

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

DIVISION OF WATER RIGHTS

WR ORDER 2004-0041-DWR

**IN THE MATTER OF LICENSE 2685 (APPLICATION 1224)
MERCED IRRIGATION DISTRICT
ORDER APPROVING TEMPORARY CHANGE
IN PLACE OF USE AND POINTS OF REDIVERSION
AND TRANSFER OF 25,000 ACRE-FEET OF WATER**

SOURCE: Merced River

COUNTY: Mariposa and Merced

ORDER APPROVING TEMPORARY CHANGE IN PLACE OF USE AND POINTS OF REDIVERSION AND TRANSFER OF 25,000 ACRE-FEET OF WATER BY THE CHIEF OF THE DIVISION OF WATER RIGHTS

1.0 SUBSTANCE OF PETITION

On June 2, 2004,

Merced Irrigation District
744 West 20th Street
Merced, CA 95344-0288

filed with the State Water Resources Control Board (SWRCB), Division of Water Rights (Division), a Petition for Temporary Change pursuant to Water Code Sections 1725 through 1732. If approved, the Merced Irrigation District (District) would temporarily increase their licensed place of use and also add seven new points of rediversion. Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

1.1 Description of the Transfer: The District proposes to transfer up to 25,000 acre-feet of stored water under its License 2685 to irrigate land that is currently not included as a place of use under the license.

The District is required to release water from its storage reservoir at Lake McClure to downstream water users to satisfy water supplies for riparian and pre-1914 claims of water rights as mandated by the Cowell Agreement (Agreement). The Agreement was established on January 17, 1926 pursuant to a Merced Superior Court Order, and stipulates a scheduled quantity of flow rates, measured at Crocker-Huffman Dam, to be maintained by the District.

The Agreement requires the District to bypass and release water in the summer so that the riparian and pre-1914 downstream users would experience the same hydrologic conditions that were in place prior to the construction of the New Exchequer Dam. Consequently, the District has at times been required to supplement downstream flows in the Merced River with releases from storage when inflow to Lake McClure has been insufficient to satisfy the flow requirements downstream of the Crocker-Huffman Dam.

The downstream diverters of the water released from storage are known as the Cowell Agreement Diverters (CAD). The CAD group irrigates acreage that is not included as a place of use in License 2685. The District filed the temporary change petition to include the acreage irrigated by the downstream diverters as a place of use in License 2685 and to include the seven points of rediversion used to supply water to the CAD group. The District seeks authorization to serve 10,208 acres within a gross area of 15,814 acres.

In the absence of the proposed temporary change, the water would be used by the District on land currently included within the District boundaries.

2.0 BACKGROUND

2.1 Substance of the District's License:

Original Water Rights under License 2685

License 2685 was issued to Merced Irrigation District (District) on August 11, 1944, pursuant to Application 1224. License 2685 allows the direct diversion of 1,500 cubic feet per second (cfs) of water from the Merced River from about March 1 through about October 31 of each year. License 2685 also allows the diversion from the Merced River to storage of 266,400 acre-feet of water per annum (afa) from about October 1 of each year to about July 1 of the succeeding year.

The point of diversion is at the New Exchequer Dam on Lake McClure. There are also two points of rediversion downstream of New Exchequer Dam – Merced Falls Diversion Dam for the North Side Canal and Crocker-Huffman Diversion Dam for the Main Canal. Water rediverted through the North Side Canal and the Main Canal is used for irrigation and domestic purposes on 164,395 gross acres within the boundaries of the District.

Modified Water Rights under License 2685

Effective February 16, 1995, License 2685 was modified from its original conditions to allow the direct diversion of 5,000 afa of water from the Merced River at a rate not to exceed 7 cfs from November 1 of each year to February 29 of the following year for municipal use in the Mariposa Town Planning Area. Storage under License 2685 is reduced in the amount of water diverted to the Mariposa Town Planning Area, up to 1,667 afa. Combined maximum direct diversion and storage under License 2685 cannot exceed 345,440 afa. The point of diversion for the water delivered to the Mariposa Town Planning Area is located approximately 40 miles upstream of New Exchequer Dam.

License 2685 was further amended effective June 20, 2003 to include an additional point of rediversion and modify the place of use resulting from the District's consolidation with the El Nido Irrigation District. The new point of rediversion downstream of New Exchequer Dam is on Duck Slough. Water rediverted through Duck Slough is used for irrigation purposes on 9,418.6 acres within the boundaries of El Nido Irrigation District.

