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7722-137

JAMES M. BOYD, JR., Of Counsel

April 20, 2010

## VIA HAND DELIVERY

Ms. Victoria Whitney, Chief  
Division of Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

2010 APR 20 PM 4:11  
DIVISION OF WATER RIGHTS  
STATE WATER RESOURCES CONTROL BOARD  
1001 I STREET  
SACRAMENTO, CA 95814

Re: City of Sacramento's and Sacramento Suburban Water District's Petition for Temporary Transfer of Water Under Permit No. 11360 (Application 12622)

Dear Ms. Whitney:

On behalf of Petitioner City of Sacramento ("City") and Co-Petitioner Sacramento Suburban Water District ("SSWD"), enclosed are the following:

1. Petition for Temporary Transfer of Water Under Permit No. 11360 (Application No. 12622) (original and one copy).
2. Environmental Information Form for Petition Under Permit No. 11360 (Application No. 12622) (original and one copy).
3. Checks payable to the State Water Board for Petition fees in the amount of \$3,313.10 and to the Department of Fish & Game for its review fee in the amount of \$850.
4. An additional copy each of the petition and environmental information form for file stamping and return to our office.

The City and SSWD are petitioning to add points of diversion, places of use and purposes of use to Permit No. 11360 for the purpose of permitting SSWD to transfer up to 4,377 acre-feet of water through groundwater substitution to eight members of the State Water Contractors' association. Your staff's prompt attention to and cooperation in processing the attached petition would be appreciated.

\$ 3.00  
\$ 3310.10  
\$ 850.00  
~~\$ 2210.10~~  
PDP. 4/20/2010  
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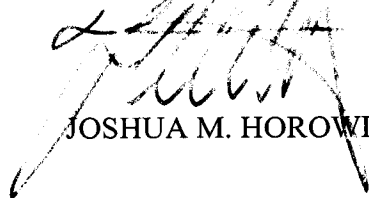
Ms. Victoria Whitney

April 20, 2010

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Please do not hesitate to contact me or the City's representative, Joe Robinson, if you or your staff have any questions about the attached Petition or Environmental Information Form or require additional information to assist in processing the petition.

Very truly yours,



JOSHUA M. HOROWITZ

JMH:adm

Encls.

cc: (via e-mail)  
Joe Robinson  
Dan Sherry  
Martha Lennihan  
Rob Roscoe  
Ed Formosa  
Greg Young  
Nancy Quan  
Eric Chapman

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(“Transferees”). The named agencies are all contractors of the State Water Project (“SWP”) and are subject to DWR’s significant cut backs in their contractual entitlements for 2010.

The City of Sacramento (“City”), as petitioner, and Sacramento Suburban Water District, as co-petitioner, hereby petition the State Water Resources Control Board (“State Water Board”) under the provisions of Water Code section 1725 et seq. and in conformance with the specific requirements of California Code of Regulations section 794 et seq. for temporary changes to the water right application(s) noted above for the purpose of transferring water. The changes are shown on the accompanying maps and described as follows:

**Amount of Water to be Transferred**

Up to a cumulative total of 4,377 AF. The entire amount will be provided by the City to SSWD under those parties’ wholesale water supply contract, and made available by SSWD to the Transferees pursuant to a conveyance agreement among SSWD, Transferees and DWR (“Transfer Water”). The proposed transfer would substantially repeat the 2009 water transfer SSWD made through DWR’s Drought Water Bank, which was approved by the SWRCB in Order WR 2009-0054-DWR. The SWRCB also approved a second transfer by SSWD of water supplies it contracts for with the Placer County Water Agency (“PCWA”) in Order WR 2009-0053-DWR. SSWD is not currently proposing to transfer any of its PCWA water supplies in 2010.

**Period of Transfer/Exchange**

Physical transfer of the Transfer Water may occur between July 1, 2010 and September 30, 2010. Transfer Water will be used in the Transferees’ service areas within one year from approval of the transfer pursuant to Water Code § 1728.

**Point of Diversion or Rediversion**

**Current:**

The City’s current points of diversion and rediversion are identified on its permit no. 11360. The City’s primary points of rediversion are at its Fairbairn diversion and water treatment plant on the lower American River and its Sacramento River diversion and treatment plant facilities at the confluence of the American and Sacramento Rivers.

