

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

DIVISION OF WATER RIGHTS

WRO ORDER 2004-0044-DWR

IN THE MATTER OF PERMITS 1267 AND 2492 (APPLICATIONS 1651 AND 2778)

**PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE FEET OF WATER
FROM THE SOUTH FEATHER WATER AND POWER AGENCY TO THE
BAY-DELTA AUTHORITY'S ENVIRONMENTAL WATER ACCOUNT**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND POINT OF REDIVERSION
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On September 16, 2004,

South Feather Water and Power Agency
c/o Michael Glaze, General Manager
P.O. Box 581
Oroville, California 95965

filed with the State Water Resources Control Board (SWRCB) a Petition for Temporary Change under Water Code section 1725, et seq. South Feather Water and Power Agency's (SFWPA) petition requests the transfer of up to 10,000 acre-feet (af) of water to the Bay-Delta Authority's Environmental Water Account (EWA) for use within the Central Valley Project (CVP) and State Water Project (SWP) service areas or to meet Delta water quality standards. Water acquired by EWA via this transfer will be administered by the Department of Water Resources (DWR). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer SFWPA proposes to transfer up to 10,000 af of water under Permits 1267 and 2492 (Applications 1651 and 2778) to the EWA. To facilitate the transfer, SFWPA proposes to release an additional 10,000 af of water currently stored in Little Grass Valley Reservoir and Sly Creek Reservoir and allow it to spill from the Ponderosa Reservoir directly into Oroville Reservoir (during November and December of 2004). The water would remain in storage in Oroville Reservoir for use by EWA within the CVP and SWP service areas and wildlife refuges for up to one year from the date of approval of this transfer (likely through early November 2005). Water would be delivered to these service areas via releases from Oroville Reservoir to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta for rediversion at the Clifton Court Forebay or the Tracy Pumping Plant.

Operational studies prepared by PG&E for SFWPA show the effects on SFWPA's reservoirs with the proposed transfer and absent the proposed transfer (assuming normal water year conditions). These studies indicate that the transfer would result in a reduction of about 8,600 af of storage in Little Grass Valley Reservoir and a reduction of about 1,400 af of storage in Sly Creek Reservoir (absent the transfer). SFWPA stated that the transfer would not impact its ability to provide either irrigation or domestic deliveries

to its customers. SFWPA also entered into an agreement with DWR titled *Agreement Between the Department of Water Resources and South Feather Water and Power Agency for a Temporary Water Transfer for Support of the Environmental Water Account* (Refill Agreement). The Refill Agreement is intended to ensure that future refill of water transferred from storage in Little Grass Valley Reservoir and Sly Creek Reservoir does not adversely impact the SWP or CVP.

In the absence of this transfer, the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future marketing to other buyers or use by SFWPA

2.0 BACKGROUND

2.1 Substance of SFWPA's Permits SFWPA holds Permits 1267 and 2492 (Applications 1651 and 2778). Permit 1267 authorizes the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River between October 1 and July 1. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) between April 1 and July 1. The point of diversion to storage for Permit 1267 is located at the Little Grass Valley Dam. Points of rediversion include the South Fork Diversion Dam, Sly Creek Dam, Lost Creek Dam, Forbestown Dam, and Ponderosa Dam. Water is used for irrigation and domestic purposes within the authorized place of use and for recreational purposes within Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir.

Permit 2492 authorizes the diversion to storage of up to 25,000 af of water per annum from Lost Creek between October 1 and June 1. Permit 2492 also authorizes the direct diversion from Lost Creek of up to 50 cfs between April 1 and June 1. The point of diversion for Permit 2492 is located at the Sly Creek Dam and the point of rediversion is located at the Lost Creek Dam. The water is used for irrigation and domestic purposes within the authorized place of use and for recreational purposes within Sly Creek Reservoir, Lost Creek Reservoir, and Ponderosa Reservoir.

On June 17, 2004, the SWRCB issued Order 2004-0029 which, in part, modified the purpose of use under Permits 1267 and 2492. Municipal and industrial were added as authorized purposes of use to permits 1267 and 2492 contingent upon the submittal of acceptable water conservation plans to the Chief of the Division of Water Rights by December 17, 2004. As of the date of this order these plans have not been submitted. This order does not authorize the change in purpose of use for municipal and industrial purposes. Accordingly, SFWPA must meet the water conservation plan submittal requirement prior to the use of water for municipal or industrial purposes pursuant to this order.

