

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

**DIVISION OF WATER RIGHTS
WR ORDER 2005-0016-DWR**

**IN THE MATTER OF LICENSE 7297 (APPLICATION 13771)
PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF
UP TO 20 ACRE-FEET OF WATER FROM
PACIFIC GAS AND ELECTRIC COMPANY TO FORMER GEOTHERMAL INC. LANDFILL**

SOURCE: Bucksnot Creek tributary to Putah Creek
COUNTY: Lake

ORDER APPROVING TEMPORARY CHANGE IN THE PLACE OF USE AND
PURPOSE OF USE BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 6, 2005,

Pacific Gas and Electric Company
c/o Paul M. Minault
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120 Montgomery St., Suite 2290
San Francisco, CA 94101

filed with the State Water Resources Control Board (State Water Board) a Petition for a renewal of Temporary Change Order 2004-0026-DWR issued on May 3, 2004. Order 2004-0026-DWR was issued to Pacific Gas and Electric Company (PG&E) pursuant to California Water Code sections 1725 through 1732. Approval of the temporary change petition will allow up to 20 acre-feet (af) of water to continue to be transferred to the former Geothermal, Inc. landfill facility in Lake County. PG&E purchased the Geothermal, Inc. property in 2004. The water will be diverted from PG&E's Freeman Lake, which is located on the Freeman Ranch property adjacent to the former Geothermal, Inc. property, during closure operations at the landfill. PG&E requested the renewal of Order 2004-0026-DWR to continue using the water from Freeman Lake during the 2005 construction season.

Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

1.1 Description of the Transfer PG&E proposes to transfer 20 af of stored water under its License 7297 to the former Geothermal, Inc. landfill property which is adjacent to PG&E's Freeman Ranch property.

The former Geothermal, Inc. landfill at 19020 Butts Canyon Road in Lake County is in the process of facility closure. PG&E and 16 other corporations and government agencies who previously sent wastes to the site are responsible for closing the facility pursuant to Cleanup and Abatement Order No. R5-2002-0204 issued by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board). A Final Closure Plan has been developed for the site and the lowering of the water level in Freeman Lake and the use of the water on the landfill facility property are essential elements of the closure plan.

The closure plan proposes lowering the water level in Freeman Lake to facilitate lowering the water table in the adjacent landfill facility in order to comply with regulatory requirements for the separation of wastes from underlying groundwater. The closure plan also calls for the establishment of a 33-acre plantation of eucalyptus and poplar trees over and surrounding the closed facility to control groundwater levels and surface water infiltration on the site. These newly planted trees will require irrigation until they are sufficiently established. The water will also be used for construction purposes including soil compaction and dust control, and if necessary for fire suppression.

2.0 BACKGROUND

2.1 Substance of PG&E's License Water Right License 7297 authorizes PG&E to divert water from an unnamed stream tributary to Bucksnot Creek thence Putah Creek thence the Yolo Bypass for storage of 47 af on an annual basis. The licensed annual season of collection is from October 1 of each year through April 1 of the succeeding year. The water is stored in Freeman Lake and is used for domestic purposes, stockwatering and irrigation of 26 acres of property on Freeman Ranch. Freeman Ranch is the authorized place of use for License 7297.

2.2 Place of Use and Purposes of Use under the Proposed Transfer PG&E's petition requested the temporary addition of the former Geothermal, Inc. landfill site to the place of use of License 7297. The property is shown on a map submitted with the petition titled *Existing Site Plan, Limits of Work, and Debris Removal Area* dated January 8, 2004 on file with Application 13771.

The petition also requests the addition of fire suppression and industrial use (construction use) as beneficial uses of the water.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change dated April 12, 2005 was provided via regular mail and electronic mail to interested parties and by publication in the Lake County Record-Bee on April 19, 2005. The Division of Water Rights (Division) did not receive any objections to the temporary change. The Division did, however, receive comments about the project as a result of the public notice. The pertinent comments and the Division's responses are summarized below:

Comment 1

The Division should order a monitoring plan for Application 13771. The Division should also make available to the public any monitoring information that was required as part of the Central Valley Regional Board's Cleanup and Abatement Order.

Response 1

Order 2004-0026-DWR included a requirement for PG&E to report to the Division the quantity of water transferred, the areas where the water was used, and the average application rate of the water. The renewed Order will include the same requirement. Any monitoring required relative to the Cleanup and Abatement Order can be reviewed at the Central Valley Regional Board office.

Comment 2

A project that has had adverse water quality effects should not be exempt from the California Environmental Quality Act (CEQA).

Response 2

The project before the State Water Board is not the landfill. Rather, the project is a proposed temporary change in the place of use and purposes of use due to a transfer or exchange of water, which is exempt from CEQA pursuant to Water Code section 1729. Moreover, the purpose of the Central Valley Regional Board's Cleanup and Abatement Order was to protect water quality. In addition, the Central Valley Regional Board prepared a Mitigated Negative Declaration (SCN 2002082046) for the closure of the landfill, which addressed the potential adverse water quality effects from the closure operations.

Comment 3

Were there fines associated with the Cleanup and Abatement Order, and if so, how much?

Response 3

All information relative to the specifics of enforcement and or fines issued by the Central Valley Regional Board is included in their case files, which are available for public review.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for temporary transfer is currently diverted under License 7297. In the absence of the proposed transfer, the water would remain in storage in Freeman Lake for use by PG&E on the Freeman Ranch property.

In light of the above, I find that in accordance with Water Code section 1727, subdivision (b)(1) 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 CEQA (Public Resources Code section 21000 et seq.). However, the State Water Board must ensure that the proposed change would not unreasonably affect fish, wildlife or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

The Central Valley Regional Board adopted a Mitigated Negative Declaration (SCN 2002082046) for the closure of the landfill in December 2002. In the document, the Central Valley Regional Board found that the use of water from Freeman Lake during closure operations would not have any significant environmental impacts.

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

6.0 STATE WATER 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, 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 transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change;
2. The proposed temporary change will not injure any legal user of the water;
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use and purpose of use under PG&E's License 7297 (Application 13771) for the transfer of up to 20 af of water is approved.

All existing terms and conditions of the subject license (or as may be subsequently amended by further order of the State Water Board) 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 continues for a period of one year.
2. The place of use is temporarily changed as follows:

Authorized place of use for the water approved for transfer in this Order is expanded to include the former Geothermal, Inc. landfill property, which is now owned by PG&E. The property is shown on a map submitted with the petition titled *Existing Site Plan, Limits of Work, and Debris Removal Area* dated January 8, 2004 on file with Application 13771.

3. Fire suppression and industrial use (construction use) are temporarily added as purposes of use under the subject license for the water approved for transfer pursuant to this Order.
4. Within 60 days of the completion of the transfer, but no later than June 15, 2006, the licensee shall provide the Chief of the Division 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 shall include the following information:

- a. General 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.
5. 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.

6. 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 order, the licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.

7. I reserve jurisdiction to supervise the temporary urgency change 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: July 1, 2005