



Bartkiewicz, Kronick & Shanahan HONORABLE BOARD OF SUPERVISORS

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2009 JUN 10 P 2:57

MEMORANDUM

TO: HONORABLE BOARD OF SUPERVISORS

FROM: BARTKIEWICZ, KRONICK & SHANAHAN

DATE: JUNE 8, 2009

SUBJECT: SERVICE OF PETITIONS FOR TEMPORARY TRANSFERS OF WATER TO THE 2009 DROUGHT WATER BANK

Attached are copies of a petition jointly filed with the State Water Resources Control Board by the City of Sacramento ("City") and the Sacramento Suburban Water District ("SSWD"). The purpose of the petition is to temporarily change certain water rights of the City in order to permit the City to transfer 1,000 acre-feet of its water rights water and SSWD to transfer 5,000 acre-feet of its contract water entitlement from the City to the 2009 Drought Water Bank being operated by the California Department of Water Resources. The water will be pumped from the Delta and used to provide water to public agencies downstream of the Delta that have experienced cutbacks in their contract entitlements from the State Water Project or federal Central Valley Project.

The City and SSWD are required to notify every county where the proposed transfer water may be used of the filing of the petitions pursuant to subdivision (c) of Water Code section 1726. Please note, however, that we are serving the County only with a copy of the petition. The filing with the State Water Board also includes an Environmental Information Form and 13 attachments to that form. In order to conserve paper and the cost of postage, these documents were not included in this mailing. However, we are happy to provide you electronic or hard copies of the Environmental Information Form and attachments upon request. If you would like to obtain copies of these documents, please contact Josh Horowitz, SSWD's attorney, at (916) 446-4254 or jmh@bkslawfirm.com. Thank you.

State of California
 State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
 Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

**PETITION FOR TEMPORARY TRANSFER
 OF WATER/WATER RIGHTS**
 (*Water Code 1725*)

Point of Diversion Point of Rediversion Place of Use Purpose of Use

Application No. 12622 Permit No. 11360 License No. _____
 Statement or Other No. _____

Present Holder and User of Water Right

<u>City of Sacramento</u>	<u>Martha H. Lennihan</u>	<u>(916) 321-4460</u>
Person or Company name	Contact person	Telephone No.

<u>Lennihan Law</u>	<u>Sacramento</u>	<u>CA</u>	<u>95816</u>
<u>2311 Capitol Avenue</u>	<u>Sacramento</u>	<u>CA</u>	<u>95816</u>
Address	City	State	Zip Code

mlennihan@lennihan.net
 E-MAIL (For noticing purposes)

Co-petitioner

<u>Sacramento Suburban Water District</u>	<u>Joshua M. Horowitz</u>	<u>(916) 446-4254</u>
Person or Company name	Contact person	Telephone No.

<u>Bartkiewicz, Kronick & Shanahan</u>	<u>Sacramento</u>	<u>CA</u>	<u>95816-4907</u>
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Proposed New User

The proposed new users are those agencies that are participating as buyers in the 2009
 Department of Water Resources' ("DWR") Drought Water Bank.

The City of Sacramento (“City”), as petitioner, and Sacramento Suburban Water District, as co-petitioner, hereby petition the State Water Resources Control Board (“State Water Board”) under the provisions of Water Code section 1725 et seq. and in conformance with the specific requirements of California Code of Regulations section 794 et seq. for temporary changes to the water right application(s) noted above for the purpose of transferring water. The changes are shown on the accompanying maps and described as follows:

Amount of Water to be Transferred

Up to a cumulative total of 6,000 AF. Up to 1,000 AF will be transferred directly by the City to the Drought Water Bank (“DWB”), and the other up to 5,000 AF will be provided by the City to SSWD under those parties’ wholesale contract, and made available by SSWD to the DWB (“Transfer Water”).

Period of Transfer/Exchange

Physical transfer of the Transfer Water may occur between July 1, 2009 to December 31, 2009, and is most likely to occur during July, August, and September. Transfer Water will be used in the State Water Project (“SWP”) and Central Valley Project (“CVP”) service areas within one year from approval of the transfer pursuant to Water Code § 1728.

Point of Diversion or Rediversion

Current:

The City’s current points of diversion and rediversion are identified on its permit no. 11360. The City’s primary points of rediversion are at its Fairbairn diversion and water treatment plant on the lower American River and its Sacramento River diversion and treatment plant facilities at the confluence of the American and Sacramento Rivers.

