

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

WR ORDER 2005-0015-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 April 19, 2005,

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 (State Water Board), 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) Permit 16482 (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 under the provisions of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare). Newton Farms and Hansen Ranches/Vista Verde Farms (Newton/Hansen) are farming interests who hold lands in both Tulare and WWD. These parties 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. DWR has also indicated that non-contract surface water supplies (Kings River water diverted under a pre-1914 water right) are currently available within Tulare. If the proposed temporary change is approved, Newton/Hansen will use these non-contract surface water supplies to irrigate their lands within Tulare.

In the absence of the proposed temporary change, the 6,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare, and the aforementioned Kings River water would be available for diversion by other parties with more junior pre-1914 rights to this water. Newton/Hansen's lands within WWD would be irrigated with local groundwater supplies.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972. 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. 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 as amended by State Water Board Decision 1641 and State Water Board Order WR 98-9, 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 requests 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 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](http://www.waterrights.ca.gov/Water%20Transfers%20Program).

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change was provided via regular mail to interested parties and by publication in the Fresno Bee on April 27, 2005. Timely comments regarding the proposed temporary change were received from the South Delta Water Agency (SDWA). SDWA's comments and the State Water Board's response are summarized below.

SDWA Comments

SDWA's comments note that Water Code section 1725 requires that the temporary change involve only water that would otherwise be consumptively used or stored by the permittee. Additionally, SDWA notes that "consumptively used" is defined as "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has otherwise been removed from use in the downstream water supply as a result of direct diversion." SDWA asserts that the intention of this passage is to insure that transfers are not a reallocation of water that results in an increase in consumptive use. SDWA asserts that in order to avoid third-party impacts, temporary changes must not result in an increase in the amount of water consumptively used. SDWA concluded that Newton/Hansen must reduce the amount of acreage they irrigate within Tulare such that they reduce their consumptive use by 6,000 af.

State Water Board Response

Section 1725 limits the amount of water that can be transferred to the amount that otherwise would have been consumptively used or stored; in other words, the amount of water authorized to be appropriated under the water right permit that actually would have been removed from use in the downstream water supply. In this case, the water to be transferred is appropriated in the Feather River or in the Delta and is removed from the downstream water supply at or before the point where it is exported from the Delta. Both the original and the proposed places of use are within the export area, and the original place of use is outside the watershed of the Delta. If the water were used in the Tulare Basin at its usual place of use, no return flow from the water would reach the Delta. Accordingly, all of the water involved in the transfer is water that would be removed from use in the downstream water supply in the absence of the transfer. Accordingly, the proposed transfer meets the criterion in section 1725.

Further, the petitioner is not precluded from substituting a different source of water for the transferred water. For example, Water Code section 1732 allows a petitioner to initiate or increase the use of groundwater to replace surface water made available for temporary transfer, if said increase is performed in compliance with Water Code sections 1745.10 and 1745.11. Accordingly, SDWA is incorrect in asserting that any temporary change that results in an increase in consumptive use by the petitioner automatically impacts third parties (or injures other legal users of water) or is otherwise precluded.

Finally, Water Code section 1727 (b) specifies the findings that the State Water Board must make to approve a petition for temporary change. These findings are as follows:

- 1) The proposed temporary change would not injure any legal user of water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows; and
- 2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

To make Finding 1 above, the State Water Board must find that the temporary change would not injure any legal user of the water.

With regard to the proposed temporary change, SDWA argues that Newton/Hansen must reduce the amount of acreage they irrigate within Tulare such that they reduce their consumptive use by 6,000 af to avoid third-party impacts (injury to other legal users of water). As stated in Section 1.1 of this Order, non-contract surface water supplies are currently available within Tulare. If the proposed temporary change is approved, Newton/Hansen will use some of these non-contract surface water supplies to irrigate their lands within Tulare. In the absence of the proposed temporary change, the 6,000 af of water proposed for transfer would be used by Newton/Hansen on their lands located within Tulare, and the aforementioned non-contract surface water supplies would be diverted by other parties with more junior rights to these waters. Considering that water flowing into the Tulare Basin ordinarily does not flow into the San Joaquin River, the use of substitute water in Tulare will not affect the amount of water available to SDWA's members who divert water from the San Joaquin River.

Based on this information, the proposed temporary change would not result in a change in the amount of water diverted by the petitioner (DWR) from a natural watercourse, and involves only the amount of water under DWR's right that would have been consumptively used within the place of use in the absence of the temporary change. The areas within WWD proposed to receive the transfer water are located such that they do not directly drain to the San Joaquin River. In the absence of the proposed temporary change, these areas would be irrigated with local groundwater supplies. Additionally, the transfer of 6,000 af of water to the areas within WWD does not have a potential to significantly increase salinity concentrations in the San Joaquin River (through either direct surface drainage or increased groundwater gradients) and injure other legal users of water through a significant change in water quality.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Tulare's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within Tulare's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local groundwater supplies. 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 direct 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 State Water Board 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 as amended by State Water Board Decision 1641 and State Water Board Order WR 98-9, 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, irrigated 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 report, Generalized Depth to Shallow Ground Water, October 2004, 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 located such that they do not directly drain to the San Joaquin River.

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

6.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board 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 State Water Board conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The State Water Board 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' (DWR) Permit 16482 (Application 17512) for the transfer of up to 6,000 acre-feet 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, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District, who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include 3,461 acres located within Township 17S, Range 15E and 875 acres located within Township 20S, Range 18E, MDB&M, as shown on map prepared by DWR for this transfer and titled *Areas of Water Transfer From Tulare Lake Storage District to Westlands Water District* (available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, 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, 2006, 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 also 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 State Water Board 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 State Water Board 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 JOHN O’HAGAN for

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

Dated: June 29, 2005