enter the San Joaquin River Watershed.

##### **California Sportfishing Protection Alliance**

CSPA asserted that the proposed transfer extends beyond one year and thus does not meet the legal requirements Water Code section 1728. CSPA also asserted that the SWRCB has no evidence to support the necessary determination that the proposed transfer "could not injure any legal user of water during any potential hydrologic condition, through resulting significant changes in water quantity, water quality..."



## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change in the place of use under the Department of Water Resources' Permitted Application 17512 for the transfer of up to 35,428 af 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 May 30, 2002.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement with the Kern County Water Agency, who is foregoing the delivery of the subject water.
3. For the purpose of transferring up to 35,428 af of water, the place of use under Permit 16482 is temporarily changed as follows:

SWP's permitted Application 17512 -- The authorized place of use is expanded to include the service areas of DPWD, PWD, SBCWD, SLWD, and TID as shown on the map submitted with the petition dated May 31, 2001.

4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, DPWD, PWD, SBCWD, SLWD, and TID shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of their service areas. 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/exchange, but no later than November 1, 2002, 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.

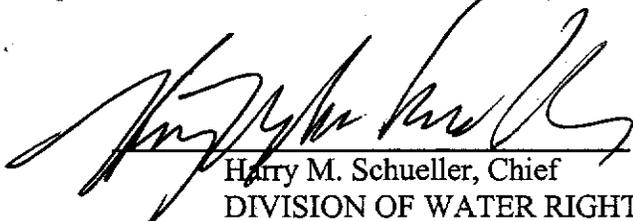
The report should include the following information:

1. General locations where the transferred water was used;
2. The monthly amounts of water each location received; and,
3. 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 SWRCB 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 SWRCB 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.



Harry M. Schueller, Chief  
DIVISION OF WATER RIGHTS

Dated: August 10, 2001