

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

DIVISION OF WATER RIGHTS

ORDER

**IN THE MATTER OF THE DEPARTMENT OF WATER RESOURCES'
PERMIT 16482 (APPLICATION 17512)
PETITION FOR LONG-TERM CHANGE
INVOLVING THE TRANSFER OF 10,000 ACRE-FEET OF WATER PER YEAR
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

ORDER AUTHORIZING LONG-TERM CHANGE IN PLACE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On February 16, 2010,

Department of Water Resources
c/o Nancy Quan, Chief
Program Development and Water Supply and Transfers
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Long-Term Change (Petition) under Water Code section 1735, et seq. If approved, the Petition would add portions of the Westlands Water District (Westlands), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512, and would be effective from April 1, 2012 through April 30, 2027. This transfer/exchange, per the Petition, was scheduled to commence on May 1, 2011, and continue through April 30, 2027. There was a delay in processing the Petition due to preparation for a public hearing (explained in Section 3.2 of this Order), which was later canceled. In the interim, a temporary transfer order was issued for a 10,000 acre-feet (af) transfer from DWR to Westlands, which commenced on April 1, 2011, and continues through March 31, 2012.

1.1 Description of the Transfer. State Water Project (SWP) water is stored in San Luis Reservoir under the provisions of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare) and the Empire West Side Irrigation District (Empire). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and Westlands. Newton Farms and Brooks Farms are farming interests that hold lands in both Empire and Westlands. These farming interests have requested that a total of up to 10,000 af of SWP water currently scheduled for use on their lands in Tulare or Empire (8,000 af from Tulare and 2,000 af from Empire) be transferred for use on their lands located within Westlands. The Petition indicates that no additional groundwater will be pumped within Tulare or Empire as a result of this transfer. DWR submitted the Petition to facilitate this exchange. The proposed long-term change would be in effect from April 1, 2012 through April 30, 2027.

In the absence of the proposed long-term change, the water would be used by the aforementioned parties on their lands located within Tulare or Empire. Additional groundwater would be pumped by the aforementioned parties for their lands located in Westlands.

1.2 Additional Information. DWR submitted information with the Petition which, using the current CVP and SWP allocations, details the water application rates (in acre-feet per acre) for each of the transferees, including both their CVP supplies and the transferred SWP water. The current CVP and SWP allocations (based on the April 2011 snow survey) are 80% of their contract deliveries. However, this allocation could change as hydrologic conditions change in subsequent years.

2.0 BACKGROUND

2.1 Substance of DWR's Permit. Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, and fish and wildlife enhancement purposes, and to generate incidental power. The subject 10,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (set forth in State Water Board Revised Decision 1641 (D-1641)) and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). In the absence of the proposed transfer, water would remain in storage in San Luis Reservoir until it is released for use within Tulare's and Empire's service areas. Therefore, the transfer will not result in an increase in diversions from the Sacramento-San Joaquin Delta or any other source. Thus, the transfer of up to 10,000 af to Westlands will have no effect on any natural streamflow or hydrologic regime in the Delta or San Luis Creek. Release rates from San Luis Reservoir may increase due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer. DWR's Petition requests the long-term addition of areas within Westlands to the place of use of Permit 16482. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this Petition on the Division of Water Rights' website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND PROTEST TO THE PROPOSED LONG-TERM CHANGE

Public notice of the Petition (dated September 28, 2010) was provided via first class mail to interested parties and by posting on the Division of Water Rights' website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/. California Water Impact Network, California Sportfishing Protection Alliance, and AquAlliance (collectively protestants) jointly submitted a timely protest letter to the proposed long-term change. Protestants' protest cites concerns regarding environmental impacts due to the shift of irrigation water supply from an area of lower to higher soil and shallow groundwater selenium concentration. Protestants' protest letter, as well as additional correspondence submitted subsequent to the protest letter, is posted with the copy of the notice for this Petition on the Division of Water Rights' website as shown above in Section 2.2 of this Order.