Proposed:

No change in the present points of diversion or points of rediversion is proposed. The SWP’s Banks Pumping Plant and Barker Slough Pumping Plant and the CVP’s Jones Pumping Plant and the Contra Costa Canal (the “SWP and CVP Facilities”) are to be added as points of rediversion to provide the Drought Water Bank with the flexibility to export the proposed transfer quantity from the Delta to any point in the SWP’s and CVP’s service areas. The proposed points of rediversion are identified on maps filed with the Division of Water Rights under Applications 5630 (SWP) and 5626 (CVP).

Banks Pumping Plant via Clifton Court Forebay: N486035, E1695057, California Coordinate System Zone 3, within the NW ¼ of SE ¼ of Projected Section 20, T1S, R4E, MDB&M.

Barker Slough Pumping Plant: N 567,682, E 2,017,761, California Coordinate System Zone 2, within the NW ¼ of SW ¼ of Projected Section 18, T5N, R2E, MDB&M.

C.W. "Bill" Jones Pumping Plant: N481100, E1694000, California Coordinate System Zone 3, within the NW ¼ of SW ¼ of Projected Section 29, T1S, R4E, MDB&M.

Contra Costa Canal: N 89°52'W, 8.9 feet from the E ¼ Corner of Section 33, T2N, R3E, MDB&M, within the SE ¼ of NE ¼ of Section 33, T2N, R3E, MDB&M.

Place of Use

Current: City of Sacramento and portions of Sacramento County, as provided pursuant to the City's Permit no. 11360.

Proposed: In addition to the current place of use, the SWP and CVP service areas are proposed to be added. The service area of the SWP is shown on Map 1878 – 1, 2, 3 and 4 on file with the Division of Water Rights under Application 5630. The service area of the CVP is shown on Map 214-208 – 12581 on file with the Division of Water Rights under Application 5626.

Purpose of Use

Current: Municipal **Proposed:** Domestic, Municipal and Industrial, and Irrigation.

	<i>Season of Use</i>	<i>Direct Use (cfs)</i>	<i>Storage (ac-ft)</i>
Current:	See project description and water rights permit 11360.		

Proposed: The Transfer Water would be used within the SWP and CVP service areas within one year after approval of the transfer pursuant to Water Code § 1728.

The proposed transfer/exchange water is presently used or stored within the county/counties of:

Sacramento County; City of Sacramento.

The proposed transfer/exchange water will be placed to beneficial use within the following county/counties:

The additional places of use would be all counties included within the service areas of the SWP and CVP. (See map information above.)

1a. Would the transfer/exchange water have been consumptively used or stored in the absence of the proposed temporary change (See WC 1725)?

Yes, consumptively used in the City's service territory and SSWD's South Service Area in the County of Sacramento.

1b. Provide an analysis which provides documentation that the amount of water to be transferred/exchanged would have been consumptively used or stored in the absence of the proposed temporary change.

City of Sacramento

The City of Sacramento proposes to institute a groundwater substitution program that will pump additional groundwater in an amount equivalent to up to 1,000 AF between July 1, 2009 and September 30, 2009 of which it would otherwise receive through surface water diversions. The Sacramento River point of re-diversion is not subject to the “Hodge” condition identified below.

Sacramento Suburban Water District

SSWD proposes to institute a groundwater substitution transfer in which it would forgo receipt of up to 5,000 AF of surface water that it anticipates would be available during July through September 2009 under the 2004 *Wholesale Water Supply Agreement Between the City of Sacramento and Sacramento Suburban Water District* (“Wholesale Agreement”). SSWD would pump groundwater for use by its customers in an amount equivalent to the amount of surface water that it would otherwise receive through the Wholesale Agreement.

The Wholesale Agreement provides for the City to divert and treat surface water at the City’s E.A. Fairbairn Water Treatment Plant and convey the treated surface water to SSWD’s South Service Area through a jointly-owned transmission pipeline when there is adequate flow in the American River. Generally, the Wholesale Agreement specifies that no water shall be delivered to SSWD when the Water Forum diversion restrictions included in the City’s four American River water rights permits are in effect.

If March through November unimpaired inflow is greater than 400,000 AF, then the City of Sacramento’s American River diversion is limited if flow is less than the “Hodge Flow Criteria” as measured at the City of Sacramento’s Fairbairn Water Treatment Plant. The Hodge Flow Criteria are as follows:

- October 15 – February: 2,000 cubic feet per second (cfs);
- March – June: 3,000 cfs; and
- July – October 15: 1,750 cfs.

