

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

WR ORDER 2003-0017-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 26,428 ACRE-FEET OF WATER
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
TO DEL PUERTO WATER DISTRICT, PANOCHE WATER DISTRICT,
SAN LUIS WATER DISTRICT, AND TRANQUILITY IRRIGATION DISTRICT**

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

1.0 SUBSTANCE OF PETITION

On July 25, 2003,

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), Panoche Water District (PWD), the San Luis Water District (SLWD), and the 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 the Department of Water Resources (DWR) permitted 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 The water proposed for transfer under this petition was made available by two previous exchanges between Kern County Water Agency (KCWA) and CVP contractors DPWD, PWD, SLWD, and TID.

The first exchange occurred in April 2000 when DPWD, SLWD, TID, and San Benito County Water District (SBCWD) transferred 23,941 af of their CVP water to KCWA in exchange for delivery of a like amount of its State Water Project (SWP) water over several years. Since a portion of KCWA is located within the CVP place of use, SWRCB approval was not required for it to receive CVP water. From June 2003 through December 31, 2003, KCWA has agreed to provide up to 8,000 af of its SWP water to DPWD, SLWD, and TID (SBCWD is not involved in this transfer). KCWA indicated that the remainder of the 23,941 af may be returned in future years.

The second exchange occurred between February and April 2003 when DPWD, PWD, and SLWD transferred 18,428 acre-feet (af) of their CVP water to KCWA in exchange for a like amount of its SWP water from June 2003 through May 2004. Accordingly, DWR submitted this petition to allow DPWD, PWD, SLWD, and TID to receive up to a total of 26,428 af of its SWP water upon approval of this petition through

May 2004. The transfer total (26,428 af) is divided amongst the transferees as follows: 10,000 af for DPWD; 5,500 af for PWD; 9,928 af for SLWD; and 1,000 af for TID.

In the absence of this transfer, KCWA would receive the subject 26,428 af of water from DWR for 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 DWR on September 26, 1972, and it authorizes DWR to collect up to 1,100,000 acre feet 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 Clifton Court Forebay and the Tracy Pumping Plant, located within the San Francisco Bay/Sacramento-San Joaquin Delta (Delta), are authorized points of diversion/rediversion under Permit 16482. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power within the SWP service area. The subject 26,428 af of SWP water is either currently stored or will be 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 and the National Marine Fisheries under the Endangered Species Act. The proposed transfer may result in temporary increases in the instantaneous release rate from San Luis Reservoir.

2.2 Place of Use under the Proposed Transfer DWR's petition requested the temporary addition of areas within DPWD, PWD, SLWD, and TID to the place of use of Permit 16482. These areas are shown on a map submitted with the petition titled *Areas of Water Transfer from Kern County Water Agency to Del Puerto WD, Panoche WD, San Luis WD, and Tranquility ID* dated May 2003. This map is available for viewing on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program, attached to the public notice for this petition.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated August 19, 2003) was provided via regular mail to interested parties and by publication in the Fresno Bee on August 25, 2003. The Division did not receive any timely comments to the public notice.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Kern County Water Agency's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be either used within Kern County Water Agency's service area or delivered to offstream (underground) storage facilities located within Kern County.

DWR's petition states that portions of SLWD and PWD have been identified as sources of agricultural drainage to the San Joaquin River. Increased agricultural drainage has the potential to increase instream salinity levels in the San Joaquin River and injure downstream users. The petition states that in the absence of this transfer, additional groundwater would be pumped and used to meet the water demands. The petition asserts that groundwater would contain a significantly higher concentration of salts than the surface water available for transfer and would therefore require a higher leaching fraction and increased application rates. Thus, the petition concludes that approval of the proposed temporary change may result in a decrease in both the quantity of agricultural drainage and its concentration of salts.

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.

5.0 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 transfer is either currently stored or will be stored in San Luis Reservoir under provisions of Permit 16482, 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 and the National Marine Fisheries under the Endangered Species Act. Thus, the transfer of up to 26,428 af to DPWD, PWD, SLWD, and TID should have no effect on any natural streamflow or hydrologic regime.

5.1 Environmental Issues within DPWD, PWD, SLWD, and TID The petition states that SLWD and PDWD have implemented programs to increase irrigation efficiency and reduce drain water leaving the district. These programs include metered deliveries, lined canals and piping of water, assistance to members to increase irrigation efficiency, and groundwater management. The petition also states that DPWD and TID have implemented some of the programs listed above to increase their irrigation efficiency and reduce potential drainage impacts.

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.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB 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' Permitted Application 17512 for the transfer of up to 26,428 af of water is approved.

All existing terms and conditions of the subject permit 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 for one year.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement with Kern County Water Agency, who is foregoing the delivery of the subject water.
3. The place of use is temporarily changed as follows:

SWP's permitted Application 17512 -- The authorized place of use is expanded to include areas within the Del Puerto Water District, Panoche Water District, the San Luis Water District and the Tranquility Irrigation District shown on map titled *Areas of Water Transfer from Kern County Water Agency to Del Puerto WD, Panoche WD, San Luis WD, and Tranquility ID* dated May 2003, on file with the SWRCB under permitted Application 17512.

4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, DPWD, PWD, 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 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 January 1, 2005, 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:

- 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 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.

STATE WATER RESOURCES CONTROL BOARD

*ORIGINAL SIGNED BY VICTORIA A. WHITNEY
FOR*

Harry M. Schueller
Chief Deputy Director

Dated: September 26, 2003