

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMIT 16479 (APPLICATION 14443)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 800 ACRE-FEET OF WATER
TO AREAS WITHIN THE MUSCO OLIVE PRODUCTS COMPANY
UNDER CALIFORNIA DEPARTMENT OF WATER RESOURCES
PERMIT 16479 (APPLICATION 14443)**

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE
BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 2, 2011,

Department of Water Resources
c/o Robert B. Cooke, Chief
State Water Project Analysis Office
1416 Ninth Street, Suite 1620
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 Musco Olive Products Company (Musco) would be temporarily added to the authorized place of use under the Department of Water Resources' (DWR) Permit 16479 (Application 14443). Temporary changes under Water Code section 1725 may be effective for a period up to one year.

1.1 Description of the Transfer Byron Bethany Irrigation District (BBID) has an existing Central Valley Project (CVP) long-term water supply contract with the U.S. Bureau of Reclamation (Reclamation). Musco contracts with BBID for a water supply. Musco is located west of the City of Tracy adjacent to the California Aqueduct. It is within the CVP place of use, but does not currently have direct access to the CVP conveyance facilities. State Water Board Revised Water Right Decision 1641 (D-1641) allows Reclamation to pump water at the State Water Project (SWP) Banks Pumping Plant (Banks) under Joint Point Operations (JPOD) stage 1 approval for delivery to Musco. Under the proposed exchange, DWR would provide up to 800 acre-feet (AF) of SWP water pumped at Banks directly to Musco in exchange for an equivalent amount of CVP water pumped at the Jones Pumping Plant and delivered to the SWP at O'Neill Forebay (O'Neill). The exchange water delivered to O'Neill will be used within the existing CVP place of use including joint service areas within Santa Clara and Kings Counties. No additional water will be pumped from the Delta or delivered to SWP and CVP contractors as a result of this exchange. DWR submitted this petition for temporary change in place of use to facilitate this exchange. The proposed temporary change would be effective for a period of one year from the date of approval. If CVP water cannot be delivered to Musco by exchange during periods when JPOD capacity is not available, the forgone deliveries will be delivered and used within BBID's service area.

2.0 BACKGROUND

2.1 Substance of DWR's Permit Permit 16479 was issued to DWR on August 24, 1951, authorizing DWR to divert to storage up to 3,542,100 AF of water between September 1 and July 31 with a maximum diversion rate of 7,545 cubic feet per second between January 1 and December 31 of each year. Authorized sources under Permit 16479 are the Feather River, Italian Slough, and Sacramento-San Joaquin Delta Channels. The water may be used for irrigation, domestic, municipal, industrial, recreation, salinity control, fish and wildlife enhancement, and to generate incidental power. The exchange of 800 AF of water will be subject to provisions of DWR's permit (set forth in D-1641) and Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the federal Endangered Species Act. The exchange will not increase the total amount of water pumped from the Delta. Thus, the transfer of up to 800 AF of water to Musco is not expected to have any additional effect on any natural streamflow or hydrologic regime.

2.2 Place of Use under the Proposed Transfer DWR's petition requests the temporary addition of areas within Musco to the place of use of Permit 16479. Musco's service area is located west of the City of Tracy adjacent to the California Aqueduct as shown on the map prepared by DWR, which is available for viewing on the State Water Board's Division of Water Rights' (Division) website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated April 29, 2011) was provided via regular mail to interested parties and by publication in the Sacramento Bee on May 3, 2011. The Division did not receive any timely comments regarding the proposed temporary change.

4.0 REQUIRED FINDINGS OF FACT

4.1 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.) "[C]onsumptively used' means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion. (*Ibid.*) The water available for the transfer consists of a portion of DWR's entitlement under Permit 16479 as amended by State Water Board Decision 1641 and subject to the requirements of Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. If CVP water cannot be delivered to Musco by exchange during periods when JPOD capacity is not available, the forgone deliveries will be delivered and used within BBID's service area. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR's permit.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the proposed transfer/exchange involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 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).) If CVP water cannot be delivered to Musco by exchange during periods when JPOD capacity is not available, the forgone deliveries will be delivered and used within BBID's service area. The petition states that the exchange will not result in an increase in total diversions from the Delta, a change in the timing or pattern of SWP diversions or an increase in return flows to the San Joaquin River. In addition, the State Water Board will require as a condition of approval that Musco implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River.

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

4.3 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 to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727, subdivision (b)(2).

The water proposed for transfer/exchange consists of a portion of DWR's SWP entitlement under Permit 16479 as amended by State Water Board Decision 1641 and subject to the requirements of Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. These restrictions would apply to this transfer, and will ensure that the proposed temporary change would have no significant effect on the natural streamflow or hydrologic regime within the Delta. In addition, as explained above, the temporary change will not result in an increase in total diversions from the Delta, a change in the timing or pattern of SWP diversions or an increase in return flows to the San Joaquin River.

In light of the above, I find that in accordance with Water Code section 1727, subdivision (b)(2), the proposed transfer would have no unreasonable effects on fish, wildlife, or other instream beneficial uses.

5.0 STATE WATER RESOURCES CONTROL BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2007-0057.

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:

I conclude that, based on the available evidence:

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.

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/exchange of up to 800 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:

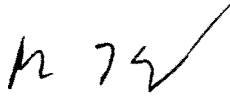
1. The transfer/exchange is limited to the period commencing on the date of this Order and ending June 30, 2012.
2. The place of use under Permit 16479 is temporarily expanded for the duration of this Order to include areas within the Musco Olive Projects Company (Musco). Musco's service area is located west of the City of Tracy adjacent to the California Aqueduct as shown on the map prepared by DWR, which is available for viewing on the State Water Board's Division of Water Rights' (Division) website at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.
3. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. In addition, Musco shall implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River. 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.
4. Within 60 days of the completion of the transfer, but no later than August 29, 2012, the permittee shall provide to the Deputy Director for 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 to Musco under this Order, including the average application rate.
5. 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.

6. 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 & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 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.

7. 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



*Barbara L. Evoy, Deputy Director
Division of Water Rights*

Dated: JUN 29 2011