2.2 Changes under the Proposed Transfer The proposed temporary change would temporarily add the service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626) to the place of use of Permits 1267 and 2492. The Oroville Dam, Clifton Court Forebay, and the Tracy Pumping Plant would be temporarily added as points of rediversion under Permits 1267 and 2492. Salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under Permits 1267 and 2492.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated September 28, 2004) was provided via regular mail to interested parties and by publication in the Oroville Mercury - Register on October 1, 2004. The Division received timely comments regarding the proposed temporary change from the United States Bureau of Reclamation (USBR). USBR's comments and the SWRCB's responses are summarized below.

United States Bureau of Reclamation USBR commented that it had reviewed the proposed transfer and the Refill Agreement between SFWPA and DWR. USBR stated that the conditions contained in the Refill

Agreement ensure that the proposed temporary change will not adversely impact the water rights or operations of the CVP. USBR requested that any SWRCB approval of this transfer note that SFWPA had entered into the Refill Agreement with DWR.

SWRCB Response The refill of water transferred pursuant to this order by SFWPA is conditioned upon compliance with the Refill Agreement.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer was stored under provisions of Permits 1267 and 2492. In the absence of this transfer, the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future marketing to other buyers or use by SFWPA. This order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential water level or water quality impacts associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion to Permits 1267 and 2492; and
- b. Future refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this temporary change.

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 temporary change of water rights 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 (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). Abrupt reductions in the magnitude of flow in the Feather River (downstream of Oroville Reservoir) have the potential to adversely impact fish. Maximum ramp-down rates for releases of water from Oroville Reservoir are governed by agreements between DWR and the California Department of Fish and Game and the National Marine Fisheries Service. This order requires the petitioner to comply with these requirements and any additional applicable conditions imposed by regulatory agencies other than the SWRCB. Additionally, this order requires SFWPA to comply with SWRCB Decision 1641 (D-1641), Tables 1, 2, and 3, to ensure that no unreasonable effects on fish, wildlife or other instream beneficial uses are caused by the addition of the Clifton Court Forebay or the Tracy Pumping Plant as points of rediversion.

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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, purpose of use, and points of redirection under South Feather Water and Power Agency's (SFWPA) Permits 1267 and 2492 (Applications 1651 and 2778) to facilitate the transfer of up to 10,000 af of water is approved.

All existing terms and conditions of Permits 1267 and 2492 remain in effect, except as temporarily amended by the following conditions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing through November 1, 2005.

2. The place of use is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).

3. The Clifton Court Forebay and the Tracy Pumping Plant are temporarily added as points of redirection. Redirection of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators of those facilities with the standards set forth in Tables 1, 2, and 3 on pages 181 to 187 of SWRCB Revised Decision 1641 (D-1641) and shall comply with the provisions of the current Water Level Response Plan (dated July 19, 2004) and Water Quality Response Plan (approved on October 22, 2004), as required on pages 150 and 151 of D-1641.

4. Salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use.

5. The criteria delineated in the *Agreement Between the Department of Water Resources and South Feather Water and Power Agency for a Temporary Water Transfer for Support of the Environmental Water Account* (Refill Agreement) shall govern the conditions under which the excess storage capacity in Little Grass Valley Reservoir and Sly Creek Reservoir resulting from this transfer is refilled.

6. Prior to August 1, 2005, SFWPA shall provide to the Chief of the Division of Water Rights a report describing the transfer of water approved by this order. This report shall include the following information:

- a. The daily release rates of the transferred water from Little Grass Valley Reservoir, Sly Creek Reservoir, and Ponderosa Reservoir (reported on a daily basis); and
- b. The value of the Transfer Account Balance as defined in the Refill Agreement (reported on a daily basis).

Should the value of the Transfer Account Balance exceed zero at the time of this report, SFWPA shall submit subsequent reports by August 1 of each year until the Transfer Account Balance equals zero. These reports shall include the daily values of the Transfer Account Balance.

7. This order shall not be construed as authorizing the violation of any terms and conditions imposed by other regulatory agencies, nor shall it be construed as authorizing the violation of any agreement concerning this temporary transfer entered into by the petitioner.

8. 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.
9. This order does not authorize any act that results in the taking of a threatened or endangered species or any act that 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.
10. 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 JAMES W. KASSEL for

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: November 8, 2004