If flow at the City’s Fairbairn Water Treatment Plant is less than the Hodge Flow Criteria, no water will be delivered to SSWD. Also, if the diversion of water for SSWD would cause the City’s diversions to be restricted because the flow drops below the Hodge Flow Criteria, then SSWD will not receive water. Currently the controlling flow measurement is made at the Fair Oaks gauge on the American River.

SSWD proposes to transfer up to 5,000 AF of Transfer Water to the DWB between July and September 2009. This surface water would otherwise be diverted by the City, treated and delivered to SSWD as part of SSWD’s long-term groundwater management and conjunctive use program. Given SSWD’s secure capacity in the City’s diversion and treatment works, SSWD could otherwise receive this quantity of water during this time period as long as the Hodge Flow Criteria in the American River are met. In 2009, SSWD anticipates being able to receive the 5,000 AF of surface water proposed for transfer to the Drought Water Bank and has approved a 2009 operating budget to purchase this quantity under the Wholesale Agreement. Absent a transfer to the DWB, SSWD would use the budgeted funds to buy the maximum amount of

surface water that it could under the Wholesale Agreement in order to operate its conjunctive use program.

Pursuant to the Wholesale Agreement, SSWD owns “Firm Capacity” in the City’s diversion, treatment and delivery works. “Firm Capacity” is the “capacity in the City Treatment and Transmission Facilities that is available to divert, treat and deliver water to the District on an equal priority to the use of such capacity to meet the demands of the City’s other water supply customers ...”, subject to the Hodge flow restrictions described above. According to the Wholesale Agreement, water diverted and treated for SSWD using Firm Capacity should not exceed the maximum amount of 20 million gallons per day (mgd), and should not exceed the instantaneous flow rate of 13,900 gallons per minute (+10% due to operational variations). Thus, if American River flow is above the Hodge Flow Criteria at Fairbairn WTP, the SSWD can use its Firm Capacity to receive up to 20 mgd.

Given the projected hydrologic conditions and SSWD’s dedicated capacity in the City’s diversion and treatment plants, absent a transfer to the DWB, SSWD would otherwise request that the City divert, treat and deliver 5,000 AF of surface water from the American River during the months of June through September. Because this amount of surface water would not be sufficient to meet all projected customer demands, SSWD also would pump groundwater to meet its total demands during this period. The baseline supply and demand mix is shown in **Table 1**.

Table 1
SSWD Projected Supply Mix Absent DWB Transfer
South Service Area

2009-2010	Surface (af)	Ground (af)	Total (af)
Mar (actual)	-	862	862
Apr (actual)	804	442	1,246
May (actual)	1,252	310	1,561
Jun	200	2,200	2,400
Jul	1,900	600	2,500
Aug	1,900	400	2,300
Sep	1,200	1,000	2,200
Oct	-	1,700	1,700
Nov	-	800	800
Dec	-	700	700
Jan	-	700	700
Feb	-	800	800
Total	7,256	10,514	17,770
Total (Jul-Sept)	5,000	2,000	7,000

Assuming that the transfer of American River surface water to the DWB occurs, SSWD would shift completely to pumping groundwater to supply customer demands during July through September. The South Service Area wells that SSWD will use in its groundwater substitution program are integrated into its water system. SSWD will use those wells to meet demands as

they occur within the South Service Area. SSWD has provided DWR and Reclamation with technical information concerning the wells that will be pumped for the groundwater substitution transfer to the DWB. SSWD will report monthly groundwater production and use to the DWB for each well used in the program. SSWD’s supply and demand projection, as well as the proposed transfer quantity and schedule are shown in **Table 2**.

