

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

DIVISION OF WATER RIGHTS

**In the Matter of Permit 20281 (Application 30358)
and Licenses 904A and 5487A (Applications 1199A and 12073A)**

Woodland-Davis Clean Water Agency

ORDER APPROVING TEMPORARY URGENCY CHANGES

SOURCE: Sacramento River

COUNTY: Yolo County

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF TEMPORARY URGENCY CHANGE PETITION

On February 12, 2016, the Woodland-Davis Clean Water Agency (WDCWA or Petitioner) filed temporary urgency change petitions (TUCPs) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) requesting approval of temporary changes to water right Permit 20281 (Application 30358) and Licenses 904A and 5487A (Applications 1199A and 12073A) pursuant to Chapter 6.6 of Part 2 of Division 2 of the Water Code. With the TUCPs, WDCWA seeks authorization to divert water from a temporary pump station in Reclamation District 2035's (RD 2035) Main Canal and deliver that water to the Davis Woodland Water Supply Project's (DWWSP) new Regional Water Treatment Facility (RWTF).

The TUCPs were filed because construction of WDCWA's and RD 2035's new permanent screened joint intake facility on the Sacramento River is behind schedule and will not be completed and ready for use until possibly late October 2016. In the interim, WDCWA has proposed using a temporary pump station on RD 2035's Main Canal to allow WDCWA to test and begin to utilize the DWWSP conveyance facilities and RWTF until the new permanent joint intake facility is on-line. In order to be able to utilize the temporary pump station, WDCWA filed the TUCPs to add a new point of diversion¹ (which reflects the location of the pump station on the RD 2035 Main Canal) to Permit 20281 and Licenses 904A and 5487A. WDCWA also requested to temporarily add the RD 2035 point of diversion on the Sacramento River to Permit 20281 to enable use of the point of diversion for that permit. With the TUCPs, WDCWA also requested a temporary suspension of a term included in both Licenses 904A and 5487A requiring all diversions after January 1, 2016 to occur through a fish screened intake structure.

2.0 BACKGROUND

Water Right Permit 20281

¹ WDCWA filed the TUCPs requesting use of the temporary pumping facilities on RD 2035's Main Canal as an added point of diversion. However, after discussion with Division staff, WDCWA agreed that the temporary pumping facilities should be defined as a point of diversion in their water rights as referenced and approved in this Order rather than an additional point of diversion as originally requested.

Permit 20281 was approved on April 14, 2011, pursuant to water right Application 30358, which was originally filed on April 19, 1994. Permit 20281 allows a 30-day average diversion rate of 80.1 cubic feet per second (cfs) and an instantaneous diversion rate of 100 cfs, to be diverted from January 1 to December 31 of each year from the Sacramento River in Yolo County. The maximum amount that can be diverted under the permit is 45,000 acre-feet annually (afa). The water may be used for municipal, irrigation, and fisheries and aquaculture research purposes within the City of Davis, the University of California, Davis, and the City of Woodland.

Water Right License 904A

License 904 was originally approved on April 18, 1930, pursuant to Application 1199, which was filed on March 1, 1919. License 904 was subsequently split into two licenses, 904A and 904B, which were approved on December 21, 2012. License 904A allows for an average direct diversion rate of 80 cfs with a maximum instantaneous direct diversion rate of 100 cfs from the Sacramento River in Yolo County from about April 1 through about September 30 of each year, with a total maximum diversion not to exceed 7,500 afa from July 1 through September 30 of each year. The maximum quantity that can be diverted under the license cannot exceed 10,000 afa; the maximum combined diversion under License 904A and License 5487A cannot exceed 10,000 afa. The water can be used for municipal, industrial, irrigation, fisheries and aquaculture research, and incidental fish and wildlife enhancement within the City of Woodland, the City of Davis, and the University of California, Davis.