**Proposed:**

No change in the present points of diversion is proposed. The present points of re-diversion will also remain in place. The SWP’s Banks Pumping Plant and Barker Slough Pumping Plant (the “SWP Facilities”) are to be added as points of rediversion to permit DWR to wheel the water to Transferees’ service areas. The proposed points of rediversion are identified on maps filed with the Division of Water Rights under Application 5630 (SWP).

Banks Pumping Plant via Clifton Court Forebay: N486035, E1695057, California Coordinate System Zone 3, within the NW ¼ of SE ¼ of Projected Section 20, T1S, R4E, MDB&M.

Barker Slough Pumping Plant: N 567,682, E 2,017,761, California Coordinate System Zone 2, within the NW ¼ of SW ¼ of Projected Section 18, T5N, R2E, MDB&M.

**Place of Use**

**Current:** City of Sacramento and portions of Sacramento County, as provided pursuant to the City's Permit no. 11360.

**Proposed:** In addition to the current place of use, the Transferees' service areas are proposed to be added. The service areas of the Transferees are shown on the SWP service area map, Map 1878 - 1, 2, 3 and 4 on file with the Division of Water Rights under Application 5630.

**Purpose of Use**

**Current:** Municipal      **Proposed:** Domestic, Municipal and Industrial, and Irrigation.

	<i>Season of Use</i>	<i>Direct Use (cfs)</i>	<i>Storage (ac-ft)</i>
<b>Current:</b>	See project description and water rights permit 11360.		

**Proposed:** The Transfer Water would be used within the Transferees' specific service areas contained within the SWP service area within one year after approval of the transfer pursuant to Water Code § 1728.

**The proposed transfer/exchange water is presently used or stored within the county/counties of:**

Sacramento County; City of Sacramento.

**The proposed transfer/exchange water will be placed to beneficial use within the following county/counties:**

The additional places of use would be the counties containing the service areas of the Transferees, which are Kern, Kings, Los Angeles, Napa, Orange, Riverside, San Bernardino, San Diego, Stanislaus, and Ventura Counties. (See map information above.)

**1a. Would the transfer/exchange water have been consumptively used or stored in the absence of the proposed temporary change (See WC 1725)?**

Yes, consumptively used in SSWD's South Service Area in the County of Sacramento.

**1b. Provide an analysis which provides documentation that the amount of water to be transferred/exchanged would have been consumptively used or stored in the absence of the proposed temporary change.**

SSWD proposes to institute a groundwater substitution transfer in which it would forgo receipt of up to 4,377 AF of surface water that it anticipates would be available during July through September 2010 under the 2004 *Wholesale Water Supply Agreement Between the City of Sacramento and Sacramento Suburban Water District* ("Wholesale Agreement"). SSWD would

pump groundwater for use by its customers in an amount equivalent to the amount of surface water that it would otherwise receive through the Wholesale Agreement. This transfer would be

The Wholesale Agreement provides for the City to divert and treat surface water at the City's E.A. Fairbairn Water Treatment Plant and to convey the treated surface water to SSWD's South Service Area through a jointly-owned transmission pipeline when there is adequate flow in the American River. Generally, the Wholesale Agreement specifies that no water shall be delivered to SSWD when the Water Forum diversion restrictions included in the City's four American River water rights permits are in effect.

If March through November unimpaired inflow is greater than 400,000 AF, then the City of Sacramento's American River diversion is limited if flow is less than the "Hodge Flow Criteria" as measured at the City of Sacramento's Fairbairn Water Treatment Plant. The Hodge Flow Criteria are as follows:

- o October 15 – February: 2,000 cubic feet per second (cfs);
- o March – June: 3,000 cfs; and
- o July – October 15: 1,750 cfs.

If flow at the City's Fairbairn Water Treatment Plant is less than the Hodge Flow Criteria, no water will be delivered to SSWD. Also, if the diversion of water for SSWD would cause the City's diversions to be restricted because the flow drops below the Hodge Flow Criteria, then SSWD will not receive water. Currently the controlling flow measurement is made at the Fair Oaks gauge on the American River.

