

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2003 – 0011 - DWR

IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 6,300 ACRE-FEET OF WATER
FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 1, 2003,

Department of Water Resources
c/o Nancy Quan, Chief
Project Water Contracts Branch
P.O. Box 942836
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (SWRCB), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, a portion of the Westlands Water District (WWD), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer State Water Project (SWP) water is stored in San Luis Reservoir and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (TLBWSD). DWR proposes a change in the place of use to facilitate the transfer of up to 6,300 acre-feet (af) of TLBWSD's State Water Project water to WWD.

Vista Verde Farms and Newton Farms own property within both the TLBWSD and WWD service areas. These farm interests wish to exchange up to 6,300 af of SWP water currently scheduled for use on their landholdings within the TLBWSD service area to their landholdings in WWD. The Vista Verde Farms would receive a total allotment of 3,800 af of irrigation water for the approximate 3,461 acres of landholdings in the WWD service area. Newton farms would

receive a total allotment of 2,500 af of irrigation water for the approximate 875 acres of landholdings within the WWD service area. In the absence of the proposed temporary change transfer, the water would be used by the aforementioned parties on lands located within the Tulare Lake Basin Water Storage District.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16482 was issued to DWR on September 26, 1972. It authorizes DWR to collect up to 1,100,000 acre feet per annum by storage, to be diverted from the Sacramento and San Joaquin River watersheds, and San Luis Creek between January 1 and December 31. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement, and to generate incidental power. The subject 6,300 af of SWP water is currently stored or will be stored under provisions of DWR's permits, as amended by SWRCB Decision 1641, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Release rates from San Luis Reservoir may be slightly different due to the proposed transfer.

2.2 Place of Use under the Proposed Transfer DWR's petition requested that WWD's service area (as shown on the location map entitled, "Areas of Water Transfer from Kern County Water Agency and Tulare Lake Basin Water Storage District to Westlands Water District Under State Water Right Permit 16482, Application 17512" (March 25, 2003) submitted with the petition) be temporarily added to the place of use of Permit 16482.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER/EXCHANGE

Public notice of the petition for temporary change (dated April 11, 2003) was provided via regular mail to interested parties and by publication in the Fresno Bee on April 18, 2003. The Division of Water Rights did not receive any timely comments to the public notice.

4.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for transfer consists of a portion of Tulare Lake Basin Water Storage District's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be used within the service area of the Tulare Lake Basin Water Storage District.

The DWR petition states that the subject water is currently in storage in San Luis Reservoir; and therefore, there will be no effect on streamflow or hydrologic regime. Although the total amount of water used will not change, the delivery rates from San Luis Reservoir may differ slightly. DWR states that the scheduling of the deliveries will be coordinated with the United States Bureau of Reclamation (USBR) so as not to adversely impact any contractor deliveries.

The quantity of SWP water associated with this transfer has been made available through the use of alternate local supplies to farmlands within TLBWSB. Vista Verde Farms will utilize water from Kings River, Corcoran Irrigation District, and groundwater (at historic pumping rates). Newton Farms operates one well that they will continue to operate at historic levels. They also intend to use local Districts as an alternate local water source.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed transfer would not injure any legal user of the water and that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

5.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code 1727(b)(2).

5.1 Environmental Issues with the Bay-Delta and its Tributaries The water available for the transfer is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits, as amended by SWRCB Decision 1641, and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Therefore, the diversion of this water will have no unreasonable effect on fish, wildlife or other instream beneficial uses in the Delta or upstream areas.

5.2 Environmental Issues within WWD Westlands Water District has programs to encourage water conservation and drainage reduction in its district. DWR's Petition for Temporary Change states that in general, land within the WWD has complete tailwater control within each field. Water planned for transfer to WWD will be delivered to lands within the western and southern half of the District. Most of the lands to receive the transferred water are located west of the California Aqueduct. Specifically, the lands are no further north and west than Township 17 South, Range 15 East, and no further east than Township 20 South, Range 18 East, Mount Diablo Base & Meridian. The lands to receive increased water deliveries due to this transfer have not been shown to have drainage or selenium problems. Those areas within the WWD having selenium and other drainage problems are located in low lying areas of the northern quarter of WWD. WWD irrigation drainage is not discharged to the San Joaquin River system.

In light of the above, I find that in accordance with Water Code section 1727(b)(2) that the proposed transfer would have no unreasonable effects on fish, wildlife or other instream beneficial uses.

6.0 SWRCB'S DELEGATION OF AUTHORITY

On May 16, 2002, the SWRCB adopted Resolution 2002-106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the SWRCB conducts a hearing to accept additional evidence.

7.0 CONCLUSIONS

The SWRCB 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' Permit 16482 for the transfer of up to 6,300 af of water is approved.

All existing terms and conditions of the subject permit 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. Prior to commencing the transfer, Department of Water Resources shall provide the Chief of the Division of Water Rights a copy of the agreement with the Tulare Lake Basin Water Storage District, which is foregoing the delivery of the subject water.
3. The places of use of the Department of Water Resources Permit 16482 are temporarily changed as follows:

The authorized place of use is expanded to include areas within the Westlands Water District shown on map entitled "Areas of Water Transfer from Kern County Water Agency and Tulare Lake Basin Water Storage District to Westlands Water District Under State Water Right Permit 16482, Application 17512", dated March 25, 2003, on file with the SWRCB under Permit 16482.

4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Prior to commencing the transfer, the Department of Water Resources shall ensure that all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside Westlands Water District's service area are implemented. 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.
5. Within 60 days of the completion of the transfer/exchange, but no later than August 1, 2004, the permittee shall provide the Chief of the Division of 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 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 in the locations.

6. 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 SWRCB 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 SWRCB 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 of the source.

7. This Order does not authorize any act which results in the taking of 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 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 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.
8. 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.

*ORIGINAL SIGNED BY
VICTORIA A. WHITNEY
for*

*Edward C. Anton, Chief
Division of Water Rights*

Date: May 23, 2003