



State Water Resources Control Board

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Division of Water Rights

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NOTICE OF PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO 25,000 ACRE-FEET OF WATER UNDER MERCED IRRIGATION DISTRICT'S LICENSE 2685 (APPLICATION 1224)

Dated: March 14, 2007

Notice is hereby given that on March 9, 2007

Merced Irrigation District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Blvd., 2nd Floor
Sacramento, CA 95817

petitioned the State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) for a temporary change pursuant to Water Code sections 1725 through 1732. The petition requests a temporary change to facilitate the transfer of up to 25,000 acre-feet (af) of water under License 2685 (Application 1224) to satisfy the terms of the Cowell Agreement. The proposed change will include the addition of 13,300 acres within a gross area of 19,700 acres for irrigation as well as the addition of seven new points of rediversion. Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

PETITIONER'S WATER RIGHTS

Original Water Rights under License 2685:

License 2685 was issued to Merced Irrigation District (District) on August 11, 1944, pursuant to Application 1224. License 2685 allows the direct diversion of 1,500 cubic feet per second (cfs) of water from the Merced River from about March 1 through about October 31 of each year. License 2685 also allows the diversion from the Merced River to storage of 266,400 acre-feet of water per annum (afa) from about October 1 of each year to about July 1 of the succeeding year.

The point of diversion is at the New Exchequer Dam on Lake McClure. There are also two points of rediversion downstream of New Exchequer Dam – Merced Falls Diversion Dam for the North Side Canal and Crocker-Huffman Diversion Dam for the Main Canal. Water rediverted through the North Side Canal and the Main Canal is used for irrigation and domestic purposes on 164,395 gross acres within the boundaries of the District.

California Environmental Protection Agency

Modified Water Rights under License 2685:

License 2685 was modified from its original conditions to also allow the direct diversion of 5,000 afa of water from the Merced River at a rate not to exceed 7 cfs from November 1 of each year to February 29 of the following year for municipal use in the Mariposa Town Planning Area. Storage under License 2685 is reduced in the amount of water diverted to the Mariposa Town Planning Area of up to 1,667 afa. Combined maximum direct diversion and storage under License 2685 cannot exceed 345,440 acre-feet annually. The point of diversion for the water delivered to the Mariposa Town Planning Area is located approximately 40 miles upstream of New Exchequer Dam.

License 2685 was also later modified to include an additional point of rediversion and place of use when the District consolidated with the El Nido Irrigation District. The new point of rediversion downstream of New Exchequer Dam is on Duck Slough. Water rediverted through Duck Slough is used for irrigation purposes on 9,418.6 acres within the boundaries of El Nido Irrigation District.

DESCRIPTION OF THE TRANSFER

The District is occasionally required to release water from Lake McClure to downstream water users to satisfy water supplies for riparian and pre-1914 claims of water rights as mandated by the Cowell Agreement (Agreement). The Agreement was established on January 17, 1926 pursuant to a Merced Superior Court Order, and stipulates a scheduled quantity of flow rates, measured at Crocker-Huffman Dam, to be maintained by the District. The Agreement requires the District to bypass and release water in the summer so that the riparian and pre-1914 downstream users would remain in the same position that they were prior to the construction of the New Exchequer Dam. The District has at times been required to supplement downstream flows in the Merced River with releases from storage when inflow to Lake McClure is insufficient to satisfy the flow requirements downstream of the Crocker-Huffman Dam. The Division advised the District that Lake McClure Reservoir releases must be covered by the District's appropriative rights; subsequently, the District filed the current petition.

The downstream diverters of the water released from storage are known as the Cowell Agreement Diverters (CAD). The CAD group irrigates acreage that is not included as a place of use in License 2685. It was also necessary for the District to file the petition for temporary change to include the acreage irrigated by the downstream diverters as a place of use in License 2685 and to include the seven points of rediversion used to supply water to the CAD group.

The District estimated that this petition for temporary change may necessitate the transfer of up to 25,000 af of water for the CAD diverters this year.