Table 2
SSWD Projected Supply Mix With DWB Transfer
South Service Area

2009-2010	Surface (af)	Ground (af)	Total (af)	Transfer Quantity (af)
Mar	-	1,000	1,000	-
Apr	-	1,700	1,700	-
May	-	2,100	2,100	-
Jun	-	2,400	2,400	600
Jul	-	2,500	2,500	1,900
Aug	-	2,300	2,300	1,900
Sep	-	2,200	2,200	600
Oct	-	1,700	1,700	-
Nov	-	800	800	-
Dec	-	700	700	-
Jan	-	700	700	-
Feb	-	800	800	-
Total AF	-	18,900	18,900	5,000
Total Jun-Sept /AF	-	9,400	9,400	5,000

Under the Wholesale Agreement, all water diverted from the American River and delivered to SSWD is withdrawn from the lower American River for municipal uses. Water is consumptively used by SSWD’s customers and is generally not returned to the lower American River because any runoff percolates into the groundwater basin or is drained into the sewer or storm drainage systems. Any percolation is irretrievably lost to the Lower American River because there is no hydrogeologic connection between the central portion of the North Area Basin from which SSWD pumps groundwater and the American River. Wastewater captured in the sewer system is collected and conveyed for treatment at the regional wastewater treatment plant operated by Sacramento County. The treated effluent from the County wastewater treatment plant is discharged into the Sacramento River at Freeport.

Recognizing the potential uncertainty associated with projecting American River flows, SSWD’s Drought Water Bank proposal represents its commitment to substitute up to 5,000 AF of groundwater pumping for 5,000 AF of surface supplies from the American River. SSWD recognizes that on days when American River flows would not otherwise be available for SSWD, it is not obtaining credit for transferable water because “new” water would not otherwise be available for transfer. Throughout the proposed transfer period, the City and SSWD will use existing mechanisms to track flows in the American River, including data from the Bureau of Reclamation concerning releases from Folsom Dam and monitoring data from the Fair Oaks gauge on the American River.

Additional information about SSWD's water supply and demand is provided in the accompanying Environmental Information Form.

2a. If the point of diversion/diversion is being changed, are there any person(s) taking water from the stream between the present point of diversion/diversion and the proposed point?

Yes.

2b. Are there any persons taking water from the stream between the present point of diversion or return flow and the proposed point of diversion or return flow?

Yes.

2c. If the answer to 2a. or 2b. is yes, provide the name and address. Also provide the name and address of other persons known to you who may be affected by the proposed change.

The City is the lowermost diverter on the lower American River before it reaches its confluence with the Sacramento River. Although there are other legal users of water between the City's point of diversion and the proposed point of diversion at SWP and CVP Facilities, those users are diverting from the Sacramento River and Delta under riparian, pre-1914 and post-1914 appropriate water rights from those systems. Also, many of the downstream diverters claim riparian and Pre-1914 rights and there is no readily available documentation of those claimed rights. As a result, it is impractical to list all other legal users of water between the City's E.A. Fairbairn Water Treatment Plant and the SWP and CVP Facilities. As explained above, the water withdrawn by the City generally percolates into the groundwater-aquifer, which is not under the influence of the American River, is captured in the storm drainage system or is discharged as treated effluent into the Sacramento River. For all of the above reasons, the water made available by the City and SSWD by foregoing diversions from the lower American for purposes of the proposed temporary transfer will not reduce the supply available to downstream legal users of water. To the extent the proposed transfer will increase flows in the Sacramento River and Delta, any such increase will be tiny relative to overall flows and well within historical flows experienced in those water bodies.

3a. Provide an analysis of any changes in streamflow, water quality, timing of diversion or use, return flows, or effects on legal users resulting from the proposed transfer/exchange.

The amount of change in streamflow, water quality, timing of diversion or use, return flows, and effect on legal users of water will be minimal and will cause no adverse economic, physical, or environmental effects. The transfer of 6,000 AF from the lower American River is a small increment of the water that will be bypassed or released by Reclamation from Folsom Reservoir this year. Downstream of the Fairbairn Water Treatment Plant, the diversion of the Transfer Water will increase the flow in the lower reach of the lower American River and Sacramento River by about the same amount. Once leaving Folsom Reservoir, the 6,000 AF of Transfer

Water, which will be released over several months, will comprise an increasingly miniscule increment of water when compared to the average flows in the lower American River, Sacramento River and the Delta.

As explained below, this transfer involves a very small quantity of water compared to the volumes of water moving through these river systems. The following table is derived from data in Attachment 8 of the related Environmental Information Form submitted with this petition. The table presents the average daily Delta outflow, river flows, and SWP and CVP pumping rates in acre-feet during the period May through October, which will likely constitute the primary portion of the proposed transfer period.

