

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

ORDER WR 2008-0046-DWR

**IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 100 ACRE-FEET OF WATER
TO THE UNITED STATES BUREAU OF RECLAMATION
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16482 (APPLICATION 17512)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On September 26, 2008,

Department of Water Resources
c/o Nancy Quan, Chief
Program Development and Water Supply and Transfers
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 U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP) located south of O'Neill Forebay, would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512. The proposed temporary change would facilitate the transfer of up to 100 acre-feet (af) of water from the Semitropic Water Bank (Semitropic) to the City of Tracy (Tracy). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer In 2006, Tracy banked approximately 1,000 af of its CVP allocation in Semitropic (due to losses associated with banking, 900 af of the banked water is considered recoverable). The water to be transferred under this petition is part of an exchange to facilitate the return of 100 af of this previously-banked water to Tracy. Semitropic will recover and deliver up to 100 af of Tracy's groundwater storage to Kern County Water Agency (KCWA). DWR will release a like amount of KCWA's State Water Project (SWP) Table A water for delivery to O'Neill Forebay. The SWP water will be delivered to USBR at O'Neill Forebay for use within the CVP service area south of O'Neill Forebay in Fresno and Merced counties. In exchange, USBR will provide 100 af of allocated 2008-09 CVP water to Tracy from the Delta Mendota Canal (DMC). The subject petition for change will authorize the delivery of SWP water to USBR for use within the CVP service area located south of the O'Neill Forebay.

In the absence of the exchange, the 100 af of banked local water would remain in Semitropic and KCWA's SWP water would be delivered to the KCWA service area under the provisions of KCWA's long-term SWP water supply contract and used within its service area. The 100 af of water pumped by USBR at the Jones Pumping Plant would be delivered through the DMC to O'Neill Forebay for use within its service area located south of the O'Neill Forebay.

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 divert to storage up to 1,100,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 100 af of SWP water is either stored in San Luis Reservoir or will be stored under provisions of DWR's permits (set forth in State Water Resources Control Board Revised 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. Thus, the transfer of up to 100 af to USBR should have no effect on any natural streamflow or hydrologic regime. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of the CVP place of use located south of the O'Neill Forebay. These areas are shown on map 214-208-12581, on file with the State Water Board under Application 5626.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated October 15, 2008) was provided via regular mail to interested parties and by publication in the Sacramento Bee on October 18, 2007. The State Water Board did not receive any timely comments.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725.) 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 Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act.

In light of the above, I find in accordance with Water Code section 1727(b)(1) 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.

4.2 No Injury to Other Legal Users of Water Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the 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. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer consists of a portion of KCWA's SWP entitlement under Permit 16482. In the absence of the exchange, the 100 af of banked local water would remain in Semitropic and KCWA's SWP water would be delivered to the KCWA service area under the provisions of KCWA's long-term SWP water supply contract and used within its service area. The 100 af of water pumped by USBR at the Jones Pumping Plant would be delivered through the DMC to O'Neill Forebay for use within its service area located south of the O'Neill Forebay.

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.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the

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 100 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 through November 1, 2009.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between the City of Tracy and the Kern County Water Agency, who is foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is temporarily expanded to include the CVP place of use located south of the O'Neill Forebay as shown on map 214-208-12581, on file with the State Water Board under Application 5626.3.
4. Within 60 days of the completion of the transfer, but no later than January 1, 2010, 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.
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 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.
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,
Deputy Director for Water Rights*

Dated: December 9, 2008