3.1 State Water Board Response. The area of Westlands where the transfer will occur is currently in production, primarily with permanent crops. The transfer will reduce the amount of groundwater required to irrigate the permanent crops and provide a supply of better quality surface water for irrigation. Westlands's map, Generalized Depth of Shallow Groundwater Surface, April 2009, indicates that the areas intended for transfer within Westlands have depths to groundwater of greater than 15 feet below the ground surface. DWR states in the Petition that "Lands to receive increased water deliveries due to this transfer have not been shown to have drainage or selenium problems." Also, agricultural drainage from Westlands does not discharge directly to the San Joaquin River. Westlands has programs to encourage water conservation and reduce deep percolation. DWR has petitioned for temporary changes (effective for up to one year) similar to the proposed long-term change on an annual basis every year since 2001. There have not been any identifiable impacts from these temporary transfers. The water proposed for transfer in the instant Petition consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482 which is currently stored in San Luis Reservoir under provisions of DWR's permit, as amended by D-1641 and BOs issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would be stored in San Luis Reservoir until released for use within Tulare's and Empire's service areas. Therefore, the delivery of this water to Westlands would have no significant adverse effect on any natural streamflow or hydrologic regime.

This Order requires Westlands to implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area.

3.2 NOTICE OF PUBLIC HEARING

A Notice of Public Hearing was issued on June 10, 2011, pursuant to California Code of Regulations, title 23, section 814, regarding a proposed long-term transfer hearing scheduled for August 22, 2011, to address issues in the protestants' unresolved protest. The State Water Board received Notice of Intent to Appear statements from DWR, South Delta Water Agency, Tulare, Empire, Westlands, and the Center for Biological Diversity (CBD), representing the protestants (CBD et al.). Evidence was submitted by DWR, Tulare, Westlands, and CBD et al. by July 22, 2011. On July 26, 2011 CBD submitted a letter to the State Water Board indicating they no longer intended to present a case-in-chief at the hearing. The State Water Board, Division of Water Rights, sent a letter to CBD on August 4, 2011, asking for a response regarding their intent to participate in the hearing. In follow-up discussions with CBD et al.'s representative, Adam Lazar, on August 16, 2011, the hearing team advised Mr. Lazar that, at the hearing officer's direction, the hearing would be canceled if no representative(s) of the protestants notified the hearing team by close of business on August 17, 2011, that they intended to participate at the hearing. Per a letter dated August 17, 2011, Mr. Lazar advised the hearing officer that neither CBD nor the protestants had the resources sufficient to appear at the evidentiary hearing. Because there was no longer a requirement to hold the hearing, the State Water Board issued a Notice of Cancellation of Public Hearing on August 19, 2011. Cancellation of the hearing did not affect the protestants' protest, which still remained active and is addressed in this Order. Also, all materials submitted for the hearing and subsequent comments were considered in processing of the Petition.

4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Under the California Environmental Quality Act (CEQA), Tulare is the lead agency for preparation of environmental documentation for the proposed long-term transfer. In February of 2010, Tulare issued an Initial Study and Negative Declaration (NegDec), pursuant to the provisions of CEQA. These documents indicate the proposed long-term transfer will not have a significant effect on the environment and that mitigation measures are not required.

The State Water Board is a responsible agency for purposes of this transfer. Under Public Resources Code section 21002.1, subdivision (d), when issuing an approval for an aspect of a project for which a lead agency has performed CEQA review, a responsible agency considers only the aspects of the project that the agency is required by law to carry out or approve.

As responsible agency under CEQA, the State Water Board has reviewed and considered the NegDec for this transfer (State Clearinghouse Number 2009121084) prepared by Tulare. Based on its independent review of the record, the State Water Board agrees that approval of this transfer will not have a significant effect on the environment and that mitigation measures are not required for the proposed long-term transfer. The State Water Board will file a Notice of Determination (NOD) concurrent with the issuance of this Order.

5.0 REQUIRED FINDINGS OF FACT

5.1 Availability of Water for Transfer. The water available for the transfer consists of a portion of either Tulare's or Empire's SWP entitlement under Permit 16482 and currently is or will be stored in San Luis Reservoir under provisions of DWR's permit as amended by D-1641 and BOs issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would remain in storage until it is delivered for use within Tulare's and Empire's service areas. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR's permit regardless of approval of this transfer.

