

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

DIVISION OF WATER RIGHTS

WR ORDER 2005-0022-DWR

**IN THE MATTER OF LICENSE 11058 (APPLICATION 14127)
PETITION FOR LONG-TERM TRANSFER
INVOLVING UP TO 67,200 ACRE-FEET OF WATER PER YEAR
FROM THE MODESTO IRRIGATION DISTRICT
TO THE CITY OF MODESTO**

ORDER AUTHORIZING LONG-TERM CHANGE IN PURPOSE OF USE
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 8, 2004,

Modesto Irrigation District
c/o Alan Short, General Manager
P.O. Box 4060
Modesto, CA 95352

filed with the State Water Resources Control Board (SWRCB), a Petition for Long-Term Transfer under Water Code section 1735, et seq. This order authorizes the Modesto Irrigation District (MID) to deliver up to 67,200 acre-feet of water per year (afa) to the City of Modesto (City) under License 11058 (Application 14127). The long-term transfer adds municipal and industrial purposes of use under License 11058 and will be effective through December 31, 2054.

1.1 Background Historically, the City has relied on groundwater pumping to meet a majority of its municipal water supply needs. However, as the local groundwater basin has entered a state of overdraft, the City has acquired surface water supplies to reduce its groundwater pumping. In 1995, the City completed construction of the Modesto Regional Water Treatment Plant (MRWTP) to treat raw Tuolumne River water diverted at existing MID facilities for municipal use. This water is diverted under a pre-1914 water right owned by MID. The stated capacity of the MRWTP is 30 million gallons per day (mgd), however it is capable of treating peak loads in excess of 30 mgd. Annual diversion data through 2003 indicates that approximately 40,000 afa of water is delivered to the MRWTP annually for treatment and use within the City. The City is expanding the Plant to a stated capacity of 60 mgd and has reached agreement with MID to provide up to 67,200 afa of water under MID's License 11058 for treatment and use within the City.

1.2 Description of the Transfer Water would be diverted at existing MID diversion facilities and delivered to the expanded MRWTP for use within the City. Since the water proposed for this transfer would be diverted at existing MID facilities and the City is located within the existing place of use under License 11058, the only change to License 11058 required for this long-term transfer is to add municipal and industrial as purposes of use. The transfer would be effective through December 31, 2054.

2.0 PETITIONER'S WATER RIGHTS

2.1 License 11058 (Application 14127) License 11058 (issued July 28, 1980) authorizes Modesto and Turlock Irrigation Districts (MID/TID) to store up to 1,046,800 afa of water between November 1 and July 31 of the succeeding year for irrigation and recreational use in New Don Pedro Reservoir. Points of diversion/rediversion under License 11058 are located on the Tuolumne River at the New Don Pedro Dam and the La Grange Dam. The authorized place of use under License 11058 is the service areas of the Modesto and Turlock Irrigation Districts as shown on the map titled "General Map of the Modesto and Turlock Irrigation Districts," dated 1979, on file with the SWRCB under Application 14127.

I note that the subject petition for long-term transfer was filed by MID without participation by TID. This order therefore applies only to the portion of License 11058 intended for use by MID.

2.2 Other Water Rights

MID/TID holds additional water right licenses and a water right permit authorizing the diversion of water at the New Don Pedro Dam. The maximum amount of water that may be withdrawn from storage under License 11058 and these other water rights is 951,100 afa.

3.0 PUBLIC NOTICE AND PROTEST TO THE PROPOSED TRANSFER

Public notice of the proposed long-term transfer was issued on February 17, 2004. Timely protests to the petition were filed by the California Department of Fish and Game (DFG), the California Department of Water Resources (DWR), and the United States Bureau of Reclamation (USBR).

DFG's protest was based on potential environmental impacts, however, by letter dated June 8, 2004, DFG withdrew its protest. DWR and USBR protested the petition based on potential adverse impacts to State Water Project (SWP) and Central Valley Project (CVP) operations within the Delta. Since MID had yet to complete its review of potential environmental impacts and this review required an analysis of the impacts of this long-term change on the timing and magnitude of flows in the Tuolumne River (tributary to the San Joaquin River then the Delta), MID responded that potential impacts to the SWP and CVP would be addressed in the environmental document for this long-term change. Accordingly, both DWR and USBR requested that their protests be held in abeyance pending the completion of this document.

In November of 2004, MID issued a draft environmental document (described in Section 4.0 of this order, below) addressing impacts of the long-term change. Upon review of this document both DWR and USBR requested that their protests be withdrawn. Thus, no unresolved protests regarding this long-term transfer remain outstanding.