Water Right License 5487A

License 5487 was originally approved on March 24, 1959, pursuant to Application 12073, which was filed on September 8, 1947. License 5487 was subsequently split into two licenses, 5487A and 5487B, which were approved on December 21, 2012. License 5487A allows for an average direct diversion rate of 80 cfs, with a maximum instantaneous direct diversion rate of 100 cfs, from the Sacramento River in Yolo County, with a total maximum diversion not to exceed 4,919 afa from about October 1 to about October 31 of each year. The maximum combined diversion under License 5487A and License 904A cannot exceed 10,000 afa. The water can be used for municipal, industrial, irrigation, fisheries and aquaculture research, and incidental fish and wildlife enhancement within the City of Woodland, the City of Davis, and the University of California, Davis.

Davis Woodland Water Supply Project (DWWSP)

The DWWSP involves the development of a new surface water supply for the Cities of Woodland and Davis and the University of California, Davis (collectively referred to as the Project Partners). The DWWSP consists of an intake/diversion structure on the Sacramento River and a raw water conveyance pipeline between the intake/diversion structure to a new RWTF. The RWTF will convey treated surface water to the service areas of the three Project Partners.

3.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Davis, as the lead agency, along with the City of Woodland and the University of California, Davis, prepared an Environmental Impact Report (EIR) for the DWWSP. On October 16, 2007, the City of Davis, as acting CEQA lead agency, adopted Resolution No. 07-168, Series 2007, which certified the final EIR, adopted CEQA findings, a statement of overriding considerations and a mitigation monitoring and reporting program, and approved the DWWSP. On November 6, 2007, the City of Woodland, acting as a CEQA responsible agency, adopted Resolution No. 4878, which adopted CEQA findings and the mitigation monitoring and reporting program and approved the DWWSP.

Since the certification of the EIR, the Cities of Woodland and Davis have formed the WDCWA, a joint powers authority to implement the DWWSP. In November 2015, the WDCWA prepared Addendum No. 8 to the 2007 EIR covering potential environmental impacts from the installation and operation of the temporary pump station, which is the subject of the TUCPs. In Addendum No. 8, WDCWA evaluated all resource topics addressed in the original EIR as they related to the installation and operation of the temporary pump station. WDCWA concluded that the proposed temporary pump station would not result in any new or more severe impacts than those discussed in the 2007 EIR, as updated by Addendum No. 5. None of the conditions or circumstances that would require preparation of a subsequent or supplemental EIR pursuant to Public Resources Code Section 21166 exists for the Project with these changes. On November 24, 2015, the Board of Directors of the WDCWA adopted Resolution No. 2015-05 which approved Addendum No. 8 to the 2007 EIR and authorized and directed the General Manager to prepare and file a CEQA Notice of Determination (NOD) reflecting approval of Addendum No. 8.

The State Water Board has reviewed the information submitted by WDCWA and has considered the 2007 EIR and Addendum No. 8 in approving the TUCPs. The State Water Board will issue a NOD for the TUCPs within five days of approval of this Order.

4.0 PUBLIC NOTICE OF TEMPORARY URGENCY CHANGE PETITION

The State Water Board issued public notice of the TUCP on March 7, 2016, pursuant to Water Code section 1438(a). The public notice was published for one day in the Daily Democrat on March 16, 2016. The State Water Board posted the notice of the temporary urgency changes and the TUCPs (and accompanying materials) on its website. The State Water Board also distributed the notice through an electronic notification system. Pursuant to Water Code section 1438(a), the State Water Board may issue a temporary urgency change order in advance of the required notice.

5.0 COMMENTS ON THE TUCPs

By letter dated March 7, 2016, Mr. Richard Morat commented on the TUCPs. Mr. Morat indicated that he objected to the suspension of the license terms requiring all diversions after January 1, 2016 occur through a fish-screened intake structure. He expressed his concern regarding the need to protect out-migrating salmon past RD 2035's Main Canal. He further asked whether parties responsible for state and federal endangered species acts approved of the proposed temporary diversion. He also asked whether there is an alternative supply available, including continuing on wells.

