

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

DIVISION OF WATER RIGHTS

ORDER WR 2007-0023-DWR

**IN THE MATTER OF LICENSE 1050 (APPLICATION 534)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 406 ACRE-FEET OF WATER
FROM THE NATOMAS CENTRAL MUTUAL WATER COMPANY
TO THE SACRAMENTO REGIONAL COUNTY SANITATION DISTRICT**

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

1.0 SUBSTANCE OF PETITION

On April 10, 2007,

Natomas Central Mutual Water Company
c/o Daniel Peterson, P.E., General Manager
2601 West Elkhorn Boulevard
Rio Linda, CA 95673

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. If approved, the Sacramento Regional County Sanitation District's (SRCSD) Lower Northwest Interceptor (LNWI), a sanitary sewer pipeline, would be temporarily added to the authorized place of use under Natomas Central Mutual Water Company's (NCMWC) License 1050 (Application 534). The proposed temporary change would facilitate the transfer of up to 406 acre-feet (af) of water for testing and flushing of the LNWI from the date of approval of this petition through October 1, 2007.

1.1 Description of the Transfer. SRCSD operates the Sacramento Regional Wastewater Treatment Plant (SRWTP) located in Elk Grove, CA and provides sanitary sewer service to a large portion of the greater metropolitan Sacramento area. SRCSD is expanding its sanitary sewer service area to provide service to portions of northern Sacramento County (including the Natomas area) and West Sacramento, requiring construction of the LNWI. The LNWI is an approximately 20-mile-long, 5 to 10-foot-diameter, sanitary sewer pipeline which extends from Natomas south through West Sacramento and then trends east across the Sacramento River, terminating at the SRWTP. Further information regarding the LNWI project is available for viewing online at www.lowernorthwest.com.

Normal pipeline operations require testing and flushing flows delivered at the LNWI intake. The LNWI's intake is located within Reclamation District 1000's (RD1000) East Drainage Canal, just northwest of the Interstate 5 and Interstate 80 interchange in northern Sacramento County and within NCMWC's service area. NCMWC holds several water rights with the State Water Board and water supply contracts with the United States Bureau of Reclamation (USBR) which authorize it to divert water from the Sacramento River for agricultural and municipal and industrial purposes within its service area. Additionally, some parties

located within NCMWC's service area discharge return flows generated from groundwater pumping. Since NCMWC's service area is a closed system with respect to the Sacramento River, NCMWC asserts that it may deliver return flows generated from groundwater pumping to the LNWI project without approval from the State Water Board. During the irrigation season, NCMWC asserts that it is difficult to discern between return flows generated from groundwater pumping and return flows from water diverted under NCMWC's water rights. This petition for temporary change was submitted to facilitate the delivery of water during the irrigation season to the LNWI under NCMWC's License 1050.

NCMWC proposes to deliver up to 406 af of water to the SRCSD for industrial use (testing and flushing) within the LNWI from the date of approval of this petition through October 1, 2007. Water would be pumped from RD1000's East Drainage Canal into the LNWI and used for testing and flushing throughout the length of the pipeline. Once used to test or flush the LNWI, the transfer water would be treated at the SRWTP and discharged to the Sacramento River as a small portion of the SRWTP's effluent. A map showing the location of the LNWI is available for viewing on the Division's website at www.waterrights.ca.gov, Water Transfer Program, Notices of Transfers and Temporary Urgency Actions. Table 1, below, shows the monthly amounts, monthly average diversion rate in cubic feet per second (cfs), and maximum 24-hour average diversion rate in cfs for each month during the proposed transfer period.

Table 1

Month	Amount (af)	Average Rate (cfs)	Maximum Rate (cfs)
May	92	1.50	9.3
June	74	1.24	9.3
July	92	1.50	9.3
August	74	1.20	9.3
September	74	1.24	9.3

Legend: Amount = monthly volume of water
Average Rate = monthly average diversion rate
Maximum Rate = maximum 24-hour average diversion rate

1.2 Place of Use and Purpose of Use Under the Proposed Transfer. The LNWI pipeline would be added to the place of use under License 1050. A map showing the location of the LNWI is available for viewing on the Division's website at www.waterrights.ca.gov/application/tempurgnotices.htm.

1.3 Water Conservation. Under normal operations, NCMWC uses water diverted under License 1050 for irrigation. Between the years 2002 and 2006, estimated annual evapo-transpiration (ET) for the NCMWC service area has averaged 46,150 af. In 2006 the estimated annual ET was 40,555 af. Due to similar cropping patterns, NCMWC anticipates that the annual ET for 2007 will be similar to 2006. NCMWC's petition states that the difference between its estimated annual ET for 2007 and its average annual ET for the years 2002 through 2006 is approximately 5,595 af. NCMWC's petition states that a small portion of this reduced water demand will be used to supply the LNWI pursuant to this proposed temporary change.

