

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 6103 (APPLICATION 2318)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 1,000 ACRE-FEET OF WATER
FROM RECLAMATION DISTRICT NO. 2068
TO THE SOLANO COUNTY WATER AGENCY
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINT OF DIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 18, 2011,

Reclamation District No. 2068
c/o Darren Cordova
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95815

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Reclamation District No. 2068's (the District) petition requests the transfer of up to 1,000 acre-feet (AF) of water to the Solano County Water Agency (SCWA) for use within the service area of the State Water Project's (SWP) North Bay Aqueduct. 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. The District proposes to transfer up to 1,000 AF of water under License 6103 (Application 2318) to SCWA through the SWP's Barker Slough Pumping Plant. To facilitate this transfer, the District will pump additional groundwater and reduce its direct diversion from Haas Slough by 4 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional 4 cfs in Haas Slough would be available for diversion at the SWP's Barker Slough Pumping Plant. Water would be used within the service area of the SWP's North Bay Aqueduct. The petition requests that the change be effective for up to one year from the date of approval.

1.2 Groundwater Substitution. The District's proposal includes detailed information relative to historical groundwater pumping, and groundwater well characteristics. Only wells which have been approved by the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) will be used for the proposed temporary transfer. The District completed its groundwater management plan (GMP) in December 2005 to consider the feasibility of implementing a conjunctive use program. As identified in the GMP, this includes the evaluation of conjunctive use involving a potential

water transfer. As a condition of participation in the proposed transfer, the District has developed a monitoring and mitigation plan to ensure the proposed transfer does not result in any unreasonable and adverse impacts to the groundwater basin or third parties. In addition, a multi-completion groundwater monitoring well was constructed in 2005 within the District's boundaries in order to further assist in documenting groundwater elevations.

1.3 Additional Information. The petition states that only a well that has been approved by DWR will be used for the proposed temporary transfer. Based on historical documentation of groundwater monitoring wells near the District, the District believes that the proposed transfer by groundwater substitution will not result in overdraft of the underlying groundwater basin.

1.4 Other Agency Consultation. Prior to submitting the petition to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of District's License. License 6103 (Application 2318) dated November 9, 1959, authorizes the direct diversion of up to 200 cfs of water from Haas Slough, tributary to Cache Slough, thence the Sacramento River, between March 1 and October 31 of each year for irrigation purposes. The point of diversion for License 6103 is located south twenty-eight degrees, seven minutes west, five thousand six hundred one feet from NE corner of Section 34, T6N, R2E, MDB&M, being within SE ¼ of SW ¼ of Section 34. The authorized place of use consists of 13,781 acres.

2.2 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Barker Slough Pumping Plant as a point of diversion under License 6103. The service area of the SWP's North Bay Aqueduct (as shown on map 1878-1 on file with Application 5630) would be temporarily added to the place of use of License 6103. Domestic, municipal, industrial, incidental power, salinity control, fish and wildlife enhancement, streamflow enhancement, and recreation would be temporarily added as purposes of use under License 6103.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated May 13, 2011) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 17, 2009. DWR submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the Department of Water Resources. DWR's comments are listed below:

- a. The delivery of transfer water through SWP facilities will require a separate water conveyance agreement developed and executed between the District, DWR, and SCWA. Issues such as depletion loss, monitoring and mitigation measures, and potential inability to divert transfer water through SWP facilities will be addressed in the conveyance agreement.
- b. The submittal should include a map clearly showing the current and proposed points of diversion and places of use.
- c. The petition states that the change is to add the Barker Slough Pumping Plant as a new point of diversion. The place of use would be limited to the North Bay Service Area of the SWP as shown on map 1878-1 on file with the State Water Board under Application 5630.

- d. Any order approving the transfer should contain a term limiting the approved quantity of transfer water to that determined by DWR following a technical analysis of the specific well to be included in the transfer.