4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Under the California Environmental Quality Act (CEQA), MID is the lead agency for preparation of environmental documentation for the proposed long-term transfer. The State Water Board is a responsible agency pursuant to CEQA for the proposed long-term transfer (See Pub. Resources Code, § 21069.) In November of 2004 MID issued a document titled *Draft Subsequent Environmental Impact Report for the Modesto Regional Water Treatment Plant Phase Two Expansion* (DSEIR). After public review and comment, MID issued a final version of the document titled *MRWTP Phase Two Expansion Project Final Subsequent Environmental Impact Report* (SEIR) in June 2005. In addition to addressing water supply, water quality, and environmental impacts associated with the proposed long-term transfer, the SEIR addresses impacts related to the siting and construction of the physical project features. Since the impacts associated with the siting and construction of the physical project features are beyond the State Water Board's water right permitting authority, this order does not address that portion of the DSEIR.

The portion of the SEIR addressing water supply, water quality, and environmental impacts associated with the proposed long-term transfer states that the proposed change will result in insignificant changes in diversion patterns or releases into the Tuolumne River. Historically, MID has provided water primarily for agricultural irrigation purposes. The SEIR states that due to a decline in MID's agricultural demand (resulting from regional urbanization), water supplies are available for urban uses. Based on this information, MID used the CALSIM II model to estimate the impacts of the delivery of up to 67,200 afa of water from MID to the City. MID's modeling indicates that though the seasonal differences between municipal and industrial demand and irrigation demand would tend to increase winter releases and decrease summer releases, the quantities of water would offset each other and there would be no change in overall quantity of water released for instream flows. Based on this modeling, the DSEIR concludes that the proposed long-term transfer will not have significant impacts on the environment and that mitigation measures are not required for the proposed long-term transfer.

The State Water Board has reviewed the SEIR and considered the information contained therein in its review of the proposed long-term transfer for CEQA compliance. Upon issuance of this order, the Chief of the Division of Water Rights will make a determination regarding the impacts of the proposed long term change and the State Water Board will issue a Notice of Determination.

5.0 REQUIRED FINDINGS

Would Not Result in Substantial Injury to Any Legal User of Water

Before approving a petition for long-term transfer, 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 injure to any legal user of water (Wat. Code, § 1736.) The quantity of water intended for transfer under the proposed long-term transfer is within the amount authorized for withdrawal from storage under License 11058. Additionally, no protests to the proposed long-term transfer remain outstanding.

In light of the above, I find in accordance with Water Code section 1736 that the proposed transfer will not result in substantial injury to any legal user of the water.

Would Not Unreasonably Affect Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a petition for long-term transfer, 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, MID has prepared and certified a SEIR addressing potential impacts of the proposed long-term transfer. The SEIR does not identify any significant adverse impacts from the proposed long-term transfer. Additionally, this order requires MID to comply with the terms and conditions of the Federal Energy Regulatory Commission (FERC) license for the New Don Pedro Project.

In light of the above, I find in accordance with Water Code section 1736 that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

6.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, delegating to the Chief of the Division of Water Rights the authority to act on petitions for long-term transfer under Water Code sections 1735-1737, where no interested party requests a hearing.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed by Modesto Irrigation District (MID) for long-term transfer under License 11058 (Application 14127) to facilitate the transfer of up to 67,200 acre-feet (af) of water per year to the City of Modesto (City) is approved.

All existing terms and conditions of License 11058 remain in effect, except as amended by the following provisions:

1. The long-term transfer is effective from the date of this order through December 31, 2054.
2. To facilitate the transfer of up to 67,200 af of water per year from MID to the City, the purpose of use under License 11058 is amended to include municipal and industrial.
3. The maximum amount of water that may be delivered to the City pursuant to this order is 67,200 af of water per water year. The amount of water delivered to the City under this order shall be water withdrawn from storage under License 11058.
4. On January 1, 2055, this change of purpose of use under License 11058 shall automatically expire, and the water subject to the change shall revert to its original holder, MID, without any action by the SWRCB.
5. MID shall keep a record of the use of water actually transferred under this order during each water year. MID shall make its record of the transfer and use of water under this order available to the Chief of the Division of Water Rights upon request. Additionally, this information shall be compiled into a report and submitted to the Division of Water Rights every three years along with the required triennial Report of Licensee for License 11058. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.
6. During the period of the long-term transfer, MID shall comply with all the terms and conditions required by the Federal Energy Regulatory Commission for the New Don Pedro Project.
7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this long-term transfer 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 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 licensee shall obtain authorization for an incidental take prior to commencing transfer of water. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary 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

ORIGINAL SIGNED BY JOHN O'HAGAN for

*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: September 12, 2005