SSWD proposes to transfer 4,377 AF of Transfer Water to the Transferees between July and September 2010. This surface water would otherwise be diverted by the City, treated and delivered to SSWD as part of SSWD's long-term groundwater management and conjunctive use program. Given SSWD's secure capacity in the City's diversion and treatment works, SSWD could otherwise receive this quantity of water during this time period as long as the Hodge Flow Criteria in the American River are met. In July through September 2010, SSWD anticipates being able to receive up to 4,377 AF of surface water and has approved an operating budget to purchase this quantity under the Wholesale Agreement. Absent a transfer to the Transferees, SSWD would use the budgeted funds to buy the maximum amount of surface water that it could under the Wholesale Agreement in order to operate its conjunctive use program.

Pursuant to the Wholesale Agreement, SSWD owns "Firm Capacity" in the City's diversion, treatment and delivery works. "Firm Capacity" is the "capacity in the City Treatment and Transmission Facilities that is available to divert, treat and deliver water to the District on an equal priority to the use of such capacity to meet the demands of the City's other water supply customers ...", subject to the Hodge flow restrictions described above. According to the Wholesale Agreement, water diverted and treated for SSWD using Firm Capacity should not exceed the maximum amount of 20 million gallons per day (mgd), and should not exceed the instantaneous flow rate of 13,900 gallons per minute (+10% due to operational variations). Thus, if American River flow is above the Hodge Flow Criteria at Fairbairn WTP, the SSWD can use its Firm Capacity to receive up to 20 mgd.

Given the projected hydrologic conditions and SSWD's dedicated capacity in the City's diversion and treatment plants, absent a transfer to the Transferees, SSWD would otherwise request that the City divert, treat and deliver 4,377 AF of surface water from the American River during the months of July through September. Because this amount of surface water would not be sufficient to meet all projected customer demands, SSWD also would pump groundwater to meet its total demands during this period. The baseline supply and demand mix is shown in **Table 1**.

**Table 1**  
**SSWD Projected Supply Mix Absent Transfer**  
**South Service Area**

2010	Surface (af)	Ground (af)	Total (af)
Jul	1,475	1,345	2,820
Aug	1,475	1,270	2,745
Sep	1,427	739	2,166
Total	4,377	3,354	7,731

Assuming that the transfer of American River surface water to the Transferees occurs, SSWD would shift completely to pumping groundwater to supply customer demands during July through September. The South Service Area wells that SSWD will use in its groundwater substitution program are integrated into its water system. SSWD will use those wells to meet demands as they occur within the South Service Area. SSWD has provided DWR and Reclamation with technical information concerning the wells that will be pumped for the groundwater substitution transfer to the Transferees. SSWD will report monthly groundwater production and use to DWR for each well used in the program. SSWD's supply and demand projection, as well as the proposed transfer quantity and schedule are shown in **Table 2**.

**Table 2**  
**SSWD Projected Supply Mix With Transfer**  
**South Service Area**

2010	Surface (af)	Ground (af)	Total (af)	Transfer (af)
Jul	0	2,820	2,820	1,475
Aug	0	2,745	2,745	1,475
Sep	0	2,166	2,166	1,427
Total	0	7,731	7,731	4,377

Under the Wholesale Agreement, the water is diverted by the City from the American River. Water is consumptively used by SSWD's customers for municipal and industrial purposes and is generally not returned to the lower American River because most runoff percolates into the groundwater basin or is drained into the sewer or storm drainage systems. Percolation back into the lower American River is minimal because there is no hydrogeologic connection between the

central portion of the North Area Basin from which SSWD pumps groundwater and the American River. Wastewater captured in the sewer system is collected and conveyed for treatment at the regional wastewater treatment plant operated by Sacramento County. The treated effluent from the County wastewater treatment plant is discharged into the Sacramento River at Freeport.

SSWD's water transfer proposal represents its commitment to substitute approximately 4,377 AF of groundwater pumping for 4,377 AF of surface supplies from the American River. SSWD recognizes that on days when American River flows would not otherwise be available for SSWD, it is not obtaining credit for transferable water because "new" water would not otherwise be available for transfer. Throughout the proposed transfer period, the City and SSWD will use existing mechanisms to track flows in the American River, including data from the Bureau of Reclamation concerning releases from Folsom Dam and monitoring data from the Fair Oaks gauge on the lower American River.

Additional information about SSWD's water supply and demand is provided in the accompanying Environmental Information Form.

**2a. If the point of diversion/rediversion is being changed, are there any person(s) taking water from the stream between the present point of diversion/rediversion and the proposed point?**

Yes.

**2b. Are there any persons taking water from the stream between the present point of diversion or return flow and the proposed point of diversion or return flow?**

N/A.

