

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

DIVISION OF WATER RIGHTS

ORDER WR 2007-0024-DWR

**IN THE MATTER OF LICENSE 2685 (APPLICATION 1224)
MERCED IRRIGATION DISTRICT
ORDER APPROVING TEMPORARY CHANGE
IN PLACE OF USE AND TRANSFER OF 5,000 ACRE-FEET OF WATER**

SOURCE: Merced River

COUNTY: Mariposa and Merced

ORDER APPROVING TEMPORARY CHANGE IN PLACE OF USE AND TRANSFER OF 5,000 ACRE-FEET OF WATER BY THE CHIEF OF THE DIVISION OF WATER RIGHTS

1.0 SUBSTANCE OF PETITION

On March 27, 2007,

Merced Irrigation District
744 West 20th Street
Merced, CA 95344-0288

filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a Petition for Temporary Change pursuant to Water Code Sections 1725 through 1732. If approved, the Merced Irrigation District (District) would temporarily increase their licensed place of use. Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

1.1 Description of the Transfer The District proposes to transfer up to 5,000 acre-feet (af) of stored water under its License 2685 to irrigate land that is currently not included as a place of use under the license.

The District is petitioning to add to the place of use covered by License 2685 (Application 1224) in order to supply previously stored surface water to agricultural lands located near the District's boundaries. The lands participating in this temporary transfer include those involved in the new organization known as the Merced County Sphere of Influence Water Users Association (SOI Water Users), which are all located within Merced County. The majority of the SOI Water Users have historically received surface water from the District during years that the District's Board of Directors determine water is available under the District's pre-1914 appropriative right claims provided that adequate natural flow is available from the Merced River. During months when surface water is not available under the pre-1914 appropriative right claims for delivery to the SOI Water Users, the individual landowners meet their demands through alternate supplies, such as groundwater.

In the absence of the proposed temporary change, the water would be used on land within the District boundaries.

1.2 Place of Use Under the Proposed Transfer SOI Water User lands (as shown on a map submitted with the petition titled *Proposed Addition to Place of Use*, dated March 27, 2007) will be temporarily added to the place of use of License 2685. The SOI Water User lands include a net area of 39,066 acres within a gross area of 71,130 acres.

1.3 Groundwater Substitution The District has proposed a groundwater exchange pumping program to ensure that the proposed transfer will not cause an increase in consumptive use of water from the Merced River. The groundwater exchange pumping program involves the delivery of water pumped from the District's groundwater wells into the District's adjacent conveyance facilities and exchanging a like amount of surface water for delivery to SOI Water Users, up to 5,000 af.

Water Code section 1732

Water Code section 1732 requires that petitioners for temporary transfers shall not initiate or increase the use of groundwater to replace surface water transferred except in compliance with Water Code section 1745.10 or 1745.11. Water Code section 1745.10 requires that petitioners may only use groundwater for surface water replacement when the groundwater use is consistent with a groundwater management plan adopted pursuant to any state law for the affected area.

The District adopted a Groundwater Management Plan (GWMP) dated January 7, 1997. In addition, the District adopted a Memorandum of Understanding with other local agencies to create an association known as the Merced Area Groundwater Pool Interests (MAGPI), in order to develop a groundwater management plan for the Merced groundwater basin. The Groundwater Management Plan for the Merced Groundwater Basin was approved in December 1997.

According to the GWMP, to ensure that local and regional water needs are reliably met, the District utilizes conjunctive use management practices. To that end, the GWMP contains information specific to conjunctive use measures for the SOI Water Users. The conjunctive use operation proposed with this transfer will allow the District to pump groundwater at a lower pumping head as compared with the groundwater wells utilized by the majority of the SOI landowners. Providing 5,000 af of surface water to the SOI Water Users will result in a net 5,000 af reduction in groundwater pumped from the SOI aquifers. This transfer implements the conjunctive use proposals included in the GWMP, and therefore complies with Water Code section 1732.

