

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMIT 16479 (APPLICATION 14443)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 6,600 ACRE-FEET OF WATER
FROM THE DEPARTMENT OF WATER RESOURCES TO SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY**

SOURCES: Feather River and Sacramento-San Joaquin Delta Channels

COUNTIES: Alameda, Butte, Contra Costa, Los Angeles, Merced, Riverside, Sacramento, San Bernardino, Solano and Stanislaus

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 27, 2014, the Department of Water Resources (DWR) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a petition for temporary urgency change under Water Code Section 1725, et seq. DWR has requested to transfer up to 6,600 acre-feet (af) of water to San Luis & Delta Mendota Water Authority (SLDMWA). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer

DWR proposes to transfer up to 6,600 af of water under Permit 16479 (Application 14443) to SLDMWA. The requested change will facilitate the transfer of water from Garden Highway Mutual Water Company (Garden Highway) to SLDMWA. Garden Highway diverts water from the Feather River below Oroville Dam under License 2033 (Application 1699) and a water rights Settlement Agreement between DWR and Garden Highway dated May 17, 1977 (Settlement Agreement). Due to curtailment of its license, Garden Highway was unable to initiate the transfer under License 2033. Consequently, Garden Highway has requested that DWR convey its Settlement Agreement water to SLDMWA pursuant to the transfer. As a result of this action, Garden Highway will not have a surface water supply. It will rely on groundwater substitution for irrigation in its service area.

The SLDMWA service area is located outside the State Water Project (SWP) authorized place of use. DWR's petition requests the temporary addition of areas within SLDMWA to the place of use of Permit 16479. SLDMWA's service area is shown on the map prepared by DWR, which was submitted with the petition.

2.0 BACKGROUND

Permit 16479 was issued to DWR on August 24, 1951, authorizing DWR to divert to storage up to 3,542,100 af of water between September 1 and July 31 with a maximum diversion rate of 7,545 cubic feet per second between January 1 and December 31 of each year. Authorized sources under Permit 16479 are the Feather River and the Sacramento-San Joaquin Delta Channels. The water may be used for irrigation, domestic, municipal, industrial, recreational, salinity control, fish and

wildlife enhancement, and to generate incidental power. The transfer of 6,600 af of water will be subject to provisions of DWR's permit (set forth in the State Water Board's Water Right Decision 1641 (D-1641) and modified by Water Right Order 2008-0029 EXEC) and Biological Opinions (BiOps) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA). The transfer will not increase the total amount of water pumped from the Delta.

SLDMWA is an organization which represents a number of Central Valley Project (CVP) agricultural contractors located in western San Joaquin Valley. Due to the critical drought conditions in 2014, the U.S. Bureau of Reclamation (Reclamation) allocated no CVP water to its agricultural contractors south of the Sacramento/San Joaquin Delta this year. The districts within SLDMWA are experiencing severe water supply shortages within their services areas. SLDMWA negotiated a one-year agreement with Garden Highway for the transfer of up 6,600 af of water to augment the limited water supplies available within SLDMWA's service area. Under the agreement, the transfer water will be made available through groundwater substitution and will be delivered by Reclamation or DWR to SLDMWA's service area through the Delta Mendota Canal or California Aqueduct from date of transfer approval through October 30, 2014. Any export of transfer water outside the period of July 1 through September 30 will require the concurrence of the NMFS, USFWS and California Department of Fish and Wildlife (CDFW).

2.1 Governor's 2014 Proclamation of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The April Proclamation reiterates the Governor's direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), section 13247 of the Water Code is suspended. Water Code section 13247 requires state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

On January 29, 2014, DWR and Reclamation jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code section 1435 et seq., to temporarily modify requirements in their water right permits and license for the SWP and Central Valley Project (CVP) for the next 180 days in response to drought conditions. An order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, February 28, March 18, April 9, April 11, April 18, and May 2, 2014. The Order restricted exports in the Delta at the SWP and CVP pumping facilities to health and safety

needs of no more than 1,500 cfs, with the exception of transfers. Any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flows, or transfers.

On May 27, 2014, the State Water Board issued curtailment notices for those diverting water in the Sacramento-San Joaquin watersheds with post-1914 water rights. However, releases of water collected to storage prior to issuance of the curtailment notice, such as in the case of this transfer, are not subject to curtailment.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On June 6, 2014, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, the Petitioner noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties on June 6, 2014.

3.1 Comments of Reclamation

By letter dated June 23, 2014, Reclamation commented on the proposed transfer concerning Garden Highway's groundwater substitution. A groundwater substitution term was added in the order section to address Reclamation's concern.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The petitioner filed the petition for temporary transfer of water pursuant to Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for this project.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code section 1727 evaluation.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored

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 or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines "consumptively used" to mean "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."

