
State Water Resources Control Board

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FROM: 
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SUBJECT: REQUEST FOR ADDITIONAL EXCHANGE OF WATER PURSUANT TO DIVISION OF WATER RIGHTS MAY 17, 2016 ORDER APPROVING CONSOLIDATED PLACE OF USE UNDER SPECIFIED PERMITS OF THE STATE WATER PROJECT AND CENTRAL VALLEY PROJECT (2016 CPOU ORDER)

On May 17, 2016, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), issued an Order (2016 CPOU Order) approving a petition¹ from the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) requesting temporary changes in the place of use of water rights of the State Water Project (SWP) and Central Valley Project (CVP). The 2016 CPOU Order temporarily approved a consolidated place of use for DWR's SWP with Reclamation's CVP allowing for transfer/exchange of water for several projects that were approved in the original petition. Section 8.0 of the 2016 CPOU Order denied one transfer/exchange (KTWD Exchange) without prejudice on the grounds that there was insufficient information to determine whether the exchange would be from stored water.

¹ The petition was filed for Permit 16479 (Application 14443) of the Department of Water Resources' State Water Project and License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 (Applications 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15764, 16767, 17374 and 17376, respectively) of the United States Bureau of Reclamation's Central Valley Project.

Condition 5 of the 2016 CPOU Order provides a process for DWR and Reclamation to request the approval of transfers/exchanges not specifically identified in the petition. In addition, Condition 5 generally applies to the proposed KTWD exchange that was denied for failure to provide sufficient information to support the findings required for approval. The Condition 5 process authorizes additional exchanges under the 2016 CPOU, if the proposed transfer/exchange meets certain criteria, including:

- a) The total quantity of water delivered to any SWP or CVP contractor shall not exceed historic average deliveries to the contractor as stated in the attachments provided with the petition for change.
- b) Transfers or exchanges shall not result in the net decrease of San Joaquin River or Sacramento River flow over the period of the transfer. The transfer or exchange will not result in an increase in saline drainage to the San Joaquin River.
- c) Transfers or exchanges shall not result in any increase in the amount of water diverted from the Delta. The water to be exchanged is part of any available Project allocations, water currently stored in San Luis Reservoir, or previously placed in groundwater storage south of the Delta. Further, the water to be exchanged or transferred would have been consumptively used or stored in the absence of the transfer.

On July 20, 2016, Reclamation submitted a request to the Division pursuant to Condition 5 of the 2016 CPOU Order. Reclamation's request is based on additional exchanges requested by the Kern County Water Agency (KCWA), Arvin Edison Water Storage District (AEWSD) and Reclamation to be made consistent with the provisions contained in Condition 5 of the 2016 CPOU Order. Inasmuch as the 2016 CPOU Order approved the then requested exchanges minus the amount requested for the denied exchange, DWR and Reclamation request that this cap be increased to 307,900 acre-feet (af) of water and that the proposed transfer from AEWSD to the Exchange Contractors and exchange of KCWA SWP water for a like amount of CVP in Millerton Lake be approved. Essentially, the petition asks that the proposed KCWA exchange be treated like the KTWD Exchange and the cap adjusted accordingly.

Kern County Water Agency Proposed Exchange

KCWA proposes to exchange up to 45,000 af of its SWP water in San Luis Reservoir for a like amount of Reclamation's CVP Friant-Kern Division (Friant) water in Millerton Lake. The SWP exchanged water would be released from San Luis Reservoir and delivered to the San Joaquin River Exchange Contractors (Exchange Contractors) via the Delta-Mendota Canal outside of the State Water Project place of use. Under the exchange, an amount of previously stored CVP Friant water equivalent to the quantity delivered to Reclamation plus 10 percent (a total of 50,000 af) will be released from Millerton Lake into the Friant-Kern Canal for delivery to KCWA through existing turnouts including the Friant-Kern Canal Intertie to the Cross Valley Canal. Water delivered to the Cross Valley Canal will then be delivered to existing turnouts and the California Aqueduct to KCWA Member Units.

Section 8 of the State Water Board's May 17 Order denied approval of a similar exchange between KTWD and the Exchange Contractors for failure to show at that time that the water to be released from Friant Dam in the absence of the exchange would have been released from storage rather than bypassed natural flows. The Order denied that portion of the petition

without prejudice, recognizing that DWR and Reclamation could in the future support the request with additional information demonstrating that the proposed exchange would only involve stored water released from Friant Dam. The Order also specifically anticipates additional south-of-Delta transfers/exchanges not identified in the Order. The amount of the previously denied exchange between KTWD and the Exchange Contractors was up to 47,920 af and, as stated above, Reclamation identifies in its request that the CVP Friant water that is part of the proposed exchange is previously stored CVP Friant water.

Arvin Edison Water Storage District Short Term Exchange

AEWSD proposes to deliver 12,000 af of water currently stored in San Luis Reservoir to Reclamation for delivery to the Exchange Contractors. The water will be returned to AEWSD by the end of February 2017. The 12,000 af proposed for the exchange is a portion of the amount of water originally described in the 2016 CPOU Order.

