



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

NOTICE OF PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO 25,000 ACRE-FEET OF WATER TO THE ENVIRONMENTAL WATER ACCOUNT UNDER MERCED IRRIGATION DISTRICT'S LICENSE 11395 (APPLICATION 16186)

Notice is hereby given that on June 28, 2007

Merced Irrigation District
c/o Marc Van Camp
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. Merced Irrigation District's (MID) petition requests a temporary change to facilitate the transfer of up to 25,000 acre-feet (af) of water under License 11395 (Application 16186) to the Environmental Water Account (EWA). The United States Bureau of Reclamation (USBR) and the United States Fish and Wildlife Service (USFWS) are the CALFED agencies administering this transfer. Transferred water would be available for rediversion at the State and federal export pumps for use within the service areas of the Central Valley Project (CVP) and the State Water Project (SWP). Additionally, in accordance with Water Code section 1707, the water would be used for the purpose of preservation and enhancement of fish and wildlife resources within the San Joaquin River downstream of Vernalis¹ to the San Francisco Bay/Sacramento – San Joaquin Delta Estuary (Delta). The proposed temporary change would be effective from October 1, 2007 through December 31, 2007.

BACKGROUND

Recent declines in the populations of Delta pelagic (open water) fish, identified as the Pelagic Organism Decline or POD², have resulted in numerous actions by the United States Bureau of Reclamation (USBR), the United States Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NOAA – Fisheries), the Department of Water Resources, and the Department of Fish and Game (DFG). These actions have

¹ State Water Board Revised Decision 1641 added the reach of river between MID's point of diversion (New Exchequer Dam) and the San Joaquin River at Vernalis as an authorized place of use under License 11395 for the purpose of Fish and Wildlife enhancement through December 31, 2011, or termination of the San Joaquin River Agreement, whichever comes first.

² Further information regarding the POD is contained at the following website:
http://science.calwater.ca.gov/pod/pod_index.shtml

California Environmental Protection Agency

included reductions in CVP and SWP exports from the Delta, as well as upstream acquisitions of water to release to the Delta. On June 8, 2007, the State Water Board received (from MID) and approved a petition for temporary urgency change to provide flow in the lower San Joaquin River to a) assist in meeting the salinity objectives for protection of agricultural beneficial uses contained in State Water Board Decision 1641 (D-1641); b) help maintain the combined net positive flow target for Old and Middle Rivers to protect Delta smelt, as recommended by the Delta Smelt Working Group; and c) enhance USBR's action to protect Delta smelt in the central Delta while Reclamation diverts a minimum amount of water at the CW "Bill" Jones Pumping Plant (also known as the Tracy Pumping Plant) to meet health and safety needs. The petition authorized MID to release up to 15,000 af of water stored in New Exchequer Reservoir at a rate of 850 cubic feet per second (cfs) to the Merced River thence the San Joaquin River and the Delta between June 10 and June 18, 2007.

The subject petition is intended to provide flows for similar purposes; to augment streamflow in the San Joaquin River and Delta Outflow, to provide fishery benefits during critical fish lifestages, and to replace project water supply interrupted by fishery-related export reductions taken earlier this year. USBR and USFWS are administering this water transfer for EWA.

DESCRIPTION OF THE TRANSFER

MID proposes to transfer up to 25,000 af of water under License 11395 (Application 16186) to EWA for use within the Delta and the CVP and SWP service areas. Water will be released from Lake McClure into the Merced River to augment stream flows in the Merced River and the San Joaquin River. Flow reaching the Delta may provide for protection of the fish of the Delta or the water may be pumped by either the CVP or the SWP to replace project water supplies interrupted by fishery related changes to CVP/SWP project operations. Transferred water will be released from Lake McClure between October 1, 2007 and December 31, 2007, with the majority of releases planned for the month of October. The release schedule has yet to be finalized and will be developed by USBR and MID in consultation with fisheries agencies. The current target for flow at Vernalis in October (including this transfer) is 3,000 to 3,500 cfs, thus the maximum release rate for this transfer will be about 2,000 cfs.

