

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0055-DWR

**IN THE MATTER OF PERMIT 11360 (APPLICATION 12622)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 667 ACRE FEET OF WATER
FROM CITY OF SACRAMENTO
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On June 8, 2009,

City of Sacramento
c/o Martha Lennihan
Lennihan Law
2311 Capitol Avenue
Sacramento, CA 95816

and

Sacramento Suburban Water District
c/o Joshua Horowitz
Barkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Pursuant to the petition, the City of Sacramento (City) and co-petitioner Sacramento Suburban Water District (SSWD) seek to transfer up to 5,377 acre-feet (af) of water to the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). Pursuant to a long-term water service contract, City would, in the absence of the transfer, deliver up to 4,377 af of water to its co-petitioner SSWD during the months of July, August, and September 2009. SSWD proposes to forego delivery of this quantity of surface water and to transfer its entitlement to the DWR 2009 DWB for use within the service areas of the State Water Project (SWP) and the Central Valley Project (CVP). The balance of up to 1000 af will be transferred by the City directly to DWR's 2009 DWB. 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. On August 17, 2009, the State Water Board issued Order WR 2009-0054-DWR approving the transfer of up to 2,902 af from the City and SSWD to the DWR 2009 DWB. Due to a miscommunication with petitioners, Order WR 2009-0054-DWR did not take action on the portion of the petition seeking approval of the transfer of 1,000 af directly from the City. Therefore, this Order is being issued to address the City's portion of the transfer.

As stated above, the City proposes to transfer up to 1000 af of water to the DWR 2009 DWB. The City will reduce its diversion of water from the Lower American River and allow the water to remain instream for transfer. Up to 1000 af of transfer water would be made available at the City's Fairbairn Water Treatment Plant, thence the lower American River, thence the Sacramento River and conveyed across the Delta to the SWP and CVP facilities. The petition requests that the temporary change be authorized for July 1, 2009 through December 31, 2009; however, the petition states that water is most likely to be transferred during the months of July, August, and September 2009. Due to the additional amount of export pumping associated with this transfer, additional Delta inflow will be required to maintain water quality objectives within the Delta. Accordingly, a portion of the transfer water (typically referred to as "carriage water") will be used for salinity control, fish and wildlife enhancement, and water quality control.

In the absence of this transfer, the City would divert up to 1000 af of water at the City's Fairbairn Water Treatment Plant during the months of July, August, and September 2009 for use within the City's service area.

1.2 Groundwater Substitution. To provide the 1000 af of transfer water, the City proposes to institute a groundwater substitution program whereby the City would reduce its diversion of surface water by up to 1,000 af during July, August, and September and pump additional groundwater in an amount equivalent to the amount of surface water that the City would otherwise divert.

DWR and the U.S. Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers. Following this review, DWR entered into an agreement with the City, titled *Agreement Between the Department of Water Resources of the State of California and City of Sacramento for Short-Term Purchase of Water for the 2009 Drought Water Bank* (Agreement) for transfer of water pursuant to this temporary change. The Agreement includes a 12% 'depletion loss' to protect the SWP and CVP from injury associated with the transfer. Pursuant to the Agreement, the City will allow 1000 af of water to remain instream during the months of July, August, and September 2009, instead of diverting the water for use within its service area. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within the City. The Agreement identifies the quantities of water which will be available for transfer for the months of July, August, and September 2009. Since this Order is not effective until August, this Order approves the transfer of up to 667 af which is the amount of water the Agreement indicates will be available for transfer during the months of August and September 2009. The amount of water will be transferred pursuant to this Order will be less than 667 af depending on what day in August the City initiates its groundwater pumping.

1.3 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/ Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of City's Permit. Permit 11360 (Application 12622), issued on May 7, 1958, authorizes the City to divert 500 cubic feet per second (cfs) from Rubicon River, 500 cfs from South Fork Rubicon River, 200 cfs from Rock Bound Creek, 75,000 af per year (afa) by storage collected from Rubicon River, 200,000 afa by storage collected from South Fork Rubicon River, 14,000 afa by storage collected from Rock Bound Creek and 25,000 afa by storage collected from Gerle Creek. This permit authorizes the direct diversion and accumulation of water in storage between November 1 of each year and August 1 of the succeeding year. The authorized purpose of use under Permit 11360 is municipal.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of rediversion under Permit 11360. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use under Permit 11360. For purposes of meeting carriage water requirements and conforming to the CVP's purposes of use, domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering would be temporarily added as purposes of use under Permit 11360.