**2c. If the answer to 2a. or 2b. is yes, provide the name and address. Also provide the name and address of other persons known to you who may be affected by the proposed change.**

The City is the lowest diverter on the lower American River before it reaches its confluence with the Sacramento River. Although there are other legal users of water between the City's point of diversion and the proposed point of rediversion at SWP Facilities, those users are diverting from the Sacramento River and Delta under riparian, pre-1914 and post-1914 appropriative water rights from those systems. Also, many of the downstream diverters claim riparian and Pre-1914 rights and there is no readily available documentation of those claimed rights. As a result, it is impractical to list all other legal users of water between the City's E.A. Fairbairn Water Treatment Plant and the SWP Facilities. As explained above, the water withdrawn by the City generally percolates into the groundwater aquifer, which is not under the influence of the American River, is captured in the storm drainage system or is discharged as treated effluent into the Sacramento River. For all of the above reasons, the water made available by SSWD by foregoing diversions from the lower American for purposes of the proposed temporary transfer will not reduce the supply available to downstream legal users of water. To the extent the proposed transfer will increase flows in the Sacramento River and Delta, any such increase will



be tiny relative to overall flows and well within historical flows experienced in those water bodies.

**3a. Provide an analysis of any changes in streamflow, water quality, timing of diversion or use, return flows, or effects on legal users resulting from the proposed transfer/exchange.**

The amount of change in streamflow, water quality, timing of diversion or use, return flows, and effect on legal users of water will be minimal and will not cause adverse economic, physical, or environmental effects. The transfer of 4,377 AF from the lower American River is a small increment of the water that will be bypassed or released by Reclamation from Folsom Reservoir this year. Downstream of the Fairbairn Water Treatment Plant, the Transfer Water will increase the flow in the lower reach of the lower American River and in the Sacramento River by about the stated amount. Once being left in the river, the 4,377 AF of Transfer Water, which will be released over several months on the same pattern it would have been diverted and used, will comprise an increasingly small increment of water as it flows downstream when compared to the average flows in the lower American River, Sacramento River and the Delta.

As explained below, this transfer involves a small quantity of water compared to the volumes of water moving through these river systems. The following table presents the average daily Delta outflow, river flows, and SWP and CVP pumping rates in acre-feet during the period May through October, which includes the proposed transfer period.

The May through October data provided in this application are the most recent data for the relevant months provided by Reclamation's Central Valley Operations Office in its monthly reports (available at [http://www.usbr.gov/mp/cvo/pub\\_rpts.html](http://www.usbr.gov/mp/cvo/pub_rpts.html)). Furthermore, these data are considered representative of likely conditions in 2010 because 2009 was a dry hydrological year and was a year in which SWP and CVP pumping operations were subject to restrictions to prevent "take" of the Delta smelt and salmonids under the federal Endangered Species Act. Similar restrictions on reverse flows and related pumping constraints, imposed by the salmon and smelt biological opinions, apply in 2010 as well. Thus, these data provide the Board with information to review the proposed transfer in light of the hydrologic conditions that are likely to occur during the proposed transfer as required by Water Code § 1727(b)(1).

**WY 2009-2010 Average Daily Delta Outflow and Combined SWP/CVP Pumping in Acre-Feet per Day.\***

	<b>July</b>	<b>August</b>	<b>September</b>
Lower American River	9,633	6,598	3,745
Sacramento River at Freeport	36,120	29,181	22,005
Delta Inflow	39,445	31,466	24,593

Combined SWP/ CVP Pumping	20,863	16,686	13,363
Delta Outflow	10,381	7,666	6,690

\* Data from Reclamation operations reports (see text above and Environmental Information Form).

The 4,377 AF of Transfer Water will not be transferred all at once, but will be left in the lower American River and conveyed across the Delta to the SWP Facilities at the rate of approximately 47.6 acre-feet per day over the three-month July through September 2010 period, all within existing regulatory constraints. As indicated from the table above, in comparison to the amount proposed for transfer, much larger volumes of water are expected to move through the lower American and Sacramento Rivers and the Delta. Thus, the transfer of an additional 4,377 AF during this period would increase flows by only a very small amount of the total in any of the water bodies listed and would also cause only a very small increase to SWP and CVP Delta pumping. Thus, while the exact operations required to implement the proposed transfer cannot be stated with precision at this time, the transfer will at most only negligibly affect streamflows, water quality, timing of diversion or use, return flows, and legal users of water.

