

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

ORDER WR 2007-0033-DWR

**IN THE MATTER OF PERMIT 16479 (APPLICATION 14443)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 70,000 ACRE-FEET OF WATER
TO THE WESTLANDS WATER DISTRICT
UNDER THE DEPARTMENT OF WATER RESOURCES
PERMIT 16479 (APPLICATION 14443)**

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

1.0 SUBSTANCE OF PETITION

On July 23, 2007,

Department of Water Resources
c/o Nancy Quan, Chief
Bay-Delta Program Development
P.O. Box 942836
Sacramento, CA 94236-0001

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, portions 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) permitted Application 14443. This temporary change would facilitate the recovery by WWD of previously-banked groundwater. 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 Lake Oroville under the provision of Permit 16479 (Application 14443) and held for use in the service areas of SWP contractors including the Kern County Water Agency (KCWA). The water proposed for transfer pursuant to this petition consists of previously-banked groundwater to be exchanged for SWP water intended for delivery to KCWA. WWD has previously banked groundwater within the Semitropic Water Storage District (SWSD). WWD has reached agreement with KCWA to facilitate the recovery of 50,000 acre-feet (af) of groundwater from the Kern Water Bank (KWB) and 20,000 af of groundwater from the SWSD. KCWA will forgo 70,000 af of its SWP water in exchange for the recovery and delivery of 50,000 af of water from the KWB and 20,000 af of water from the SWSD. WWD will receive the 70,000 af of KCWA's SWP water. This petition was filed to temporarily add the portions of WWD intended for delivery of the 70,000 af of SWP water to the place of use of Permit 16479.

In the absence of the proposed temporary change, KCWA would receive the 70,000 af of SWP water for use within its service area.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16479 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 3,542,100 af of water between September 1 and July 31 of each year in Lake Oroville. The authorized source under Permit 16479 is the Feather River. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, fish and wildlife enhancement. The subject 70,000 af of SWP water is stored in Lake Oroville. Absent the transfer, the subject 70,000 af of SWP water would be delivered to KCWA from Lake Oroville for use within its service area. Thus, the proposed temporary change should have no effect on any natural streamflow or hydrologic regime.

2.2 Status of WWD's Project WWD's service area is located primarily east of Interstate 5, between the cities of Mendota and Kettleman City, in Fresno and Kings Counties, being within T13-22S, R12-19E, MDB&M. For contractual purposes, WWD has defined its service area as Priority Areas I, II, and III. Priority Area I is WWD's original service area; Priority Area II includes lands from the June 1965 merger of WWD and the Westplains Water Storage District; and Priority Area III is defined as any lands annexed after June 1965.

- Priority Area I lands have the right to apply for and purchase up to 695,488 af of CVP contract water. There are approximately 271,057 acres of land in Area I that are irrigable and eligible, under federal reclamation law, to receive CVP water. Consequently, Priority Area I lands receive an average application rate of 2.57 af per acre under 100% CVP allocation.
- Owners of Priority Area II lands have the right to apply for and purchase up to 501,460 af of CVP contract water (including reassignment water). There are approximately 194,449 acres of land that are irrigable and eligible, under federal reclamation law, to receive CVP water. Consequently, Priority Area II lands receive an average application rate of 2.57 af per acre under 100% CVP allocation.
- Priority Area III consists of approximately 10,000 acres of irrigable land, but has no entitlement to CVP contract water.

This year CVP allocations are at 50% resulting in a significant unmet demand within WWD. The water proposed for transfer will be delivered only to Priority I & II lands as described above. The total amount of water delivered to WWD's Priority I & II areas this year (including its CVP contract water, other water transfers, and the subject water transfer) is 758,140 af, resulting in an application rate, with the proposed transfer, of 1.63 af per acre.

In general, land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD has established aggressive programs to encourage water conservation and reduce deep percolation.

2.3 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of the Priority I and II Areas of WWD (as described above) to the place of use of Permit 16479. These areas are shown on a map prepared by DWR available for viewing with the copy of the notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated August 8, 2007) was provided via regular mail to interested parties and by publication in the Fresno Bee on August 14, 2007. The Division did not receive any timely comments regarding the proposed temporary change.

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. (Wat. Code, § 1725.) 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 State Water Board 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.

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.

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).) The water proposed for transfer consists of a portion of KCWA's SWP entitlement under Permit 16479. In the absence of the proposed transfer, the water would be used within KCWA's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. In order to reduce the potential for this transfer to increase salinity concentrations in the San Joaquin River, this order limits the place of use to specific areas within WWD which do not have significant potential for either direct surface drainage to, or increased groundwater gradients towards, the San Joaquin River.

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.

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 proposed for transfer consists of a portion of KCWA's SWP entitlement under Permit 16479 which is either currently stored or will be stored in San Luis Reservoir under provisions of DWR's permits as amended by State Water Board 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. In the absence of the proposed transfer, the water would be used within KCWA's service area, and the areas within WWD proposed to receive the transfer water would be irrigated with local surface or groundwater supplies. Therefore, the delivery of this water to WWD would have no significant adverse effect on any natural streamflow or hydrologic regime.

In general, irrigated land in WWD has complete tailwater control within each field. WWD's pipeline distribution system and landowners' irrigation systems in WWD have been documented as one of the more efficient systems available in California to minimize the amount of water applied to crops. In addition, WWD

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use under the Department of Water Resources' (DWR) Permit 16479 (Application 14443) for the transfer of up to 70,000 acre-feet of water is approved.

All existing terms and conditions of Permit 16479 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period of one year, commencing on the date of this Order.
2. Prior to commencing the transfer, DWR shall provide the Chief of the Division of Water Rights a copy of the agreement between Westlands Water District (WWD) and Kern County Water Agency, who is forgoing the delivery of the subject water.
3. The place of use under Permit 16479 is temporarily expanded to include Priority I and II areas within WWD, as shown on map prepared by DWR for this transfer and titled *Kern Water Bank and Semitropic Water Storage District Delivery of Previously Banked Water for Irrigation to Westlands Water District* (on file with the State Water Board under Application 14443 and available for viewing with the copy of the public notice for this petition posted on the Division of Water Rights' website at www.waterrights.ca.gov, Water Transfers Program).
4. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. Furthermore, WWD shall implement all reasonable measures to prevent sub-surface drainage of poor quality water into the downslope area outside of WWD's service area. 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, but no later than December 1, 2008, 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 also 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 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.

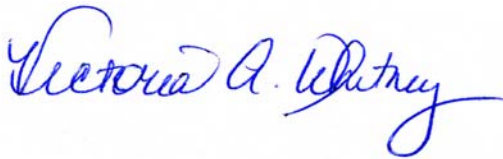
The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

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 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.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: October 2, 2007