



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.waterboards.ca.gov/waterrights

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

CORRESPONDENCE 3
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JUL 30 2009

Placer County Water Agency
c/o Hanspeter Walter
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Sacramento Suburban Water District
c/o Joshua Horowitz
Bartkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907

Dear Messrs. Walter and Horowitz:

APPLICATIONS 18085 and 18087 - ORDER APPROVING PETITIONS FOR TEMPORARY CHANGE TO AUTHORIZE THE TRANSFER OF UP TO 6,400 ACRE-FEET OF WATER TO THE 2009 DROUGHT WATER BANK

Enclosed is a copy of the Order approving your petitions for temporary change under Water Code section 1725, et. seq, to authorize the transfer of up to 6,400 acre-feet of water to the 2009 Drought Water Bank. This temporary change is effective immediately and expires on September 30, 2009.

If you have any questions, please contact Greg Wilson, the staff person handling this matter, at (916) 341-5427.

Sincerely,

for James W. Kassel

Leslie F. Grober, Manager
Hearings and Special Programs Section

Enclosure

cc: Enclosed Mailing List

BOARD OF SUPERVISORS
2009 AUG -6 A 11:44

**Interested Party Mailing List for
Applications 18085 & 18087 Order
Approving Temporary Transfer of
6,400 Acre-Feet of Water**

Fresno County Board of
Supervisors
2281 Tulare Street
Hall of Records, Room 301
Fresno, CA 93721-2198

Kern County Board of
Supervisors
1115 Truxton Avenue
Bakersfield, CA 93301

Board of Supervisors
COUNTY OF CONTRA COSTA
651 Pine Street
Martinez, CA 94553

Board of Supervisors
COUNTY OF YOLO
625 Court Street, Room 204
Woodland, CA 95695

San Joaquin County Board of
Supervisors
222 East Weber Avenue
Stockton, CA 95202

Merced County Board of
Supervisors
2222 M Street
Merced, California 95340

Kings County Board of
Supervisors
c/o Ms. Alene Taylor
1400 West Lacey Boulevard
Hanford, CA 93230

Tulare County Board of
Supervisors
2800 West Burrel
Visalia, CA 93291

Madera County Board of
Supervisors
209 West Yosemite Avenue
Madera, CA 93637

Mariposa County Board of
Supervisors
5100 Bullion Street
Mariposa, CA 95338

Board of Supervisors
COUNTY OF BUTTE
25 County Center Drive
Oroville, CA 95965

Stanislaus County Board of
Supervisors
1010 10th Street
Modesto, CA 95354

Board of Supervisors
COUNTY OF SOLANO
601 West Texas Street
Fairfield, CA 94533

Board of Supervisors
COUNTY OF ALAMEDA
1221 Oak
Oakland, CA 94612

Board of Supervisors
COUNTY OF ORANGE
10 Civic Center Plaza
Santa Ana, CA 92666

Board of Supervisors
COUNTY OF SUTTER
1160 Civic Center Blvd.
Yuba City, CA 95993

Board of Supervisors
COUNTY OF RIVERSIDE
4080 Lemon Street
Riverside, CA 92501

San Benito County Board of
Supervisors
481 4th Street
Hollister, CA 95023

Santa Clara County Board of
Supervisors
70 West Hedding Street
10th Floor
San Jose, CA 95110

Board of Supervisors
COUNTY OF SAN DIEGO
1600 Pacific Highway
San Diego, CA 92101

Board of Supervisors
COUNTY OF SACRAMENTO
700 H Street
Sacramento, CA 95814

Board of Supervisors
COUNTY OF LOS ANGELES
500 W. Temple Street
Los Angeles, CA 90012

Board of Supervisors
COUNTY OF SANTA BARBARA
105 East Anapamu Street
Santa Barbara, CA 93101

Board of Supervisors
COUNTY OF SAN LUIS OBISPO
Courthouse Annex, Room 202
San Luis Obispo, CA 93408

Board of Supervisors
COUNTY OF SAN BERNARDINO
385 N. Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415

Teresa Geimer
Drought Water Bank Coordinator
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Board of Supervisors
COUNTY OF SANTA CRUZ
701 Ocean Street
Santa Cruz, CA 95060

Board of Supervisors
COUNTY OF SAN MATEO
Hall of Justice & Records
401 Marshall Street
Redwood City, CA 94063

California Water Impact Network
P.O. Box 148
Quincy, CA 95971

Bob Baiocchi
Executive Director
California Salmon and Steelhead Association
P.O. Box 1790
Graeagle, CA 96103