The May – October data provided in this application are the most recent data for the relevant months provided by Reclamation’s Central Valley Operations Office in its monthly reports (available at http://www.usbr.gov/mp/cvo/pub_rpts.html). Furthermore, these data are considered representative of likely conditions in 2009 because both 2007 and 2008 were also dry hydrological years. Also, 2007 and 2008 were years in which the SWP and CVP were subject to restrictions on allowable reverse flows in Old and Middle Rivers, which restricted SWP and CVP Delta pumping in order to prevent “take” of the Delta smelt under the U.S. Endangered Species Act. Similar restrictions on reverse flows and related pumping constraints, imposed by the U.S. Fish and Wildlife Service, will likely apply in 2009 as well. Thus, these data provide the Board with information to review the proposed transfer in light of the potential hydrologic conditions likely to occur during the proposed transfer as required by Water Code § 1727(b)(1).

2007-2008 Average Daily Delta Outflow and Combined SWP/CVP Pumping in Acre-Feet per Day.*

	May	June	July	August	September	October
Lower American River	2,592	6,795	7,464	5,631	3,431	2,636
Sacramento River at Freeport	17,077	21,996	37,753	34,016	31,023	21,253
Delta Inflow	25,614	26,976	41,983	38,261	34,793	25,479
Combined SWP/CVP Pumping	3,945	4,344	22,575	22,298	19,507	14,953
Delta Outflow	17,093	15,300	11,466	8,051	10,726	8,011

* Data from Reclamation operations reports (see text above and Environmental Information Form, pp. 9 – 11 for explanation).

The 6,000 AF of Transfer Water will not be transferred all at once, but will be released from Folsom Reservoir and conveyed across the Delta to the SWP and CVP Facilities over a period of time during the remainder of 2009, all within existing pumping and other regulatory constraints. As indicated from the table above, in comparison to the amount proposed for transfer, much larger volumes of water are expected to move through the lower American and Sacramento Rivers and the Delta. Thus, the transfer of an additional 6,000 AF would increase flows by only a very small amount of the total in any of the water bodies listed and would also cause only a very small increase to SWP and CVP Delta pumping. Thus, while the exact operations required to implement the proposed transfer cannot be stated with precision at this time, the transfer will only negligibly affect streamflows, water quality, timing of diversion or use, return flows, and effect on legal users of water.

The hydrologic systems and project operations affected by this transfer experience wide fluctuations in river stages and pumping operations due to natural events and because of other water project operations such as compliance with D-1641. The data presented represent the low flow and low pumping circumstances that are likely to occur in 2009, but the fact that the river flows and pumping rates are greater in average and wetter years also supports the conclusion that slightly increased flows, with a concomitant increase in SWP and CVP pumping rates, will not significantly or unreasonably affect streamflow, water quality, timing of diversion or use, return flows, or other legal users of water.

Because of the minimal changes in existing conditions, other legal users of water will not be adversely affected by this transfer project. The only effects of this transfer on other legal users of water will be a very slight increase in river flows from the point of diversion on the lower American River to the proposed points of rediversion at the SWP and CVP Facilities. Furthermore, when the Transfer Water is diverted by the SWP and CVP Facilities, DWR and Reclamation will redivert all water in compliance with all existing state and federal regulations, including Decision 1641, State and Federal endangered species acts, all biological opinions and take permits, and existing court orders.

3b. State reasons you believe the proposed temporary change will not injure any legal user of the water, see Water Code Section 1727(b)(1).

No legal user of water will be injured because the proposed transfer of water will only slightly increase, not decrease, streamflows below the City's Fairbairn Water Treatment Plant where the water normally would be diverted. Any such increase will be minor and will not cause any water flows to noticeably increase above normal seasonal levels, or to violate any existing regulatory requirements. The City normally would divert and treat the 6,000 AF of proposed Transfer Water and deliver the treated water to its customers and SSWD for consumptive purposes. Because the City already diverts this amount of water in the lower American River for itself and SSWD and there are no downstream diverters, there would be no impact to legal users in that watershed. Downstream of the confluence of the American and Sacramento Rivers, this quantity of water would not be available to any other legal user of water with or without this proposed transfer. There is no evidence that adding this small increment of water to the lower American and Sacramento Rivers within the range of historical flows would work any injury to a legal user of water.

