

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

DIVISION OF WATER RIGHTS

WRO ORDER 2004-0037-DWR

IN THE MATTER OF PERMITS 13856 AND 13858 (APPLICATIONS 18085 AND 18087)

**PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 20,000 ACRE FEET OF WATER
FROM THE PLACER COUNTY WATER AGENCY TO THE
DEPARTMENT OF WATER RESOURCES' ENVIRONMENTAL WATER ACCOUNT**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND POINT OF REDIVERSION
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On June 8, 2004,

Placer County Water Agency
c/o Janet K. Goldsmith
400 Capitol Mall, 27th Floor
Sacramento, California 95814

completed the filing with the State Water Resources Control Board (SWRCB) of a Petition for Temporary Change under Water Code section 1725, et seq. Placer County Water Agency's (PCWA) petition requests the transfer of up to 20,000 acre-feet (af) of water to the Bay-Delta Authorities' Environmental Water Account (EWA) for use within the Central Valley Project (CVP) and State Water Project (SWP) service areas or to meet Delta water quality standards. The Department of Water Resources (DWR) will administer water acquired by EWA via this transfer. If approved, the temporary change would be effective through December 31, 2004.

1.1 Description of the Transfer PCWA proposes to transfer up to 20,000 af of water currently stored in French Meadows Reservoir and Hell Hole Reservoir (the major storage facilities of its Middle Fork Project) under Permits 13856 and 13858 (Applications 18085 and 18087) to EWA. The transfer water would be released between the date of this order, but no sooner than July 1, 2004, and December 31, 2004, to the Rubicon River thence the Middle Fork American River and temporarily stored in Folsom Reservoir. The transfer water would then be available for release to the Lower American River thence the Sacramento River to the Delta to provide salinity and water quality controls within the Delta or to export to users within the State Water Project (SWP) or Central Valley Project (CVP) service areas. The transfer water would be available for use by EWA through December 31, 2004.

In the absence of this transfer, up to 20,000 af of the subject water would remain in storage in French Meadows Reservoir and Hell Hole Reservoir.

2.0 BACKGROUND

2.1 Substance of PCWA's Permits Permits 13856 and 13858 (Applications 18085 and 18087), issued on January 10, 1963, authorize PCWA to divert to storage up to a maximum of 133,700 af per year (afa) in French Meadows Reservoir and up to 208,400 afa in Hell Hole Reservoir. These permits also authorize the direct diversion of up to a total of 2025 cfs between November 1 and July 1 of each year. The authorized purposes of use under Permits 13856 and 13858 are irrigation, municipal, industrial, recreation and incidental domestic and the place of use is shown on PWCA's map set dated July 31, 1996.

PCWA also holds Permits 13855 and 13857 (Applications 18084 and 18086), issued on January 10, 1963. These permits authorize similar direct diversion and storage totals and locations as Permits 13856 and 13858, however, these permits are for non-consumptive uses (i.e., power generation and recreation). Accordingly, these permits were not included in this petition for temporary change.

2.2 Middle Fork Project PCWA owns and operates the Middle Fork Project (located within the upper American River watershed) consisting of the French Meadows and Hell Hole reservoirs, with combined storage capacity of approximately 343,000 af (135,000 af of capacity in French Meadows Reservoir and 208,000 af of capacity in Hell Hole Reservoir), and associated canals, pipelines, powerhouses and regulating reservoirs. French Meadows Reservoir is located on the Middle Fork American River and Hell Hole Reservoir is located on the Rubicon River (which is tributary to the Middle Fork American River). PCWA's Federal Energy Regulatory Commission (FERC) licenses require PCWA to maintain minimum instream flows in the Middle Fork American River and Rubicon River (below both reservoirs) based on the season and water year type. Water stored in French Meadows Reservoir may be pumped via underground pipeline to Hell Hole Reservoir and, during normal operations, PCWA uses Hell Hole reservoir as the release point for most of the water it uses for power generation and its authorized consumptive uses.