2.2 Place of Use and Points of Rediversion under the Proposed Transfer: The District's petition requests the temporary addition of the lands irrigated by the CAD group which are shown on a map submitted with the petition titled *Proposed Addition to Place of Use and Points of Rediversion*, dated June 2004.

The new points of redirection are as follows:

1. Canevaro Ditch - located within the projected NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, T5S, R14E, MDB&M.
2. Robinson/Cuneo Ditch - located within the projected NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 10, T5S, R14E, MDB&M.
3. Ruddle Ditch – located within the projected NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 9, T5S, R14E, MDB&M.
4. Dale/Scott Ditch – located within the projected SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, T5S, R14E, MDB&M.
5. Jorgenson/Ferrell Ditch – located within the projected NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 17, T5S, R14E, MDB&M.
6. Cowell Ditch – located within the projected NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 17, T5S, R14E, MDB&M.
7. Bettencourt/Schaffer/Griffith Ditch – located within the projected SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 28, T5S, R13E, MDB&M.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change was provided July 2, 2004 via regular mail to interested parties and by publication in the Merced Sun-Star on July 10, 2004 and the Mariposa Gazette on July 14, 2004. The Division did not receive any substantive comments on or objections to the petition for temporary change and transfer of water.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for temporary transfer through October 2004 is currently stored under License 2685 in Lake McClure. The water proposed for transfer in the 2005 irrigation season will be collected to storage in Lake McClure from October 1, 2004 to July 31, 2005. Under License 2685, the District can both divert directly and collect water to storage. The District does not provide water by direct diversion under License 2685 to the CAD service area. When adequate instream flow is available for direct diversion, the District limits its diversion to maintain sufficient instream flow for the CAD diverters to use their claimed riparian and pre-1914 appropriative rights set forth in the CAD agreement. Therefore, the transfer should be limited to water released from storage at Lake McClure. In the absence of the proposed transfer, the water would remain in storage in Lake McClure or be released from storage for use by the District within the District boundaries.

No substantive objections to the transfer on the basis of injury to legal water rights were filed with the Division.

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

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition for temporary change in the place of use and points of rediversion under Merced Irrigation District's License 2685 (Application 1224) for the transfer of 25,000 acre-feet of water to the CAD service area is approved.

All existing terms and conditions of License 2685 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing for one year. Only water stored in Lake McClure may be transferred. Water shall not be provided to the CAD service area by direct diversion.

2. License 2685 shall be temporarily amended to add the new points of re-diversion, described as follows:

Canevaro Ditch – West 1,792 feet and South 366 feet from projected NE corner of Section 11, being within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 11, T5S, R14E, MDB&M.

Robinson/Cuneo Ditch – West 2,117 feet and South 423 feet from projected NE corner of Section 10, being within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 10, T5S, R14E, MDB&M.

Ruddle Ditch – West 1,963 feet and South 1,174 feet from projected NE corner of Section 9, being within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 9, T5S, R14E, MDB&M.

Dale/Scott Ditch – East 742 feet and South 2,683 feet from projected NW corner of Section 9, being within the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, T5S, R14E, MDB&M.

Jorgenson/Ferrell Ditch – West 926 feet and South 674 feet from projected NE corner of Section 17, being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 7, T5S, R14E, MDB&M.

Cowell Ditch – East 390 feet and North 1,744 feet from projected SW corner of Section 17, being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 17, T5S, R14E, MDB&M.

Bettencourt/Shaffer/Griffith Ditch – East 2,021 feet and North 545 feet from projected SW corner of Section 28, being within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 28, T5S, R13E, MDB&M.

3. The place of use shall be modified to include the following area: Irrigation of 10,208 acres within a gross area of 15,814 acres as shown on a map entitled "Merced Irrigation District – Proposed Addition to Place of Use and Points of Rediversion" dated June 2004, filed with the Division.
4. Within 60 days of completion of the transfer, but not later than October 14, 2005, the Licensee shall provide to the Chief of the Division a report describing the use of water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.
5. Licensee shall develop and implement a plan acceptable to the Chief of the Division to add the CAD service area and the seven points of rediversion listed in this Order to License 2685. The plan shall be submitted to the Division within 30 days of the date of this Order. A long-term petition for change shall be submitted in accordance with the schedule set forth in the plan, as modified if necessary and accepted by the Chief of the Division. Failure to comply with this requirement may result in cancellation of this Order and may further result in appropriate enforcement action.

6. The District shall comply with the License 2685 instream flow requirements at all times while transferring water pursuant to this Order.
7. 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: September 17, 2004

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