Although DWR may convey water sold to the Drought Water Bank through SWP or CVP Facilities, it is expected that most water made available to the Drought Water Bank will be conveyed through SWP facilities because of available capacity. A recent DWR analysis shows the availability of pumping capacity at the SWP's Banks Pumping Plant given various hydrological conditions. (See attached Exhibit 1.) According to this data, the SWP has ample conveyance capacity to pump the proposed Transfer Water. Specifically, given DWR's current 2009 SWP allocation of 30% and even with the most restrictive limitations on negative flows in Old and Middle Rivers to protect Delta smelt, DWR's analysis shows that the SWP has capacity to convey up to 500,000 acre-feet of non-project water such as the proposed sale to the DWB of the 6,000 AF of Transfer Water.

4. Consult with staff of the applicable Regional Water Quality Control Board concerning the proposed temporary change. State the name and phone number of person(s) contacted. Summarize their opinion concerning compliance with CCR 794(b) and any Regional Board requirements.

The City and SSWD have not contacted the Regional Board staff, but intend to do so during the review process if Division of Water Rights staff requests it. Similar transfers of water from the American River system have occurred in the past without any adverse change in water quality. The Transfer Water is very high quality runoff derived predominantly from snowmelt and rains falling in largely undeveloped higher elevation portions of the Sierra Nevada. If anything, any minor increase in flows in downstream reaches that could result from this transfer should improve water quality by increasing dissolved oxygen levels and decreasing the concentration of dissolved solids and other constituents of concern in downstream waters.

5a. Consult with the California Department of Fish and Game pursuant to 14 CCR 794(b) concerning the proposed temporary change. State the name and phone number of the person(s) contacted and their opinion concerning the potential effect(s) of the proposed temporary change on fish, wildlife, or other instream beneficial uses, and state any measures recommended for mitigation.

A copy of this petition was sent to the DFG North Central Regional Manager Sandra Morey at 1701 Nimbus Road, Rancho Cordova, CA 95670 Phone: (916) 358-2899, FAX: (916) 358-2899. The City and SSWD have not received DFG's opinion regarding the project, but will provide this information to the appropriate SWRCB staff when available. The City and SSWD expect DFG to indicate that the transfer will not unreasonably affect fish or wildlife resources because very similar transfers have been done in the past with no adverse impacts identified by DFG. In fact, in the past DFG has advocated such transfers as part of the transfer of water to the CAL-FED Environmental Water Account ("EWA"). For example, DFG reviewed a similar transfer from Placer County Water Agency to Westlands Water District in 2008, and did not indicate that instream beneficial uses would be adversely affected.

5b. Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See WC 1707)?

Generally no. The Transfer Water will be consumptively used within the SWP and CVP service areas, most likely for municipal and industrial use. However, DWR may designate some portion

of the water made available to the Drought Water Bank to enhance instream beneficial uses. In addition, the release of Transfer Water at the City's Fairbairn Water Treatment Plant will provide up to 6,000 AF to support additional flows in the lower American and Sacramento Rivers. These increased flows may enhance some biological resources in those reaches of river given the drought conditions affecting California. Additionally, the addition of the Transfer Water into the SWP and CVP Facilities may incrementally improve wetlands, fish and wildlife habitat, or recreational opportunities or aesthetics in San Luis Reservoir or other particular SWP terminal reservoirs.

5c. Provide an analysis of potential effect(s) on fish, wildlife, or other instream beneficial uses which may arise from the proposed change.

As explained in response to Question 5a, the proposed transfer may improve water quality and thereby benefit instream beneficial uses including fish and wildlife resources. There is no evidence that the proposed transfer will negatively affect fish and wildlife or other beneficial instream uses in any unreasonable, significant, or measurable way.

When the Transfer Water is diverted at the SWP and CVP Facilities, all existing state and federal regulations will be complied with, including Decision 1641, State and Federal endangered species acts, all biological opinions and take permits, and any outstanding court orders. Reclamation has agreed to implement all reasonable and prudent alternatives that will be triggered in 2009 contained in the U.S. Fish and Wildlife Service's 2008 Biological Opinion on effects of combined SWP and CVP operations on the Delta smelt. Additionally, there is close monitoring and coordination between DWR, Reclamation, USFWS, and the National Marine Fisheries Service ("NMFS"), and the California Department of Fish and Game ("DFG") regarding the effects of combined project operations on the host of species inhabiting the Delta. This allows the relevant agencies to quickly deal with circumstances as they arise, and to avoid significant impacts to species of special concern (i.e., listed and protected under state or federal laws).