The timing and magnitude of PCWA's releases for its power generation and consumptive uses from Hell Hole Reservoir are governed by power demands. Under typical conditions, PCWA operates its power generation facilities during daytime (peak demand) hours only. Accordingly, PCWA releases approximately 950 cubic feet per second (cfs) from Hell Hole Reservoir (in addition to the required instream flows) for between 10 and 14 hours per day. During off-peak times only the required instream flow is maintained. PCWA indicated that additional releases of water from Hell Hole Reservoir associated with the proposed transfer would result in an extended peak release period, however, the magnitude of the peak release would remain approximately 950 cfs.

2.3 Folsom Reservoir Operations DWR indicated that the timing and magnitude of releases of the transfer water from Folsom Reservoir to the Lower American River will be made in consultation with the EWA Management Agencies (the California Department of Fish and Game, National Marine Fisheries Service, and the United States Fish and Wildlife Service). Coordination of these releases with the EWA Management Agencies is intended to maximize any potential benefit of the resulting additional flows on fish and wildlife. Representatives of DWR estimated that the maximum additional releases from Folsom Reservoir resulting from this transfer will be 1,000 cfs. PCWA's petition also included an agreement with USBR titled *Refill Agreement Between United States Bureau of Reclamation and Placer County Water Agency for Water Transfers from Placer County Water Agency* (Refill Agreement). The Refill Agreement is intended to ensure that future refill of water to the excess capacity in French Meadows and Hell Hole reservoirs resulting from this transfer does not adversely impact operations of Folsom Reservoir.

2.4 Changes under the Proposed Transfer The proposed temporary change would temporarily add the service areas of the CVP and SWP to the authorized place of use under Permits 13856 and 13858. The Clifton Court Forebay and the Tracy Pumping Plant would be temporarily added as points of rediversion under Permits 13856 and 13858 and water quality control would be temporarily added as a purpose of use under Permits 13856 and 13858.

PCWA's petition also requested the temporary addition of El Dorado Irrigation District's point of diversion at Folsom Reservoir (EID POD) as a point of rediversion under Permits 13856 and 13858. PCWA requested this point of rediversion to allow for the potential for service of this water to EID under its CVP contract. However, the petitioner has indicated that the 20,000 af of water to be transferred pursuant to this order will be rediverted at the Delta to San Luis Reservoir and will not be delivered to EID. Thus, this order does not authorize the temporary addition of the EID POD as a point of rediversion under Permits 13856 and 13858.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated June 18, 2004) was provided via regular mail to interested parties and by publication in the Auburn Journal on June 23, 2004. The Division received timely comments regarding the proposed temporary change from the United States Bureau of Reclamation. USBR's comments and the SWRCB's responses are summarized below.

United States Bureau of Reclamation USBR commented that Article 13 of the transfer agreement between PCWA (as the transferor) and DWR (as the transferee) requires PCWA to adhere to the version of the refill agreement submitted with the petition and that the transfer agreement between DWR and PCWA is null and void if the refill agreement is not executed. USBR stated that if the refill agreement is met, the proposed temporary change will not adversely impact the CVP. USBR requested that approval of this temporary change be conditioned with requirements that PCWA adhere to both the refill agreement and Article 13 of the transfer agreement.

USBR also commented that a contract between USBR and DWR may be required for the temporary storage of water in Folsom Reservoir pursuant to this temporary change and that USBR and DWR are currently in negotiations regarding this issue. USBR requested that the temporary change be subject to the adoption of a contract for the temporary storage of water in Folsom Reservoir.

SWRCB Response This order is conditioned upon execution and implementation of the refill agreement submitted with the petition. However, also conditioning this order upon compliance with Article 13 of the transfer agreement would be duplicative of the refill condition and therefore unnecessary. Accordingly, this order does not also contain a condition requiring PCWA to adhere to Article 13 of the transfer agreement between itself and DWR.

