

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

DIVISION OF WATER RIGHTS

ORDER WR 2011-0010-DWR

**IN THE MATTER OF
THE DEPARTMENT OF WATER RESOURCES'
PERMIT 16481 (APPLICATION 14445A)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 10,000 ACRE-FEET OF WATER
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On February 14, 2011,

The 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. requesting the temporary addition of 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)) within the authorized place of use for the Department of Water Resources' (DWR/petitioner) Permit 16481 (Application 14445A) for the State Water Project (SWP). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer. SWP water is stored in San Luis Reservoir under the provisions of Permit 16481 and held for use in the service areas of SWP contractors, including the Tulare Lake Basin Water Storage District (Tulare) and the Empire West Side Irrigation District (Empire). Newton Farms is a farming interest that holds lands in Tulare, Empire, and WWD. Hansen Ranches/Vista Verde Farms is a farming interest that holds lands in both Tulare and WWD. Brooks Farms is a farming interest that holds lands in both Empire and WWD. These parties have requested that a total of up to 10,000 acre-feet (af) of SWP water currently scheduled for use on their lands in Tulare or Empire (8,000 af from Tulare and 2,000 af from Empire) 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. The proposed temporary change would be effective for a period of one year from the date of this order. The petitioner indicated that no additional groundwater will be pumped within Tulare or Empire as a result of this transfer.

In the absence of the proposed temporary change, the water would be used by the aforementioned parties on their lands located within Tulare and Empire.

1.2 Additional Information. DWR submitted information with the petition which, given the current SWP and CVP allocations, details the water application rates (in acre-feet per acre, (af/ac)) for each of the transferees, including both their CVP supplies and the transferred SWP water. The CVP and SWP allocations for 2011 are 55% and 70%, respectively. Based on this information, the water application rate will be 2.7 af/ac for Hansen Ranches/Vista Verde Farms, 3.9 af/ac for Newton Farms, and 2.0 af/ac for Brooks Farms. However, these allocations are subject to change as the year progresses.

2.0 BACKGROUND

2.1 Substance of DWR's Permit. Permit 16481 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 44,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16481 are the Sacramento-San Joaquin Delta Channels and Italian Slough. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, and fish and wildlife enhancement uses and to generate incidental power. With or without the transfer, diversion to storage of water in San Luis Reservoir pursuant to Permit 16481 will not change. The subject 10,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (set forth in State Water Board Revised Water Right Decision 1641 (RD 1641)) and Biological Opinions issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA). Thus, the transfer of up to 10,000 af to WWD will have no effect on any natural streamflow or hydrologic regime in the Delta. 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 areas within WWD to the place of use of Permit 16481. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, 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 on the Division of Water Rights' website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated February 16, 2011) was provided via first class mail to interested parties on February 18, 2011 and by publication in the Fresno Bee on February 19, 2011. California Fisheries and Water Unlimited (CFWU) submitted timely comments to the proposed temporary change. CFWU's comments cite concerns regarding the need to transfer water to WWD, impacts related to the underlying operations of the SWP and CVP, and transfer of surface water into a groundwater supply. CFWU's comments are posted with the copy of the notice for this petition on the Division of Water Rights' website as shown above in Section 2.2 of this Order.

3.1 State Water Board Response. The State Water Board does not make a determination if a water transfer is needed. It is assumed that at the time of petition submittal, the petitioner made the determination that the water transfer was needed. Existing weather and runoff conditions may result in a lesser amount of water transferred than originally stated in the petition. The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16481 which currently is or will be stored in San Luis Reservoir under provisions of DWR's permit as amended by RD 1641 and Biological Opinions issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would be used within Tulare's and Empire's service area. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime. 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 ESA (Fish & G. Code, §§ 2050 -2097) or the federal ESA (16 U.S.C. §§ 1531-1544).

The proposed temporary change will result in application rates between 2.0 and 3.9 af/ac. This Order requires WWD to implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. Pursuant to Water Code section 1727, subdivision (e), the State Water Board may not deny or place conditions on a temporary change to mitigate impacts that are not caused by the temporary change. Thus, this Order does not address underlying impacts of the operations of the SWP or CVP. The area of WWD where the transfer will occur is currently in production, primarily with permanent crops. The transfer will reduce the amount of groundwater required to irrigate the permanent crops and provide a supply of better quality surface water for irrigation.

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.) “[C]onsumptively used’ means 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.” (*Ibid.*) The water available for the transfer consists of a portion of either Tulare’s or Empire’s SWP entitlement under Permit 16481 and currently is or will be stored in San Luis Reservoir under provisions of DWR’s permit as amended by RD 1641 and Biological Opinions issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would remain in storage in San Luis Reservoir until delivered for use by the aforementioned parties on their lands in Tulare and Empire. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR’s permit.

In light of the above, I find in accordance with Water Code section 1727, subdivision (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 Tulare’s and Empire’s SWP entitlement under Permit 16481. In the absence of the proposed transfer, the water would remain in storage in San Luis Reservoir until delivered for use by the aforementioned parties on their lands in Tulare and Empire. Agricultural deliveries to WWD may ultimately increase the subsurface flow of saline groundwater to the San Joaquin River within 10 to 20 years. Also, due to current wet conditions, the amount of water delivered to WWD in 2011 will be at or slightly above the average annual deliveries for the years 2000 through 2010. However, the State Water Board will require as a condition of approval that WWD implement all reasonable measures to prevent subsurface drainage of poor quality water into the downslope area outside of WWD’s service area. Therefore, the proposed temporary change should not result in significant future increases in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (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 requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727, subdivision (b)(2).

The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16481 currently stored in San Luis Reservoir under provisions of DWR's permit, as amended by RD 1641 and Biological Opinions issued by the USFWS and the NMFS under the ESA . In the absence of the proposed transfer, the water would continue be stored in San Luis Reservoir until delivered for use by the aforementioned parties on their lands in Tulare and Empire. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

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 some 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 drainage reduction in their district. WWD's map, Generalized Depth of Shallow Ground Water, October 2010, indicates that irrigation of the areas intended for transfer within WWD have not been shown to cause drainage or selenium problems. These areas are also 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, subdivision (b)(2), the proposed transfer would have no unreasonable effects on 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.

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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 16481 (Application 14445A) for the transfer of up to 10,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16481 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on April 1, 2011, and continuing through March 31, 2012.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreement between Westlands Water District (WWD) and the Tulare Lake Basin Water Storage District and the Empire West Side Irrigation District, who are foregoing the delivery of the subject water.
3. The place of use under Permit 16481 is temporarily expanded to include 1,319 acres located on Brooks Farms, 3,461 acres located on Hansen/Vista Verde Farms, and 875 acres located on Newton Farms. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR for this transfer and titled *SWP Table A Water from Tulare Lake Basin Water Storage District and Empire West Side Irrigation District to Westlands Water District* (on file with the State Water Board under Application 14445A).
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. By June 30, 2012, the permittee shall provide to the Deputy Director for 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 (ESA) (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531-1544). If a "take" will result from any act authorized under this temporary transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable ESA 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



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: **APR 01 2011**