Given the small amount of water involved in this transfer relative to the amount of water in the system and pumped by the projects, it is not expected that any fish species will be adversely affected by the proposed additional flows resulting from the foregone diversions at the City's Fairbairn Water Treatment Plant. Change petitions and transfers have been granted by the SWRCB in the past to support acquisition of water from the American River system by the EWA. For instance, in 2001 the SWRCB issued Order WR 2001-18-DWR, which approved the transfer of 20,000 AF from Placer County Water Agency's Middle Fork Project reservoirs to the California Department of Water Resources to support the EWA. A copy of this order is attached to the Environmental Information Form submitted with this petition. Notably, that order found that because "the water proposed for transfer would temporarily benefit fishery resources by providing increased flows and decreased water temperatures in a critically dry year there is no apparent reason why increased flows during the summer would harm fishery resources." Similar circumstances exist this year, and if the proposed transfer causes any effect on fish, the effect should be the same beneficial effect noted by the SWRCB in Order 2001-18-DWR approving the 2001 transfer.

The transfer period at issue here occurs during a time when delta smelt and longfin smelt are not at high risk of entrainment at the SWP and CVP Facilities because during the July to September period when a majority of the Transfer Water is likely to be conveyed through the Delta, the majority of the populations of both species are further downstream at the confluence of the Sacramento and San Joaquin Rivers or in the Suisun Marsh or Napa River areas, all of which are beyond the zone of influence of the SWP and CVP Facilities. This means that slightly increased SWP or CVP pumping will not have a meaningful effect of populations of these species.

Additionally, salmonid entrainment by the SWP and CVP Facilities is generally low or absent during the summer and early fall months during which time the majority of Transfer Water will be conveyed through the Delta and diverted for export to SWP and CVP water users. This is partially due to the fact that outmigrating smolts have already left the freshwater system by this time, and the projects do not entrain a high number of adult salmonids because they are strong swimmers able to avoid entrainment influences of pumping. This fact, coupled with the fact that any SWP or CVP pumping will only be slightly increased and well within the range of current and past pumping rates, leads to a conclusion that salmonids will not be unreasonably or significantly affected by the proposed transfer.

Other wildlife and plant species in the project area should not be affected by the slight changes in streamflows caused by this transfer.

(See Environmental Information Form for more details.)

5d. State reasons you believe the proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses, see Water Code Section 1727(b)(2).

See response to Question 5c above and the accompanying Environmental Information Form for more details.

6a. Does any agency involved in the proposed transfer/exchange rely upon section 382 of the Water Code to allow the delivery of water outside of the agency's service area?

No. The City holds the water right authorizing diversion and redirection of the Transfer Water, and the City and SSWD have independent legal authority for this transfer under their organic acts. (See City Charter section 10; Water Code sections 31001, 31004 and 31023.)

6b. If yes, provide an analysis of the effect of the proposed transfer/exchange on the overall economy of the area from which the water is being transferred.

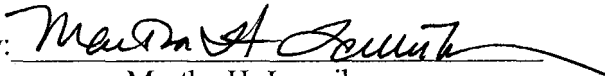
N/A.

TRANSFER/EXCHANGE UNDER WATER CODE SECTION 1725 INVOLVES ONLY THE AMOUNT OF WATER WHICH WOULD HAVE BEEN CONSUMPTIVELY USED OR STORED IN THE ABSENCE OF THE PROPOSED TEMPORARY CHANGE. A CHANGE WILL BE EFFECTIVE FOR A PERIOD OF ONE YEAR OR LESS, BEGINNING ON THE APPROVAL OF THIS PETITION OR ON SUCH DATE OTHERWISE SPECIFIED BY THE SWRCB ORDER. FOLLOWING EXPIRATION OF THIS TEMPORARY CHANGE, ALL RIGHTS AUTOMATICALLY REVERT TO THE PRESENT HOLDER BY OPERATION OF LAW.

We declare under penalty of perjury that the above is true and correct to the best of our knowledge and belief.