AVAILABILITY OF WATER FOR TRANSFER

The water proposed for temporary transfer is currently stored under License 2685 in Lake McClure. The water proposed for transfer in the 2007 irrigation season will be

collected to storage in Lake McClure from October 1, 2006 to July 31, 2007. Under License 2685, the District can both divert directly and collect water to storage. The District does not provide water by direct diversion under License 2685 to the CAD service area. When adequate instream flow is available for direct diversion, the District limits its diversion to maintain sufficient instream flow for the CAD diverters to use their claimed riparian and pre-1914 appropriative rights set forth in the CAD agreement. Therefore, the transfer will be limited to water released from storage at Lake McClure. In the absence of the proposed transfer, the water would remain in storage in Lake McClure or be released from storage for use by the District within the District boundaries.

COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Temporary changes in water right permits and licenses to enable a temporary transfer of water pursuant to with Water Code section 1725, et seq. are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). However, in acting upon petitions for temporary changes involving a temporary transfer of water, the State Water Board must consider potential impacts to other legal users of the water and to fish, wildlife, or other instream beneficial uses.

On March 6, 2007, the District adopted Resolution No. 2007-5, which determined that this project is an existing facility and categorically exempt from CEQA under Title 14, California Code of Regulations section 15301, Class 1.

SWRCB'S STATUTORY PROVISIONS

Pursuant to Water Code sections 1725 through 1732, the State Water Board is authorized to issue temporary change orders, to allow the transfer or exchange of water or water rights after completing an evaluation sufficient to determine that the proposed temporary change(s):

1. Involve a water that would otherwise have been consumptively used or stored by permittee or licensee or was conserved pursuant to Water code section 1011;
2. Would not injure any other legal user of the water; and,
3. Would not unreasonably affect fish, wildlife, or other instream beneficial uses; and

If the State Water Board cannot satisfy, in a timely manner, the provisions of Water Code section 1725 through 1732, then the State Water board may deny the petition or schedule and notice a hearing regarding the proposed transfer or exchange of water.

OPPORTUNITY FOR COMMENTS

Pursuant to the requirements outlined above, the State Water Board is seeking information to assist in the evaluation of the proposed temporary change of water rights

under the transfer. Any person may file comments concerning the petition for temporary change. The comments must address the required findings set forth above. The petitioner has the burden of establishing that the proposed temporary change will not injure any legal user of water, or unreasonably affect fish, wildlife, or instream beneficial uses. If the State Water Board determines that the petitioner has established a prima facie case, the burden of proof then shifts to the party that has filed comments (Water Code section 1727). While such a determination has not been made in this case, commentors should provide sufficient information to support claims of injury or affects on fish, wildlife, or other instream uses.

Due to the relative brevity of the temporary transfer process, the Division (if necessary) may request that the petitioner submit additional information **during the comment period**. Any such requests and any additional information submitted by the petitioner regarding this proposed temporary change during the comment period will be posted with this notice on the Division website at <http://www.waterrights.ca.gov/application/tempurgnotices.htm>. Potential commentors are strongly urged to check the website for such information prior to filing a comment.

Comments filed in response to this notice must be received in the office of the State Water Board's Division of Water Rights, at the address listed below by **3:00 p.m. on April 18, 2007**. Additionally, **the response must be accompanied by proof of service of a separate copy of the materials on the petitioner**. The petitioner's and the Division's street and mailing addresses are listed below. Interested parties are encouraged to file comments by fax and to notify the following contact persons by telephone of any materials that will be submitted. However, an original copy of all materials must be received for the State Water Board to consider your concerns.

Division of Water Rights
c/o Kate Gaffney
P.O. Box 2000
Sacramento, CA 95812-2000
Fax: (916) 341-5400

Merced Irrigation District
c/o Mark Van Camp
MBK Engineers
2450 Alhambra Blvd., 2nd Floor
Sacramento, CA 95817-1125
Fax: (916) 456-0253

Please direct questions about this notice to Kate Gaffney at (916) 341-5360. Questions regarding the petitioner or transferee should be addressed to Mark Van Camp at (916) 456-4400.

ORIGINAL SIGNED BY:

Steven Herrera, Chief
Permitting Section

Dated: March 14, 2007