Reclamation has indicated that the proposed exchange meets all criteria identified under Condition 5 of the 2016 CPOU Order, other than the total quantity-limit summed from the approved transfers identified in Condition 4, as described below:

1. The transfer will not result in an increase in water diverted from the Delta. DWR and Reclamation operations in the Delta will not change as a result of the proposed exchange. All the water proposed for exchange is already in storage downstream of the Delta or previously stored in Millerton Reservoir. There will be no change in inflow to or export from the Delta as a result of the proposed exchange.
2. The quantity of the exchange will not exceed the amount of SWP water currently scheduled for delivery to KCWA or AEWSD. No change in SWP or CVP allocations will be made.
3. The purpose of the exchange is to help address critical CVP water supply shortages in San Luis Reservoir due to the severe restrictions on Delta exports at Jones. CVP allocations were severely restricted in 2016. All the water to be provided through the exchange is water already diverted to storage. There will be no change in the amount of water allocated to any contractor no additional water diverted to storage at any SWP or CVP facility. All the water would have been consumptively used or stored in the absence of the transfer.
4. The total quantity of water delivered to SWP or CVP contractors as a result of the change will not exceed historic average deliveries. CVP water supplies are critically short in 2016. There will be no increase in allocation to any CVP contractors as a result of the exchange.
5. The exchange will not result in a net loss of San Joaquin River or Sacramento River flows. The water stored in Millerton Reservoir to be delivered to KCWA is water previously stored under Reclamation's Friant water rights. The Friant water is water that would otherwise have been delivered to the Exchange Contractors or remained in storage in Millerton Reservoir.
6. The exchange will not result in an increase in saline drainage to the San Joaquin River. There will be no increase in the amount of water delivered to the Exchange contractors as a result of the exchanges. There is no return flow to the San Joaquin River from KCWA.
7. Section 8 of the SWRCB's May 17 Order denied approval of a similar exchange between KTWD and the Exchange Contractors on the basis that "(I)t is uncertain whether the water that would be released from Friant Dam in the absence of the exchange would have been released

from storage rather than bypassed natural flows." The Order went on to state "(I)f the Petitioners can provide additional information to support that the proposed exchange between KTWD and the Exchange Contractors would only involve stored water released from Friant Dam, the Deputy Director for Water Rights will consider the proposed exchange between KTWD and the Exchange Contractors under the additional south-of-Delta transfer/exchange process identified in Condition 5 of the Order ." The amount of this exchange was up to 47,920 af; however Reclamation's current exchange request is 50,000 af.

8. As noted above, the water provided to the Exchange Contractors in the absence of this exchange will be water previously stored in Millerton Reservoir pursuant to Reclamation's Friant Division water rights (License 1986; Permits 11885 and 11886).

Approval of Condition 5 Request

Pursuant to Condition 5 of the 2016 CPOU Order, the exchanges as described above are approved.

The authorized amount of transfers and exchanges approved pursuant to the 2016 CPOU Order is 257,900 af, which is equal to the sum of the approved transfers and exchanges per the original petition as identified in Condition 4 of the Order. It is clear from the discussion at section 8 of the Order that the 257,900 af sum in Condition 4 was based on the petitioners' failure to provide sufficient information related to the KTWD Exchange showing that the water to be released from Friant Dam in the absence of the exchange would have been released from storage rather than bypassed natural flows. The 2016 CPOU Order's denial of the KTWD was without prejudice and clearly left open the possibility that "[i]f the Petitioners can provide additional information to support that the proposed exchange between KTWD and the Exchange Contractors would only involve stored water released from Friant Dam, the Deputy Director for Water Rights will consider the proposed exchange between KTWD and the Exchange Contractors under the additional south-of-Delta transfer/exchange process identified in Condition 5." (Order, p. 14.) Reclamation's Millerton Lake Daily Operations Report for July 20, 2016, shows that the natural San Joaquin River flow was 658 cubic feet per second (cfs), inflow to Millerton Lake was 1,769 cfs and total releases from Friant Dam were 4,087 cfs. Therefore, the releases from Friant Dam constitute withdrawal from storage; this allows the KTWD Exchange to meet the conditions of the 2016 CPOU Order.

In reviewing Condition 5, it appears that the intent was to establish general conditions for other south-of-Delta approvals beyond those discussed in the 2016 CPOU Order, but the total cap on transfers was not to apply to exchange/transfers discussed in the order. Otherwise, the denial without prejudice in Section 8.0 would be meaningless. Even if petitioners cured the defects described in Section 8.0, they would not be able to avail themselves of the transfer because of the hard cap in Condition 4. As a result, it makes sense to construe the Condition 4 cap as applying to approvals generally, but not as a limitation on an exchange/transfer that attempts to satisfy the failings identified in Section 8.0.

Inasmuch as the sum total of the approved transfers/exchanges did not include the at-that-time denied exchange, it is reasonable to conclude that had the petitioners adequately supported that exchange, the sum total of the approved transfers/exchanges would have been the requested amount. Because the present request meets all other criteria identified in Condition 5 and is in other pertinent respects similar to the previously denied request but is supported by the

previously lacking information, it is reasonable to approve the present request for a south-of-Delta KCWA exchange and modify the transfer/exchange sum total accordingly.

If you require further assistance, please contact Kathryn Gaffney at (916) 341-5360 or by email at Kathryn.Gaffney@waterboards.ca.gov. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Kathryn Gaffney, P.O. Box 2000, Sacramento, CA, 95812-2000.

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