

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

WR ORDER 2004-0028-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 6,000 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 CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 30, 2004,

Department of Water Resources
c/o Nancy Quan, Chief
Bay-Delta Program Development
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, portions of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's 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 State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms (NF) and Vista Verde Farms (VVF) are farming interests who hold lands in both Tulare and WWD. NF and VVF have requested that up to 6,000 acre-feet (af) of SWP water currently 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 water would be used by NF and VVF on their lands located within the Tulare Lake Basin Water Storage District.

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/redirection under Permit 16482. Water

diverted under Permit 16482 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 6,000 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 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. 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 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 (dated March 19, 2004) 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 TRANSFER

Public notice of the petition for temporary change (dated April 16, 2004) was provided via regular mail to interested parties and by publication in the Fresno Bee on April 23, 2004. 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 Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either surface drainage to or increased groundwater gradients towards the San Joaquin River.

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 the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits, and conditions set forth in the 1995 Bay-Delta water quality objectives, SWRCB 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. Therefore, the diversion of this water would have no significant adverse effect on any natural streamflow or hydrologic regime.

5.1 Environmental Issues within WWD In general, 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 one 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 Generalized Depth to Shallow Ground Water, October 2001 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 among the lands that do not cause surface water problems due to agricultural drainage.

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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the

Department of Water Resources Permit 16482 (Application 17512) for the transfer of up to 6,000 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 for one year.
2. Prior to commencing the transfer, the Department of Water Resources shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District and the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use is temporarily changed as follows:

State Water Project's permitted Application 17512: The authorized place of use is expanded to include Township 17S, Range 15E and Township 20S, Range 18E, MDB&M.
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, Westlands Water District (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 September 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, Chief
Division of Water Rights*

Dated: June 8, 2004

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