Board of Supervisors
COUNTY OF VENTURA
800 S. Victoria Ave.
Ventura, CA 93009

Department of Fish and Game
Bay-Delta Region
P.O. Box 47
Yountville, CA 94599

Sacramento Groundwater Authority
5620 Birdcage Street, Suite 180
Citrus Heights, CA 95864

California Sportfishing Protection Alliance
c/o Bill Jennings
3536 Rainier Avenue
Stockton, CA 95204

Regional Water Quality
Control Board
Central Valley Region –
Sacramento Office
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Tully & Young, Inc.
3600 American River Drive, Suite 260
Sacramento, CA ~~9564~~ 95864

California Sportfishing Protection Alliance
c/o Michael Jackson
P.O. Box 207
429 West Main Street
Quincy, CA 95971

Regional Water Quality
Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Department of Fish and Game
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123

California Sportfishing Protection Alliance
c/o Chris Shutes
1608 Francisco Street
Berkeley, CA 94703

Department of Fish and Game
Inland Deserts Region
3602 Inland Empire Boulevard,
Suite C-220
Ontario, CA 91764

Department of Fish and Game
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670

Regional Water Quality
Control Board
Central Valley Region –
Fresno Office
1685 E Street
Fresno, CA 93706

Department of Fish and Game
Central Region
1234 E. Shaw Avenue
Fresno, CA 93710

Regional Water Quality
Control Board
Colorado River Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Department of Fish and Game
Resources Management
and Policy Division
c/o Paul Forsberg
830 S Street
Sacramento, CA 95811

Regional Water Quality
Control Board
Los Angeles Region
320 W. Fourth Street, Suite 200
Los Angeles, CA 90013

Regional Water Quality
Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Regional Water Quality
Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

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

DIVISION OF WATER RIGHTS

ORDER WR 2009-0053-DWR

**IN THE MATTER OF PERMITS 13856 AND 13858 (APPLICATIONS 18085 AND 18087)
PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 6,400 ACRE FEET OF WATER
FROM PLACER COUNTY WATER AGENCY AND
SACRAMENTO SUBURBAN WATER DISTRICT
TO THE 2009 DROUGHT WATER BANK
ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

**ORDER AUTHORIZING TEMPORARY CHANGE IN POINTS OF REDIVERSION,
PLACE OF USE, AND PURPOSE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITIONS

On May 18, 2009,

Placer County Water Agency
c/o Hanspeter Walter
Kronick, Moskovitz, Tiedemann & Girard
400 Capital Mall, 27th Floor
Sacramento, CA 95814

and

Sacramento Suburban Water District
c/o Joshua Horowitz
Barkiewicz, Kronick & Shanahan
1011 22nd Street
Sacramento, CA 95816-4907

filed with the State Water Resources Control Board (State Water Board) two Petitions for Temporary Change under Water Code section 1725, et seq. Pursuant to the petitions, Placer County Water Agency (PCWA) and co-petitioner Sacramento Suburban Water District (SSWD) seek to transfer up to 12,000 acre-feet (af)¹ of water to the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). PCWA owns and operates the Middle Fork Project and holds water rights for that project subject to Permits 13856 and 13858 (Applications 18085 and 18087). Pursuant to a long-term water service contract, PCWA would, in the absence of the transfer, deliver up to 12,000 af of water to its co-petitioner SSWD in 2009. SSWD proposes to forego delivery of this quantity of surface water and to transfer its entitlement to the DWR 2009 DWB for use within the service areas of the State Water Project (SWP) and the Central

¹ The petitioners originally requested a transfer total of 12,000 af but later reduced the amount to 6,400 af.

Valley Project (CVP). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer. PCWA proposes to transfer up to 6,400 af of water currently stored in its Middle Fork Project Reservoirs under Permits 13856 and 13858 (Applications 18085 and 18087) to the DWR 2009 DWB. The petitions request that transfer water be authorized for release from the effective date of this Order through December 31, 2009; however, the petitions state that the water is most likely to be released during the months of July, August, and September 2009. Water will be released to the Rubicon and Middle Fork American Rivers and temporarily stored in Folsom Reservoir. The transfer water would then be available for release to the Lower American River thence the Sacramento River to the Delta for export to the SWP and CVP service areas. Due to the additional amount of export pumping associated with this transfer, additional Delta inflow will be required to maintain water quality objectives within the Delta. Accordingly, a portion of the transfer water (typically referred to as "carriage water") will be used for salinity control, fish and wildlife enhancement, and water quality control. DWR plans to coordinate with the U.S. Bureau of Reclamation (USBR) in order to provide operational flexibility to first store the transfer water in Folsom Reservoir before its conveyance through the Delta. Additionally, DWR and USBR will coordinate SWP and CVP operations to convey the transfer water through the Delta.