Potential impacts to surface water

The District wells proposed for groundwater exchange pumping in this temporary transfer are located throughout its service area. The Department of Water Resources (DWR) previously approved use of the wells for groundwater substitution related to the District's 2001 transfer of 25,000 af to the CalFed Environmental Water Account. DWR's approval was based on the fact that pumping from these wells would not impact the surface water system. Under this transfer, the District will only be using wells previously approved by DWR for groundwater substitution.

2.0 BACKGROUND

2.1 Substance of the District's License

Original Water Rights under License 2685

License 2685 was issued to the District on August 11, 1944, pursuant to Application 1224. License 2685 allows the direct diversion of 1,500 cubic feet per second (cfs) of water from the Merced River from about March 1 through about October 31 of each year. License 2685 also allows the diversion from the Merced River to storage of 266,400 af per annum (afa) from about October 1 of each year to about July 1 of the succeeding year.

The point of diversion is at the New Exchequer Dam on Lake McClure. There are also two points of rediversion downstream of New Exchequer Dam – Merced Falls Diversion Dam for the North Side Canal and Crocker-Huffman Diversion Dam for the Main Canal. Water rediverted through the North Side Canal and the Main Canal is used for irrigation and domestic purposes on 164,395 gross acres within the boundaries of the District.

Modified Water Rights under License 2685

Effective February 16, 1995, License 2685 was modified from its original conditions to allow the direct diversion of 5,000 afa of water from the Merced River at a rate not to exceed 7 cfs from November 1 of each year to February 29 of the following year for municipal use in the Mariposa Town Planning Area. Storage under License 2685 is reduced in the amount of water diverted to the Mariposa Town Planning Area, up to 1,667 afa. Combined maximum direct diversion and storage under License 2685 cannot exceed 345,440 afa. The point of diversion for the water delivered to the Mariposa Town Planning Area is located approximately 40 miles upstream of New Exchequer Dam.

License 2685 was further amended effective June 20, 2003 to include an additional point of rediversion and modify the place of use resulting from the District's consolidation with the El Nido Irrigation District. The new point of rediversion downstream of New Exchequer Dam is on Duck Slough. Water rediverted through Duck Slough is used for irrigation purposes on 9,418.6 acres within the boundaries of El Nido Irrigation District.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TRANSFER

Public notice of the petition for temporary change was provided April 2, 2007 on the Division's internet site and via regular mail and email to interested parties and by publication in the Merced Sun-Star on April 9, 2007 and the Mariposa Gazette on April 12, 2007. Timely comments regarding the proposed temporary change were submitted by the following: Dr. Michael Martin, Stevinson Water District, Anthony M. Roggero, Jr., U.S. Bureau of Reclamation (USBR), Anglers Committee, and the California Department of Water Resources (DWR).

Comments of Dr. Michael Martin

Dr. Michael Martin opposed the proposed temporary change based on the following claims:

1. Downstream fisheries have been negatively impacted due, in part, to the District's historical diversions under License 2685, and this transfer may increase diversions on the Merced River and thereby further impact downstream fisheries.
2. The District has obtained other temporary transfers in the past several years. Therefore, these transfers could represent a permanent transfer that would circumvent the normal environmental analyses necessary for permanent changes to water rights.
3. The temporary transfer should comply with California Fish and Game Code sections 5935 and 5937.

State Water Board response:

1. When considering a petition for temporary transfer, the State Water Board does not re-evaluate previously issued permits and licenses. This transfer does not include any new points of diversion or any increase in the District's historical diversions under License 2685. There will be no net increase in diversion from the Merced River because the District must offset the 5,000 af of transfer on a one-for-one basis with additional groundwater pumping. Therefore, there will be no downstream effects from the proposed temporary transfer relative to water quality or instream flows. No further action is needed on this issue.
2. Although the District has recently engaged in other transfers, this is the first time the District has filed a petition to temporarily include the SOI Water Users lands in the place of use of

License 2685. Under Water Code section 1732, if the State Water Board concludes that the petitioner has not exercised due diligence in petitioning for a long-term change, the State Water Board must disapprove a temporary change. Should the District determine that it will need to regularly supply water to the SOI Water Users, the District will need to file a petition for a long-term change to License 2685.