MID has proposed to make water available for transfer by pumping additional groundwater to replace the transferred surface water (groundwater substitution). The groundwater wells intended for additional pumping are located within MID's service area. MID has adopted a Groundwater Management Plan and local interests have adopted a basin-wide Groundwater Management Plan. Both of these documents are available for viewing with the copy of this notice posted online at www.waterrights.ca.gov, Water Transfer Program, Notices of Transfers and Temporary

Urgency Actions. MID's petition states that the groundwater substitution will be performed in accordance with these plans. MID is in the process of finalizing a monitoring and mitigation plan to ensure that the groundwater wells used for groundwater substitution are located and operated to minimize potential effects on other legal users of water. In order to pump 25,000 af of groundwater, MID initiated the additional groundwater pumping on July 28, 2007 and will complete the additional pumping on October 31, 2007.

In the absence of the transfer, MID would release the subject 25,000 af of water from Lake McClure for use by its customers and MID would not perform the additional groundwater pumping associated with its groundwater substitution plan.

PROPOSED TEMPORARY CHANGE

The proposed temporary change would temporarily add the Banks and Jones Pumping Plants as additional points of re-diversion and municipal, industrial, salinity control, stockwatering, and water quality control as additional purposes of use under License 11395. The service areas of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of License 11395. In addition, the Delta channels from the San Joaquin River near Vernalis to the Banks and Jones Pumping Plants would be added to the place of use of License 11395 for the purpose of preservation and enhancement of fish and wildlife resources in accordance with Water Code section 1707. The San Joaquin River at Vernalis is identified as point C10 on the State Water Board's *Bay - Delta Estuary Monitoring Stations* map contained in the 2006 Water Quality Control Plan for the Delta.

PETITIONER'S WATER RIGHTS

License 11395 (Application 16186) authorizes the diversion to storage of up to 605,000 af of water from the Merced River between October 1 and July 1. The points of diversion for License 11395 are located at the New Exchequer Dam and the McSwain Dam. The water is used for irrigation, domestic, recreational, fish culture, and wildlife enhancement purposes within the authorized place of use identified by the "Official map of MID-1973" on file with the SWRCB.

COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT

Temporary changes involving the transfer of water that was previously stored are exempt from the requirements of the California Environmental Quality Act (CEQA). However, the State Water Board must consider potential impacts to other legal users of the water and to fish, wildlife, or other instream beneficial uses.

STATE WATER RESOURCES CONTROL BOARD'S STATUTORY PROVISIONS

Pursuant to Water Code sections 1725, et seq., the State Water Board is authorized to issue temporary change orders, allowing the transfer or exchange of water or water rights after completing an evaluation and finding that the proposed temporary changes:

1. Involve only water that would otherwise have been consumptively used, stored, or conserved pursuant to Water Code section 1011, by permittee;
2. Would not injure any legal user of the water; and
3. Would not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) is performed in compliance with Water Code sections 1745.10 and 1745.11.

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

OPPORTUNITY FOR COMMENT

Pursuant to the requirements outlined above, the State Water Board is seeking information to assist in the evaluation of the proposed temporary change of water rights. Any person may file comments concerning the petition for temporary change. The comments must address the required findings set forth above. The petitioner has the 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 State Water Board 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 effects 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 of Water Rights' website at www.waterrights.ca.gov, Water Transfer Program, Notices of Transfers and Temporary Urgency Actions. 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 State Water Board's Division of Water Rights, at the first address listed below by **2:00 p.m. on September 10, 2007**. Additionally, a copy of the comments must be filed with the Merced Irrigation District. **Comments must be accompanied by proof of service of a separate copy of the materials on the petitioner.** Interested parties are encouraged to file comments by FAX and to notify the following contact persons by telephone of any materials that will be submitted. An original copy of all materials, however, must be received for the State Water Board to consider your comments.

Division of Water Rights
c/o Greg Wilson
P.O. Box 2000
Sacramento, CA 95812-2000
FAX: (916) 341-5400

Merced Irrigation District
c/o Marc Van Camp, MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, CA 95817-1125
FAX: (916) 456-0253

Please address questions about this notice to Greg Wilson at (916) 341-5427. Questions regarding the petitioner or transferee should be addressed as follows:

Merced Irrigation District (petitioner):

Marc Van Camp (916) 456-4400
FAX: (916) 456-0253

USBR/USFWS (transferee):

Tim Rust (916) 978-5516
Roger Guinee (916) 979-2760

ORIGINAL SIGNED BY

Leslie F. Grober, Manager
Hearings and Special Projects Section

Dated: August 8, 2007