5.2 No Injury to Other Legal Users of Water. Before approving a long-term 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 not result in substantial injury to any legal user of water. (Wat. Code, § 1736.) The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be diverted at Banks Pumping Plant and stored in San Luis Reservoir until released for use within Tulare's and Empire's service areas. Therefore, the transfer will not result in an increase in diversions from the Sacramento-San Joaquin Delta or any other source. There were no identifiable impacts from the temporary transfers to Westlands approved by the State Water Board between 2001 and 2011, many of which were in amounts similar to the yearly amount of the proposed long-term transfer. Accordingly, there should be no identifiable impacts from the proposed long-term transfer. The delivery of SWP water to Westlands in lieu of groundwater pumping may improve the quality of the groundwater in the areas of the transfer. The areas to receive the transfer water have not been shown to have drainage or selenium problems. Also, agricultural drainage from Westlands does not discharge directly to the San Joaquin River. In addition, the State Water Board will require as a condition of approval that Westlands implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area.

In light of the above, I find that, in accordance with Water Code section 1736, that the proposed transfer would not injure any legal user of water.

5.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Before approving a long-term 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 not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1736.) Pursuant to CEQA, Tulare has prepared a NegDec for this transfer. The NegDec does not identify any significant effects on the environment from the proposed long-term transfer.

The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482 that is currently stored in San Luis Reservoir under provisions of DWR's permit as amended by D-1641 and BOs issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would be diverted at Banks Pumping Plant and stored in San Luis Reservoir until released for use within Tulare's and Empire's service areas. Therefore, the delivery of this water to Westlands would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in Westlands has complete tailwater control within each field. Westlands's pipeline distribution system and Westlands's landowners' irrigation systems have been documented as some of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, Westlands has programs to encourage water conservation and reduce deep percolation. Westlands's map, Generalized Depth of Shallow Groundwater Surface, April 2009, indicates that the areas intended for transfer within Westlands have depths to groundwater of greater than 15 feet from the ground surface. CBD et al., as part of their hearing evidence, submitted a map showing Westlands's depth to groundwater that is in general agreement with Westlands's map. Irrigation of these lands has not been shown to cause drainage or selenium problems. These areas are also located such that they do not directly drain to the San Joaquin River.

In light of the above, I find that, in accordance with Water Code section 1736, the proposed transfer would have no unreasonable effects on fish, wildlife, or other instream beneficial uses.

6.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for long-term change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.3 of Resolution 2007-0057.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1736; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed long-term change will not result in substantial injury to any legal user of water.
2. The proposed long-term change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for long-term change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 10,000 acre-feet (af) of water per year is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on April 1, 2012, and continuing through April 30, 2027.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreements between Westlands Water District (Westlands) and Tulare Lake Basin Water Storage District and Empire West Side Irrigation District, who are foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is expanded to include 1,319 acres located on Brooks Farms, 3,461 acres located on Hansen/Vista Verde Farms, and 875 acres located on Newton Farms. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S, Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR for this transfer and titled SWP Table A Water from Tulare Lake Basin Water Storage District and Empire West Side Irrigation District to Westlands Water District (on file with the State Water Resources Control Board (State Water Board) under Application 17512).
4. On May 1, 2027, this change of place of use under Permit 16482 shall automatically expire, and the water subject to the change shall revert to the original water right holder, DWR, without any action by the State Water Board.
5. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, Westlands shall implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area. 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.
6. By May 31, 2013, and on a yearly basis thereafter, the permittee shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

The report should also include the following information:

- a. Specific locations where the transferred water was used;
- b. The monthly amounts of water each location received; and
- c. The average application rate of water at each location.

7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and long-term 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.

8. 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. §§ 1531 to 1544). If a "take" will result from any act authorized under this long-term transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the long-term transfer authorized under this Order.
9. 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



*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated:

Nov 21, 2011