State Water Board Response:

As noted in Section 6.3 of this Order, WDCWA representatives met with California Department of Fish and Wildlife (CDFW) regarding the TUCPs at the proposed location of the temporary pumping facility on the RD 2035 Main Canal. Based on the CDFW site visit, a term is being included in this approval order regarding protection of fisheries. Also, regarding the continuation of use of groundwater for water supply instead of this temporary surface water diversion, the current groundwater supply for both Davis and Woodland does not meet hexavalent chromium drinking water standards. The objective of the temporary changes proposed with the TUCPs is to provide drinking water that meets water quality standards as soon as possible for the municipalities of Davis and Woodland.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order.

The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.
(Wat. Code, § 1435, subd. (b)(1-4).)

6.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an "urgent need" means "the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented" However, the State Water Board shall not find the need urgent if it concludes that the petitioner has failed to exercise due diligence in petitioning for a change pursuant to other appropriate provisions of the Water Code.

In this case, there is an urgent need for the proposed change since the WDCWA originally planned on completing the new screened intake prior to completion of the RWTF to enable testing of the facility that is necessary before commencement of delivery of potable water to the Project Partners. The RWTF is slated for completion by June 1, 2016; however construction of the new screened joint intake is behind schedule and may not be completed until November 2016. WDCWA has indicated that if the testing and startup of the RWTF were to be delayed, the following adverse consequences could occur: 1) some of the customers in Davis and Woodland who have funded the DWWSP through water rates would receive drinking water from wells that would not meet the current hexavalent chromium drinking water standard; 2) Davis and Woodland both currently have hard water supplies that corrode appliances and plumbing, leading to expensive maintenance or replacements; 3) the use of water softeners to deal with the hard water are costly to operate and maintain and the byproducts of the water softeners add more salt to the cities' wastewater, which is already high in salinity; 4) the high mineral content of the well water causes customer dissatisfaction with the taste of the water; and 5) the delay would impose additional financial hardship on WDCWA to pay the Design-Build Operator for continued mobilization of staff and temporary construction facilities while the delay is in effect. Therefore, in order to perform necessary tests to the RWTF and be able to supply treated surface water to the customers in Davis, Woodland and UC Davis in an expeditious manner, WDCWA filed the TUCPs requesting to divert water at a temporary pumping facility located on RD 2035's Main Canal.

6.2 No Injury to Any Other Lawful User of Water

There are no other diversions between the present point of diversion and the proposed temporary point of diversion, so the temporary change will not result in the injury to any other legal user of water.

Accordingly, granting these TUCPs will not result in injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water and instream beneficial uses.

6.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

WDCWA prepared DWWSP EIR Addendum No. 8 to cover the changes proposed with the TUCPs.

The addendum covered potential impacts as a result of the use of the existing RD 2035 intake on the Sacramento River to deliver sufficient quantities of water into the Main Canal, which would then be rediverted from the temporary pump station through the newly constructed pipeline to the RWTF. WDCWA determined that the amount of water required for testing and initial operations, and delivery of water thereafter to the RWTF, plus RD 2035's average diversions for the past five years, will be well below WDCWA's current diversion limitations. As a result, WDCWA found that there are no changes in the environmental setting or project characteristics that would raise important new biological resources issues related to using RD 2035's existing intake structure on the Sacramento River.

WDCWA also concluded in Addendum No. 8 that construction of the temporary pumping facilities could result in similar, but less severe construction-related impacts to species and habitat identified within the 2007 DWWSP EIR because the temporary pumps would be located on the newly completed gravel ramp at the outlet structure to the Main Canal and would not require construction equipment other than trucks to bring them in on the skids. Implementation of the applicable 2007 DWWSP EIR Mitigation Measures 3.6-7n through 3.6-7x, which include measures for all phases of project construction to address impacts to sensitive species and consultation with state and federal wildlife agencies, as necessary, would still be implemented by the Cities of Davis and Woodland. As a result, there are no changes in the environmental setting or project characteristics that would raise important new biological resources issues.

