



**Terry Tamminen**  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

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**Division of Water Rights**  
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Division of Water Rights: <http://www.waterrights.ca.gov>



**Arnold Schwarzenegger**  
Governor

## **NOTICE OF PETITION FOR A TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO 25,000 ACRE-FEET OF WATER UNDER MERCED IRRIGATION DISTRICT'S LICENSE 2685 (APPLICATION 1224)**

Dated: July 2, 2004

Notice is hereby given that on June 2, 2004

Merced Irrigation District  
744 West 20<sup>th</sup> Street  
Merced, CA 95344-0288

petitioned the State Water Resources Control Board's (SWRCB) Division of Water Rights (Division) for a temporary change pursuant to Water Code sections 1725 through 1732. The petition requests the addition of 10,208 acres within a gross area of 15,814 acres for irrigation as well as the addition of seven new points of rediversion. Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

### **PETITIONER'S WATER RIGHTS**

#### *Original Water Rights under License 2685:*

License 2685 was issued to Merced Irrigation District (District) on August 11, 1944, pursuant to Application 1224. License 2685 allows the direct diversion of 1500 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 acre-feet of water 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:*

License 2685 was modified from its original conditions to also 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 of up to 1,667 afa. Combined maximum direct diversion and storage under License 2685 cannot exceed 345,440 acre-feet annually. The point of diversion for the water

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**California Environmental Protection Agency**

delivered to the Mariposa Town Planning Area is located approximately 40 miles upstream of New Exchequer Dam.

License 2685 was also later modified to include an additional point of rediversion and place of use when the District consolidated 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.

### **DESCRIPTION OF THE TEMPORARY CHANGE**

The District is occasionally required to release water from Lake McClure to downstream water users to satisfy water supplies for riparian and pre-1914 claims of water rights as mandated by the Cowell Agreement (Agreement). The Agreement was established on January 17, 1926 pursuant to a Merced Superior Court Order, and stipulates a scheduled quantity of flow rates, measured at Crocker-Huffman Dam, to be maintained by the District. The Agreement requires the District to bypass and release water in the summer so that the riparian and pre-1914 downstream users would remain in the same position that they were prior to the construction of the New Exchequer Dam. The District has at times been required to supplement downstream flows in the Merced River with releases from storage when inflow to Lake McClure is insufficient to satisfy the flow requirements downstream of the Crocker-Huffman Dam. The Division advised the District that Lake McClure Reservoir releases must be covered by the District's appropriative rights; subsequently, the District filed the current petition.

The downstream diverters of the water released from storage are known as the Cowell Agreement Diverters (CAD). The CAD group irrigates acreage that is not included as a place of use in License 2685. It was also necessary for the District to file the petition for temporary change to include the acreage irrigated by the downstream diverters as a place of use in License 2685 and to include the seven points of rediversion used to supply water to the CAD group.

The District estimated that this petition for temporary change may necessitate the transfer of up to 25,000 af of water for the CAD diverters this year.

### **COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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.).

On June 1, 2004 the District adopted Resolution No. 2004-49, 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.

### **SWRCB'S STATUTORY PROVISIONS**

Pursuant to Water Code sections 1725 through 1732, the SWRCB is authorized to issue temporary change orders, to allow the transfer or exchange of water or water rights after completing an evaluation sufficient to determine that the proposed temporary change(s):

1. Involve a water that would otherwise have been consumptively used or stored by permittee or licensee;
2. Would not injure any other legal user of the water; and,
3. Would not unreasonably affect fish, wildlife, or other instream beneficial uses.

If the SWRCB cannot satisfy, in a timely manner, the provisions of Water Code section 1725 through 1732, then the SWRCB may deny the petition or schedule and notice a hearing regarding the proposed transfer or exchange of water.

#### **OPPORTUNITY FOR COMMENTS**

Pursuant to the requirements outlined above, the SWRCB is seeking information to assist in the evaluation of the proposed temporary change of water rights under the transfer. Any person may file comments concerning the petition for temporary change. The comments must address the required findings numbered 2 and 3 set forth above. The petitioner has the initial burden of establishing that the proposed temporary change will not injure any legal user of water, or unreasonably affect fish, wildlife, or instream beneficial uses. If the SWRCB determines that the petitioner has established a prima facie case, the burden of proof then shifts to the party that has filed comments (Water Code section 1727). While such a determination has not been made in this case, commentors should provide sufficient information to support claims of injury or affects on fish, wildlife, or other instream uses.

Due to the relative brevity of the temporary transfer process, the Division (if necessary) may request that the petitioner submit additional information during the comment period. Any such requests and any additional information submitted by the petitioner regarding this proposed temporary change during the comment period will be posted with this notice on the Division website at [www.waterrights.ca.gov/application/TempUrg.htm](http://www.waterrights.ca.gov/application/TempUrg.htm). Potential commentors are strongly urged to check the website for such information prior to filing a comment.

Comments filed in response to this notice must be received in the office of the SWRCB's Division of Water Rights, at the address listed below by **3:00 p.m. on July 19, 2004**. Materials filed in response to this notice **shall also be provided to the petitioner at the address listed below**. Interested parties are encouraged to file comments, etc., by fax and to notify the following contact persons by telephone of any materials that will be submitted. However, an original copy of all materials must be received in order for the SWRCB to consider your concerns.

Division of Water Rights  
c/o Kate Gaffney

Merced Irrigation District  
c/o Mark Van Camp

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License 2685

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Sacramento, CA 95812-2000  
Fax: (916) 341-5400

MBK Engineers  
2450 Alhambra Blvd., 2<sup>nd</sup> Floor  
Sacramento, CA 95817-1125  
Fax: (916) 456-0253

Please address questions about this notice to Kate Gaffney at (916) 341-5360. Questions regarding the petitioner or transferee should be addressed to Mark Van Camp at (916) 456-4400.

Victoria A. Whitney  
Division Chief

Dated: July 2, 2004

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