The hydrologic systems and project operations affected by this transfer experience wide fluctuations in river stages and pumping operations due to natural events and because of other water project operations such as compliance with D-1641. The data presented represent the lower flow and pumping rates that are likely to occur in 2010, but the fact that the river flows and pumping rates are greater in average and wetter years also supports the conclusion that slightly increased flows, with a concomitant increase in SWP and CVP pumping rates that are still within permitted limits, will not significantly or unreasonably affect streamflow, water quality, timing of diversion or use, return flows, or other legal users of water.

Because of the minimal changes in existing conditions, other legal users of water will not be adversely affected by this transfer project. The only effects of this transfer on other legal users of water will be a very slight increase in river flows from the point of diversion on the lower American River to the proposed points of rediversion at the SWP Facilities. Furthermore, when the Transfer Water is diverted by the SWP Facilities, DWR will redivert all water in compliance with all existing state and federal regulations, including the salmon and smelt biological opinions, Decision 1641, and existing court orders.

**3b. State reasons you believe the proposed temporary change will not injure any legal user of the water, see Water Code Section 1727(b)(1).**

No legal user of water will be injured because the proposed transfer of water will only slightly increase, not decrease, streamflows below the City's Fairbairn Water Treatment Plant where the water normally would be diverted. Any such increase will be minor and will not cause any water flows to noticeably increase above normal seasonal levels, or to violate any existing regulatory requirements. The City normally would divert and treat the 4,377 AF of proposed Transfer Water and deliver the treated water to SSWD for consumptive purposes. Because the City already diverts this amount of water in the lower American River for SSWD and there are no

downstream diverters, there would be no impact to legal users in that watershed. Downstream of the confluence of the American and Sacramento Rivers, this quantity of water would not be available to any other legal user of water with or without this proposed transfer. There is no evidence that adding this small increment of water to the lower American and Sacramento Rivers within the range of historical flows would work any injury to a legal user of water.

**4. Consult with staff of the applicable Regional Water Quality Control Board concerning the proposed temporary change. State the name and phone number of person(s) contacted. Summarize their opinion concerning compliance with CCR 794(b) and any Regional Board requirements.**

The City and SSWD have not contacted the Regional Board staff, but intend to do so during the review process if Division of Water Rights staff requests it. Similar transfers of water from the American River system have occurred in the past without any adverse change in water quality. The Transfer Water is very high quality runoff derived predominantly from snowmelt and rains falling in largely undeveloped higher elevation portions of the Sierra Nevada. If anything, any minor increase in flows in downstream reaches that could result from this transfer should improve water quality by increasing dissolved oxygen levels and decreasing the concentration of dissolved solids and other constituents of concern in downstream waters.

**5a. Consult with the California Department of Fish and Game pursuant to 14 CCR 794(b) concerning the proposed temporary change. State the name and phone number of the person(s) contacted and their opinion concerning the potential effect(s) of the proposed temporary change on fish, wildlife, or other instream beneficial uses, and state any measures recommended for mitigation.**

A copy of this petition was provided to acting regional manager Kent Smith at the DFG North Central Regional Office, 1701 Nimbus Road, Rancho Cordova, CA 95670 Phone: (916) 358-2898, FAX: (916) 358-2899. The City and SSWD have not received DFG's opinion regarding the project, but will provide this information to the appropriate SWRCB staff when available. The City and SSWD expect DFG to indicate that the transfer will not unreasonably affect fish or wildlife resources because very similar transfers have been done in the past with no adverse impacts identified by DFG. In fact, in the past DFG has advocated such transfers as part of the transfer of water to the CAL-FED Environmental Water Account ("EWA").

**5b. Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See WC 1707)?**

Generally no. The Transfer Water will be consumptively used by one or more of the eight listed buyers within the SWP service area, most likely for municipal and industrial use. The release of Transfer Water at the City's Fairbairn Water Treatment Plant will provide up to 4,377 AF to support additional flows in the lower American and Sacramento Rivers. These increased flows may enhance some biological resources in those reaches of river. The addition of the Transfer Water into the SWP Facilities may incrementally improve wetlands, fish and wildlife habitat, or recreational opportunities or aesthetics in San Luis Reservoir or other SWP terminal reservoirs.