2.3 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements, petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the SWP and CVP meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity,

however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, redirection of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated June 29, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on July 1, 2009. The Sacramento Groundwater Authority (SGA) submitted comments regarding the petition. These comments and the State Water Board's response are summarized below.

3.1 Comments of the Sacramento Groundwater Authority. The City's proposed water transfer is consistent with SGA's long-term groundwater management objectives, which require members to use surface and groundwater conjunctively to enhance water supply reliability and to improve the health and long-term sustainability of the North Area Basin. The City's proposal is not expected to harm other groundwater pumpers or the North Area Basin because any additional pumping for the transfer will not cause overall pumping in the North Area Basin to exceed its sustainable safe yield. The expected lack of impacts is due in part to the significant investment the City has made to conjunctively managing its water resources and its participation in and support of SGA's efforts to effectively manage the North Area Basin.

SGA believes that the State Water Board should encourage creative water management solutions such as the City's conjunctive use program by approving the proposed transfer. The State Water Board's approval of the City's temporary transfer petition will make surface water available during a time of critical water shortage in other regions of the state, which furthers the objectives stated in the Governor's February 27, 2009 drought emergency proclamation.

State Water Board Response: The State Water Board thanks the SGA for its 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 or conserved pursuant to Section 1011. (Wat. Code, §§ 1725 - 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the transfer proposal and associated groundwater pumping and determined that 12% of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 88% of the amount of surface water made available at the Fairbairn Water Treatment Plant as a result of this transfer.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed 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 article 1 of 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).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Section 1.2 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within the City as a result of this transfer. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of rediversion to Permit 11360. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

SGA adopted a revised Groundwater Management Plan on December 11, 2008. As referenced in Section 3.1 above, the City’s proposed water transfer is consistent with SGA’s long-term groundwater management objectives, which require members to use surface and groundwater conjunctively to enhance water supply reliability and to improve the health and long-term sustainability of the North Area Basin.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires groundwater use that is part of a groundwater substitution transfer in an area be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

6.0 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.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in points of rediversion, place of use, and purpose of use under Permit 11360 (Application 12622) of the City of Sacramento (City) for the transfer of up to 667 acre-feet (af) of water is approved.

All existing terms and conditions of Permit 11360 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the effective date of this Order and continuing through September 30, 2009.
2. Petitioner shall implement the monitoring and mitigation plans and reporting requirements contained in Exhibit E of the *Agreement Between the Department of Water Resources of the State of California and City of Sacramento for Short-Term Purchase of Water for the 2009 Drought Water Bank* (Agreement) as a condition of transferring water pursuant to this Order.
3. The City shall reduce its diversion rate at the Fairbairn Water Treatment Plant under Permit 11360 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured on a monthly basis). The City shall reduce diversions at Fairbairn Water Treatment Plant on the same pattern as otherwise would have been diverted for delivery within the City's service area. The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of reduced diversion at the City's Fairbairn Water Treatment Plant.
4. The place of use under Permit 11360 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629 and the Central Valley Project (CVP) as shown on map 214-208-12581 on file with Application 5626.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of rediversion under Permit 11360.

Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and the U.S. Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under Permit 11360.

7. Within 60 days of the completion of the transfer, the City shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The monthly volume of water made available for transfer at the City's Fairbairn Water Treatment Plant pursuant to this Order;
 - c. The monthly volume of water diverted pursuant to Permit 11360 during the transfer period;
 - d. The average daily streamflow measured at the nearest representative gaging station on the American River; and
 - e. Groundwater elevations within the vicinity of the City's service area prior to the proposed transfer, as required by Exhibit E of the Agreement.

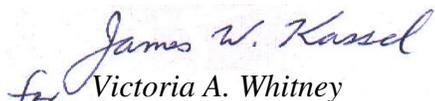
The City shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2010, a map defining the groundwater elevations within the vicinity of the City's service area, until such time as these elevations correspond to pre-transfer levels.

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 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.

9. 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, 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


for Victoria A. Whitney
Deputy Director for Water Rights

Dated: **AUG 26 2009**