State Water Board Response:

The State Water Board responds to DWR's comments as follows:

- a. The transfer is subject to completion and execution of an Agreement between the parties (the District, DWR, and SCWA). The Agreement will address depletion loss, monitoring and mitigation measures, and potential inability to divert transfer water through SWP facilities.
- b. The location of the existing point of diversion is described in the petition and its location will not change as a result of the transfer. The petition states that the Barker Slough Pumping Plant will be added as an additional point of diversion. The proposed additional point of diversion is shown on map 1878-1 on file with the State Water Board, Division of Water Rights under Application 5630.
- c. The place of use would be limited to the service area of the SWP's North Bay Aqueduct as shown on map 1878-1 on file with the State Water Board, Division of Water Rights under Application 5630.
- d. The transfer will be subject to the terms of an Agreement between the parties mentioned in (a), above. This Agreement would limit the quantity of transfer water to that amount determined by DWR following a technical analysis of the specific well to be included in the transfer.

4.0 REQUIRED FINDINGS OF FACT

4.1 Availability of Water for Transfer. 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 Water Code 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 surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply.

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.

4.2 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).) DWR and Reclamation have reviewed the proposed transfer and determined that a water conveyance Agreement must be developed and executed between the District, DWR, and SCWA. Issues such as depletion loss, monitoring and mitigation measures, and potential inability to divert transfer water through SWP facilities will be

addressed in the conveyance agreement. This Order requires compliance with this Agreement.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10, subdivision (a). That section requires that the groundwater use that is part of a groundwater substitution transfer in an area be consistent with a groundwater management plan that has been adopted pursuant to state law for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) However, 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, subdivision (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. In addition, diversion of water at the Barker Slough Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable Biological Opinions issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service under the federal Endangered Species Act, and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. In the absence of the proposed transfer, the water would be used within the District's service area. Therefore, delivery of this water to SCWA would have no significant effect on any natural streamflow or hydrologic regime within the Delta.

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.

5.0 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 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 2007-0057.

6.0 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 temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under License 6103 (Application 2318) of Reclamation District No. 2068 (the District) for the transfer of up to 1,000 acre-feet of water is approved.

All existing terms and conditions of License 6103 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 approval and continuing through October 31, 2011.
2. Prior to initiating the transfer of water pursuant to this Order, a water conveyance agreement (Agreement) shall be developed and executed between the District, the Department of Water Resources (DWR), and Solano County Water Agency (SCWA). Issues such as depletion losses, monitoring and mitigation measures, and potential inability to divert transfer water through State Water Project (SWP) facilities will be addressed in the Agreement. Petitioner shall comply with all terms of this Agreement as a condition of transferring water pursuant to this Order.
3. The petitioner shall reduce its diversion rate at the original point of diversion authorized under License 6103 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average).
4. The place of use under License 6103 is temporarily expanded to include the service area of the SWP's North Bay Aqueduct as shown on Map 1878-1 on file with the State Water Resources Control Board (State Water Board), Division of Water Rights under Application 5630.
5. The SWP's Barker Slough Pumping Plant is temporarily added as an authorized point of diversion under License 6103 (as shown on Map 1878-1 on file with Application 5630).
6. Diversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the federal Endangered Species Act (ESA), and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
7. Domestic, municipal, incidental power, industrial, salinity control, fish and wildlife enhancement, streamflow enhancement, and recreation are temporarily added as purposes of use under License 6103.
8. Within 60 days of the completion of the transfer, but no later than December 30, 2011, the District shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average diversion rate for water diverted pursuant to License 6103 during the transfer period pursuant to this Order;
 - c. The daily average pumping rate of groundwater pumped by the District in excess of that which would have been pumped in the absence of this transfer; and
 - d. Groundwater elevations within the vicinity of the District prior to the proposed transfer.

The District shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2011, a map defining the groundwater elevations within the vicinity of the District, until such time as these elevations correspond to pre-transfer levels.

9. 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.

10. 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 ESA (Fish & G. Code, §§ 2050 to 2097) or the federal ESA (16 U.S.C. §§ 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 ESA for the temporary transfer authorized under this Order.
11. 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 L. Evoy, Deputy Director
Division of Water Rights*

Dated: JUL 5 2011