The water proposed for transfer consists of water released from Lake Oroville storage. Absent the transfer, the water would have been provided to Garden Highway for irrigation of its lands consistent with the Settlement Agreement between DWR and Garden Highway. Instead, Garden Highway will rely on groundwater substitution pumping to irrigate its lands in exchange for DWR conveying the

transfer water to SLDMWA pursuant to the transfer. The amount of water made available through groundwater substitution is based on the amount of additional water pumped by Garden Highway above their normal baseline pumping adjusted by a streamflow depletion factor. The streamflow depletion factor is intended to account for depletions in surface water during the period when the Delta is in balanced conditions that may occur as a result of the increased groundwater pumping in order to minimize potential impacts to other legal users of water and the environment. Therefore, only an amount of water that would have been consumptively used will be transferred.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

5.2 No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of 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 requested change can be made without injuring other legal users of water. The water to be transferred is limited to the quantity that would have been consumptively used in the absence of the transfer. As noted above, the water will be made available through groundwater substitution. Any transfer water made available will accrue in Lake Oroville or be directly exported at either Reclamation's Jones Pumping Plant (Jones) or DWR's Banks Pumping Plant (Banks) on the same pattern as the water is made available from the additional groundwater pumping. DWR and Reclamation limit the quantity of transfer water from groundwater substitution to the amount of additional groundwater pumped for the transfer less a streamflow depletion factor to avoid a reduction in the quantity of water available for diversion by other legal users of water downstream of the point of transfer. The release of any stored transfer water or direct conveyance of transfer water will be coordinated between DWR and Reclamation to coincide with availability of export capacity.

The water to be transferred or exchanged is diverted out of the watershed from which it originates in conformance with the provisions of DWR's water right. Water made available through the proposed transfer cannot be exported at Jones or Banks if the export will impact SWP and/or CVP (collectively Projects) operations, including the Projects' ability to comply with all applicable regulatory requirements. All water exported at the SWP and CVP Delta facilities is pumped consistent with the criteria contained in D-1641 and the requirements contained in the applicable BiOps issued by NMFS and USFWS for the protection of Delta Smelt, anadromous fish and Marine mammal species. DWR and Reclamation will continue to meet the objectives specified in D-1641, as modified by Water Right Order 2008-0029 EXEC over which the Projects have control, and as modified by any subsequent orders in effect at the time of the export as well as the requirements of the BiOps.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal users of water.

5.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

The change requested by DWR will not result in unreasonable impacts to fish and wildlife or the environment. The SWP water conveyed for the transfer is water previously stored at Lake Oroville and exported at Jones and Banks in conformance with the provisions of DWR's water rights permits governing SWP operations. In the absence of the transfer, growers within Garden Highway would

have diverted surface water in an amount equivalent to the transfer water, and that surface water diverted would have been consumptively used within the Garden Highway service area. None of the water would have been available to other downstream users or would have contributed to streamflow. Conveyance of the transfer will result in a slight increase in streamflow from the Garden Highway diversion facilities on the Feather River to Jones.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, 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 2010-0029.

7.0 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 transfer involves only an amount of water that would have been consumptively used in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 6,600 af of water under Permit 16479 is approved.

All existing terms and conditions of Permit 16479 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the date of this Order and continuing for one year.
2. The transfer period is further limited to the period allowed pursuant to any applicable BiOps or ESA consultations (or informal consultations) related to transfers at State and federal Delta pumps. Permittee is responsible, under its water right, for meeting all requirements of the applicable ESA for its diversion period allowed pursuant to the BiOps or consultation prior to transfer of water. Such documentation may include an electronic link to any transfer BiOps or ESA consultations, informal ESA consultations, opinions, or other documents issued by CDFW, NMFS and/or USFWS.
3. The maximum transfer quantity from DWR to SLDMWA authorized under Permit 16479 is 6,600 af.
4. The place of use under Permit 16479 is temporarily amended to include the service area of SLDMWA as shown on the map prepared by DWR, which was submitted with the petition.
5. Rediversion of water at Jones or Banks pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in and consistent with the April 8, 2014 CVP and SWP Drought Operations Plan and the State Water Board's SWP-CVP Order issued January 31, 2014 and subsequently amended.
6. Rediversion of water at Jones or Banks pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, or any future State Water Board orders or decisions implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Order item 5. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable BiOps, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
7. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. In addition, SLDMWA shall implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River. 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.
8. Water may not be transferred through Jones or Banks until DWR and Reclamation have approved the Garden Highway groundwater substitution operation. Such approval shall include the following elements:
 - a. Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
 - b. The amount of transferable water credited to Garden Highway's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.

- c. Before commencing the groundwater substitution operation, Garden Highway shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
- d. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

Documentation that an acceptable groundwater substitution operation has been approved by Reclamation and DWR shall be submitted to the Division within 15 days of the date such approval is granted by those entities.

- 9. The State Water Board has issued a notice curtailing direct diversion and collection to storage of water pursuant to Permit 16479. Therefore, the transfer of water under this Order is limited to water collected to storage by DWR prior to issuance of the curtailment notice. The quantity of water released by DWR from Lake Oroville for transfer to the SLDMWA service area is available as a result of the groundwater substitution program implemented by Garden Highway in 2014. The amount of water released from Lake Oroville by DWR for the transfer to SLDMWA approved in this Order shall not exceed 88% of the rate of additional groundwater pumping, and shall in no case exceed the diversion rate shown in Garden Highway's License 2033.
- 10. The Petitioner shall provide the Deputy Director for Water Rights a monthly report describing the conservation and transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall include the following information:
 - a. The daily average rate of water diverted and daily volume of water diverted at Jones or Banks pursuant to this Order;
 - b. The daily amounts and the monthly total of water delivered to SLDMWA pursuant to this Order; and
 - c. Final measurement of the amount of water actually conserved.
- 11. 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.
- 12. 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 (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 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.

13. 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:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUL 11 2014