Further, on November 16, 2015, WDCWA representatives met with CDFW staff regarding the project proposed with the TUCPs. CDFW staff advised WDCWA representatives that CDFW would not oppose the TUCPs if the State Water Board's approval only allows diversions from RD 2035's point of rediversion on or after June 1, 2016, in order to protect winter-run and spring-run Chinook salmon. The State Water Board will condition this approval order that temporary use of the RD 2035 point of rediversion cannot begin until June 1, 2016.

Therefore, based on the above information, the State Water Board finds that the proposed changes may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

6.4 The Proposed Change is in the Public Interest

As described in Section 6.1, use of the temporary point of rediversion is in the public interest as it will allow WDCWA to complete the DWWSP which will provide a necessary and high quality surface water supply to the Cities of Woodland, Davis, and the University of California, Davis.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The right holder has an urgent need to make the proposed change;
2. The proposed change will not operate to the injury of any other lawful user of water;
3. The proposed change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The proposed change is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the TUCPs filed by the Woodland-Davis Clean Water Agency for temporary urgency changes in Permit 20281 (Application 30358) and Licenses 904A and 5487A (Applications 1199A and 12073A) are approved and effective until 180 days from the date of this Order.

All existing terms and conditions of the subject permit and licenses remain in effect, except as temporarily amended by the following terms.

1. The following point of diversion from the Sacramento River will be added to Permit 20281:

The existing Reclamation District 2035 intake facility on the Sacramento River located as follows: California Coordinate System of 1983, Zone 2, North 2,008,400 feet and East 6,667,100 feet, being within the SE¼ of SW¼ of projected Section 27, T10N, R3E, MDB&M.

2. The following point of rediversion will be added to Permit 20281 and Licenses 904A and 5487A:

The WDCWA temporary pumping station in RD 2035's Main Canal located as follows: California Coordinate System of 1983, Zone 2, North 2,008,160 feet and East 6,667,000 feet, being within NE¼ of NW¼ of projected Section 34, T10N, R3E, MDB&M.

3. Diversions from the temporary pumping station or the Reclamation District 2035 intake facility pursuant to this Order shall not commence until June 1, 2016.

4. During the effective date of this Order, the following term in both Licenses 904A and 5487A is suspended:

After January 1, 2016, no water shall be diverted under this license except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of the Department of Fish and Game, U.S. Fish and Wildlife Service and National Marine Fisheries Service, as specified at the time the last permit for construction is issued, to protect species of fish listed as endangered or threatened under the California Endangered Species Act (Fish and Game Code sections 2050 to 2098) or the federal Endangered Species Act (16 U.S.C. sections 1531 to 1544). Construction, operation, and maintenance costs of the required facility are the responsibility of the Licensee.

5. WDCWA shall submit to the Deputy Director for Water Rights on a monthly basis a written report that summarizes all activities conducted to ensure compliance with the requirements of this Order. The first monthly report is due at the end of the first complete month of this Order. WDCWA shall submit a final report summarizing overall compliance with this Order no later than December 1, 2016.

6. 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 Order, the licensee shall obtain authorization for an incidental take permit prior to construction or operation. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary urgency changes authorized under this Order.

7. The State Water Board shall supervise the diversion and use of water under this Order for the protection of legal users of water and instream beneficial uses and for compliance with the conditions. Petitioner shall allow representatives of the State Water Board reasonable access to the project works to determine compliance with the terms of this Order.

8. The State Water Board reserves jurisdiction to supervise the temporary urgency changes 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.
9. The temporary urgency changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the State Water Board. The temporary urgency changes approved in this Order shall automatically expire 180 days from the date of approval of this Order, unless earlier revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 28 2016