3. The transfer involves the exchange of groundwater and surface water supplies not a new mode of operating a dam. No further action is needed.

Comments from Stevinson Water District, et al.

Stevinson Water District, the James J. Stevinson Corporation, and the East Side Canal and Irrigation Company (collectively referred to as Stevinson) have numerous water rights and contracts for water on various watercourses including the Merced River. Stevinson is concerned that the proposed transfer could have an adverse impact on its various water rights, including changes in the timing and nature of return flows.

State Water Board response:

The District proposes that the quantity of water proposed for transfer will be made available by groundwater exchange pumping. Therefore, reservoir operations and surface water flows downstream of the District will be unchanged.

Comments from Anglers Committee

1. Anglers Committee believes that diversions of water from the San Joaquin River watershed, including diversions by the District, have adversely affected the San Joaquin River anadromous fisheries. The transfer of water proposed by the District will negatively impact the anadromous fisheries of the Merced River.
2. The District should formally consult with NOAA Fisheries, U.S. Fish and Wildlife Service, and California Department of Fish and Game (DFG) regarding the proposed transfer.
3. The District should have fish screens installed on all points of diversion

State Water Board response:

1. In considering a petition for temporary transfer, the State Water Board does not re-evaluate the previous issuance of a water right license or permit. This transfer does not propose to increase diversions from the Merced River over current historical diversions for consumptive use. The surface water use will be offset on a one-for-one basis with groundwater diversion. Absent a change in surface water flow, there is no unreasonable impact on fish, wildlife, or other instream beneficial uses. No further action is needed on this issue.
2. A public notice of the temporary transfer petition was sent to NOAA Fisheries, U.S. Fish and Wildlife Service and DFG. No comments were received.
3. No new diversion facilities will be used for this transfer. Therefore, there are no changes to historic operations of the diversion works.

Comments from Anthony M. Roggero, Jr.

Mr. Roggero's property lies within the El Nido Irrigation District, and he indicates that his property received 520 af of District water for irrigation from late April to October of 2006. In order to remain in the same condition as last year, he will need an estimated 680 af of surface water for the 2007 irrigation season because this is a dry water year. Edward Selb, Deputy General Manager of the District, indicated to Mr. Roggero on April 17, 2007 that the District has adequate storage (carry-over) to serve its customers including the transfer service area. The District will not impact,

restrict, and/or limit supplies to growers in the El Nido District and specifically to the 157-acre parcel of Roggero Family Trust Property.

State Water Board response:

Mr. Roggero indicated that his concerns regarding the proposed transfer have been addressed by Mr. Selb's assurances that he will receive the estimated 680 af of water supply. No further action will be taken on this issue.

Comments from USBR and DWR

USBR and DWR determined that refill criteria language needed to be included in any order approving the District's proposed transfer in order to avoid impacting USBR's and DWR's downstream water rights.

State Water Board response:

Originally, the District proposed use of stored water or groundwater exchange for this transfer. Currently, the District proposes that the quantity of water proposed for transfer will be made available by groundwater exchange pumping, not water made available from storage. Reservoir operations will be unchanged. Therefore, refill criteria language is not necessary for this transfer. The State Water Board will, however, require that a like quantity of water from groundwater exchange pumping be discharged into the District's conveyance system to compensate for the water transferred under this Order.

4.0 REQUIRED FINDINGS OF FACT

4.1 No Injury to Other Legal Users of Water USBR, DWR and Stevinson Water District, et al., all commented regarding the potential impacts to their downstream water rights based on the proposed transfer. USBR and DWR requested reservoir refill criteria be included in any order approving the transfer. However, due to the fact that the District has chosen to conduct groundwater exchange pumping, it is not necessary to include reservoir refill criteria. This Order will require the use of wells previously approved for groundwater pumping exchange to ensure that the pumping does not affect the surface water system and therefore impact any other downstream water rights.