Date: June 4, 2009

LENNIHAN LAW, A Professional Corporation
Attorneys for Petitioner City of Sacramento

By: 
Martha H. Lennihan

Date: June 4, 2009

BARTKIEWICZ, KRONICK & SHANAHAN
Attorneys for Co-Petitioner Sacramento Suburban Water
District

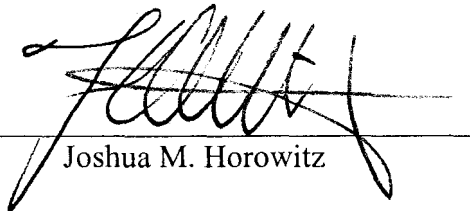
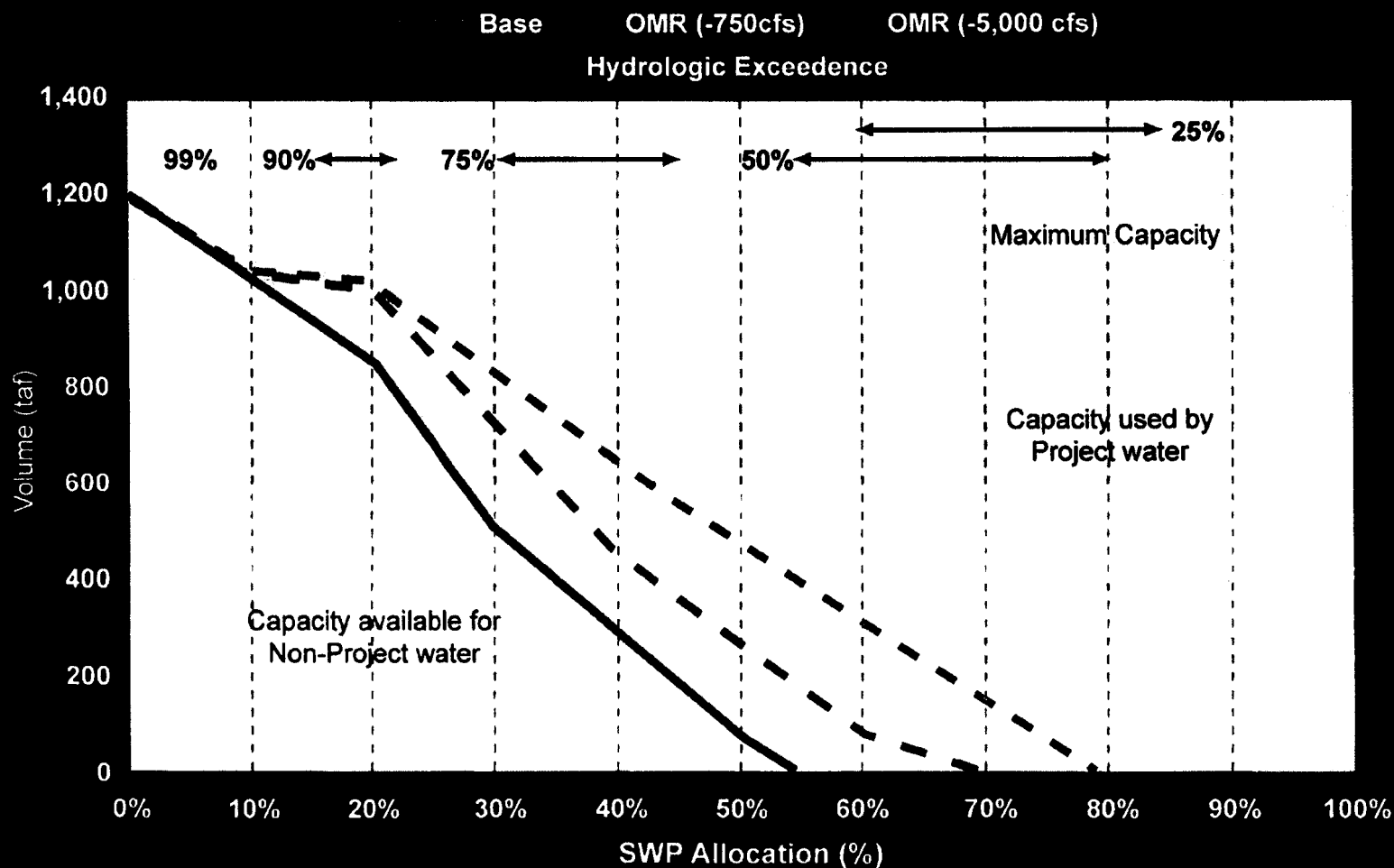
By: 
Joshua M. Horowitz

EXHIBIT 1

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Total Estimated Conveyance Capacity at Banks Between July - September 2009



- * Based on September's Allocation Analysis for 2009 (dated 9/16/2008)
- ** Assumed maximum capacity of 6,680 cfs at Clifton Court Forebay
- *** Capacity may be further reduced up to a maximum of 128 TAF for the CVC Contractors