The issuance of any water right permit or license by the SWRCB does not guarantee the permittee or licensee access to the points of diversion or place of use specified therein. Further, the issuance of a water right order approving a temporary transfer does not require any party to provide access to pumping, conveyance, or storage facilities necessary to perform the transfer. Thus, the issuance of this order does not require PCWA, DWR, or USBR to temporarily store the water in Folsom Reservoir. The use of storage space in Folsom Reservoir is a matter between the PCWA, the DWR, and the USBR that does not require the SWRCB's involvement and can be handled through a separate agreement. Therefore, the SWRCB will not condition this temporary change on the execution of an agreement between DWR and USBR regarding temporary storage of water in Folsom Reservoir authorized by this order.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of water currently stored in French Meadows Reservoir and Hell Hole Reservoir under PCWA's Permits 13856 and 13858. In the absence of the proposed transfer, the water would remain in storage in these reservoirs. Additionally, this transfer would result in the temporary addition of Clifton Court Forebay and the Tracy Pumping Plant as points of rediversion under Permits 13856 and 13858. Accordingly, this order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to future refill of French Meadows Reservoir and Hell Hole Reservoir resulting from this temporary change and potential lowering of water levels in southern Delta Channels associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as

points of redirection to Permits 13856 and 13858.

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 SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The proposed temporary change would result in additional instream flows in the Rubicon River and Middle Fork American River; additional releases from Folsom Reservoir to the Lower American River thence the Sacramento River then the Delta, and additional redirection of water at either Clifton Court Forebay or the Tracy Pumping Plant. Accordingly, this order requires PCWA to maintain any instream flow requirements specified in both water right Permits 13856 and 13858 and the FERC license for the Middle Fork Project. Additionally, the redirection of water at Clifton Court Forebay and the Tracy Pumping Plant authorized under this order is conditioned with provisions contained in SWRCB Revised Decision 1641 for the protection of fish and wildlife beneficial uses.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would not have an unreasonable effect on fish, wildlife or other instream beneficial uses.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB 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 SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB 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, purpose of use, and point of redirection under Placer County Water Agency's (PCWA) Permits 13856 and 13858 (Applications 18085 and 18087) to facilitate the transfer of up to 20,000 af of water is approved.

All existing terms and conditions of Permits 13856 and 13858 remain in effect, except as temporarily amended by the following conditions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing through December 31, 2004.
2. The place of use is temporarily changed as follows:

The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).
3. The Clifton Court Forebay and the Tracy Pumping Plant are temporarily added as points of redirection. Redirection of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to compliance by the operators of those facilities with the standards set forth in Tables 1, 2, and 3 on pages 181 to 187 of SWRCB Revised Decision 1641 (D-1641) and shall comply with the provisions of the current Water Level Response Plan (dated July 19, 2004), as required on page 150 of D-1641.
4. Water quality control is temporarily added as a purpose of use.
5. The criteria delineated in the *Refill Agreement Between United States Bureau of Reclamation and Placer County Water Agency for Water Transfers from Placer County water Agency* (Refill Agreement), submitted with the petition, shall govern the conditions under which the excess storage capacity in French Meadows Reservoir and Hell Hole Reservoir resulting from this transfer is refilled.
6. Prior to July 1, 2005, PCWA shall provide to the Chief of the Division of Water Rights a report describing the transfer of water approved by this order. The report shall include the following information:
 - a. The duration and magnitude of the increased releases of water and the corresponding volume of water released from Hell Hole Reservoir as a result of this transfer (reported on a daily basis);
 - b. The average daily release rates and corresponding volume of water released from Folsom Reservoir as a result of this transfer (reported on a daily basis); and
 - c. The value of the Refill Reservation as defined in the Refill Agreement (reported on a daily basis).

Should the value of the Refill Reservation exceed zero at the time of this report, PCWA shall submit subsequent reports by June 1 of each year until the Refill Reservation equals zero or the Refill Agreement is terminated pursuant to Items 6 and 7 of that agreement. These reports shall include the daily values of the Refill Reservation.

7. This order shall not be construed as authorizing the violation of any terms and conditions imposed by other regulatory agencies, nor shall it be construed as authorizing the violation of any agreement concerning this temporary transfer entered into by the petitioner.
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 SWRCB 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 SWRCB 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 that results in the taking of a threatened or endangered species or any act that 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.
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

Original signed by

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

Dated: August 4, 2004