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

4.2 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

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 State Water Board must consider potential impacts on fish, wildlife, and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water available for transfer is either currently stored or will be stored in Lake McClure under the provisions of License 2685. Surface water use will be offset by groundwater exchange pumping. The District states that the SOI Water User lands currently and historically have received surface water from the District during years the Board of Directors of the District determines water is available under its pre-1914 claims, provided adequate natural flow is available from the Merced River. The SOI Water User lands historically received surface water from the District (the project) prior to the effective date of CEQA, and the project has not changed since the effective date of CEQA. On March 20, 2007 the District adopted Resolution No. 2007-11, which determined that this project is an existing facility and categorically exempt from CEQA under Title 14, California Code of Regulations section 15301, Class 1. According to the District, since the public project approval in 1929 there has been negligible, if any, expansion of place of use.

The District is required to maintain specified instream flows pursuant to State Water Board Water Right Decision 1641 and Federal Energy Regulatory Commission License No. 2179 for the Exchequer

Merced River Project. The flow requirements are set forth in License 2685. The District will be required to comply with the License 2685 instream flow requirements at all times while transferring water pursuant to this Order.

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.

4.3 Availability of Water for Transfer The water proposed for transfer in the 2007 irrigation season will be collected to storage in Lake McClure from October 1 to July 31. Under License 2685, the District can both directly divert and collect water to storage. The District will not provide water by direct diversion under License 2685 to the SOI Water User lands.

The transfer of up to 5,000 af to the SOI Water Users will be of released stored water offset by the same quantity of water discharged into the District's system via groundwater exchange pumping. The transfer will only utilize groundwater wells previously approved by DWR because use of these wells does not impact surface water systems. This will ensure there will be no net change in surface water diversion and use as a result of the transfer.

In light of the above, I find in accordance with Water Code section 1727(b)(1) 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 STATE WATER 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:

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 under the District's License 2685 (Application 1224) to facilitate the transfer of 5,000 af of water to the SOI Water User lands is approved subject to the provisions of this Order.

All existing terms and conditions of License 2685 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing for one year. Only water stored in Lake McClure may be transferred. Water shall not be provided to the SOI Water User lands by direct diversion.
2. The District shall discharge an equivalent amount of water from the groundwater exchange pumping program into their conveyance system as is transferred to the SOI Water User lands. The groundwater pumping shall be in addition to the previously established level of pumping.
3. For the groundwater exchange pumping program, the District shall utilize only those wells approved by the *Agreement for the Temporary Transfer of Water from Merced Irrigation District to the Department of Water Resources*, dated July 25, 2001.
4. The place of use shall be modified to include the following area: Irrigation of 39,066 acres within a gross area of 71,130 acres as shown on a map entitled "Merced Irrigation District – Proposed Addition to Place of Use" dated March 27, 2007, filed with the Division.
5. Within 60 days of completion of the transfer, but not later than August 20, 2008, the Licensee shall provide to the Chief of the Division a report describing the use of water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order and the quantities pumped from groundwater to offset the transfer.

The report should include the following information:

- a. The monthly amounts of water released from Lake McClure;
 - b. The monthly amounts of water delivered to the SOI Water User lands;
 - c. The locations of the groundwater wells used for groundwater substitution as a result of this transfer and the monthly amounts of water pumped from each well;
 - d. The beginning and end of season groundwater elevations in each of the wells used for the transfer;
 - e. The District shall provide documentation showing that it has complied with Item 2 above; and,
 - f. The general locations where water transferred under this Order was put to use.
6. The District shall comply with the License 2685 instream flow requirements at all times while transferring water pursuant to this Order.
 7. 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 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 the 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 that results in the taking of a threatened or endangered species or any act that 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 any 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 STEVEN HERRERA for

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

Dated: June 21, 2007