Pursuant to Water Code section 1011, water right holders who implement water conservation efforts are required to report these efforts to the State Water Board on the tri-annual "Report of Licensee" form. The most recent "Report of Licensee" form submitted by NCMWC covers the years 2003, 2004, and 2005. NCMWC reported its water conservation efforts for all its water right licenses and estimated the quantity of water saved for each year. NCMWC estimated that it conserved 36,367 af in 2003, 18,589 af in 2004, and 37,069 af in 2005. While this reported estimate is considerably higher than the estimate submitted with the petition, both the estimate included with the petition and the estimates contained in NCMWC's "Report of Licensee" are well above the requested transfer total of 406 af.

1.4 Other Agency Consultation. Prior to submitting the subject petition for temporary change, NCMWC contacted Central Valley Regional Water Quality Control Board (Central Valley Board) staff and the Department of Fish and Game to solicit their comments regarding the proposed temporary change. These parties did not respond or comment on the proposed temporary change.

2.0 BACKGROUND

2.1 Substance of NCMWC's License. License 1050 authorizes NCMWC to directly divert up to 42 cfs from April 1 through October 1 of each year for irrigation use within the entire NCMWC's service area, and municipal and industrial use within Sacramento Metropolitan Airport and its Special Planning Area only. License 1050 authorizes direct diversion from four permanent points on the Sacramento River and two permanent points on the Natomas Cross Canal. A map showing the locations of the authorized points of diversion and the location of the authorized place of use under License 1050 is available for viewing on the Division's website at www.waterrights.ca.gov, Water Transfer Program, Notices of Transfers and Temporary Urgency Actions.

3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER

Public notice of the petition for temporary change (dated April 30, 2007) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 1, 2007. No timely comments regarding the proposed temporary change were received by the State Water Board.

4.0 REQUIRED FINDINGS OF FACT

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 Section 1011. (Wat. Code, § 1725 and § 1726.) NCMWC submitted information indicating that the difference between its estimated annual ET for 2007 and its average annual ET for the years 2002 through 2006 is approximately 5,595 af. NCMWC also reported estimated water conservation for the years 2003 through 2005, though these estimates were significantly higher than 5,595 af. However, both the estimate included with the petition and the estimates contained in NCMWC's "Report of Licensee" for water conservation are significantly greater than the 406 af amount requested for transfer.

In light of the above, I find in accordance with Water Code section 1726(e) that the water proposed for transfer pursuant to this order will be conserved pursuant to Water Code section 1011.

No Injury to Other Legal Users of Water

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 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).) Water diverted pursuant to this order will be used for testing and flushing of the LNWI pipeline and then treated at the SRWTP and released to the Sacramento River as effluent. Potential impacts to the quantity of flow in the Sacramento River due to diversion of water pursuant to this order are limited to the river reach located between NCMWC's diversion point and the SRWTP outfall. The maximum

24-hour average diversion rate for water transferred pursuant to this order is 9.3 cfs. Given the typical range of flow in the Sacramento River in November and December (approximately 5,000 – 15,000 cfs), this diversion rate represents significantly less than one percent of the total flow in the Sacramento River. This negligible reduction in flow should not adversely impact parties with rights to divert water from the reach of the Sacramento River located between NCMWC's diversion point and the SRWTP outfall.

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

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). (Public Resources Code section 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, subd. (b)(2).)

As stated above, the proposed temporary change will result in an insignificant reduction in flow in the Sacramento River between NCMWC's diversion point and the SRWTP outfall.

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

5.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On May 16, 2002, the State Water Board adopted Resolution 2002-0106, granting the authority to act on petitions for temporary change to the Chief of the Division of Water Rights, except where the State Water Board conducts a hearing to accept additional evidence. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to the delegation of authority in Resolution 2002-0106.

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.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use and purpose of use under Natomas Central Mutual Water Company's (NCMWC) License 1050 (Application 534) to facilitate the transfer of up to 406 af of water is approved subject to the provisions of this order.

All existing terms and conditions of License 1050 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange of water is limited to the period from the date of this Order through October 1, 2007.
2. The place of use of License 1050 is temporarily changed as follows:

The authorized place of use is expanded to include the Lower Northwest Interceptor (LNWI) sanitary sewer pipeline as shown on the map on file with the State Water Board under Application 25727.
3. Industrial uses (testing and flushing) are temporarily added as purposes of use under License 1050.
4. The maximum daily average diversion rate for water diverted for use within the LNWI is 9.3 cubic feet per second.
5. By June 1, 2008, NCMWC shall provide to the Chief of the Division of Water Rights a report describing the diversion and use of the water transferred pursuant to this Order, as well as the conservation measure or measures utilized to make water available for transfer. The report shall include the following information:
 - a. The daily average rate of diversion of water for use within the LNWI;
 - b. The 30-day average rate of diversion and monthly volume of water diverted for use within the LNWI;
 - c. The daily average rate of diversion for use pursuant to existing authorized uses under License 1050; and
 - d. The 30-day average rate of diversion and monthly volume of water diverted for use pursuant to existing authorized uses under License 1050.
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 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.

7. 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 permittee shall obtain authorization for an incidental take prior to commencing transfer of water. 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.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

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

Dated: June 15, 2007