To provide the 6,400 af of transfer water, PCWA would deliver surface water in Folsom Reservoir that normally would be rediverted by SSWD for treatment at the San Juan Water District's Petersen Treatment Plant and then conveyed through the San Juan Cooperative Transmission Pipeline into SSWD's North Service Area water system for distribution to and consumption by SSWD's retail customers. Because of limitations in PCWA's place of use, any surface water that it supplies may only be used in SSWD's North Service Area. SSWD has supplied its North Service Area retail customers with treated PCWA surface water in lieu of pumped groundwater, which was SSWD's traditional source of supply. In 2007, however, limited PCWA surface water was available. SSWD received only 4,163 af of surface water that year and pumped a total of 13,962 af of groundwater in the June through September 2007 period. The amount of 2007 groundwater pumping and use is comparable to the amounts of groundwater pumping and use in SSWD during the June through September period prior to 1998. The petition states that SSWD has the capacity to produce a sufficient amount of groundwater to meet demands in its North Service Area during the July through September period when it anticipates transferring its PCWA surface water to the DWB. DWR and USBR will verify the amount of transfer water delivered based on the amount of groundwater produced by SSWD during the period the transfer water is delivered to the DWB, less a 12% depletion factor.

In the absence of this transfer, up to 6,400 af of the subject water would be used within SSWD's service area.

1.2 2009 Drought Water Bank. In response to Governor Schwarzenegger's June 4, 2008 Executive Order, DWR initiated the DWB in the summer of 2008 to help alleviate drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. DWB transfers will occur between July 1 and September 30, 2009. The amount of water each prospective purchaser will buy is still being negotiated, however the most recent information is available online with this Order at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/

DWR and the United States Bureau of Reclamation (USBR) have reviewed all the proposals for DWB transfers. Following this review, DWR entered into an agreement with SSWD, titled *Agreement Between the Department of Water Resources of the State of California and Sacramento Suburban Water District for Short-Term Purchase of Water for the 2009 Drought Water Bank* (Agreement) for the transfer of water pursuant to this temporary change. The Agreement includes a 12% 'depletion loss' to protect the SWP and CVP from injury associated with the transfer. Transfer releases will be measured at the PCWA's

Middle Fork Project Reservoirs. Pursuant to the Agreement, PCWA will release 6,400 af from Middle Fork Project Reservoirs on the same pattern as otherwise would have been delivered to its co-petitioner SSWD absent the transfer. PCWA will receive credit from DWR for the release of 6,400 af of water. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within SSWD.

Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>

1.3 Other Agency Consultation. Prior to submitting the petitions to the State Water Board the petitioner submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change.

2.0 BACKGROUND

2.1 Middle Fork Project. PCWA owns and operates the Middle Fork Project (located within the upper American River watershed) which consists of the French Meadows and Hell Hole Reservoirs, with combined storage capacity of approximately 342,000 af, and associated canals, pipelines, powerhouses and regulating reservoirs. French Meadows Reservoir is located on the Middle Fork American River and Hell Hole Reservoir is located on the Rubicon River (which is tributary to the Middle Fork American River). PCWA's Federal Energy Regulatory Commission (FERC) licenses require PCWA to maintain minimum instream flows in the Middle Fork American River and Rubicon River (below both reservoirs) based on the season and water year type. Water stored in French Meadows Reservoir may be pumped via underground pipeline to Hell Hole Reservoir and, during normal operations, PCWA uses Hell Hole Reservoir as the release point for most of the water it uses for power generation and its authorized consumptive uses.

2.2 Substance of PCWA's Permits. Permits 13856 and 13858 (Applications 18085 and 18087), issued on January 10, 1963, authorize PCWA to divert to storage up to a maximum of 133,700 af per year (afa) in French Meadows Reservoir and up to 208,400 afa in Hell Hole Reservoir. These permits also authorize the direct diversion of up to a total of 2,025 cfs between November 1 of each year and July 1 of the succeeding year. The authorized purposes of use under Permits 13856 and 13858 are irrigation, municipal, industrial, recreation and incidental domestic and the place of use is shown on PCWA's map set dated July 31, 1996.

PCWA also holds Permits 13855 and 13857 (Applications 18084 and 18086), issued on January 10, 1963. These permits authorize similar direct diversion and storage totals and locations as Permits 13856 and 13858; however, these permits are for non-consumptive uses (i.e., power generation and recreation). Accordingly, Permits 13855 and 13857 are not included in the petitions for temporary change.

2.3 Proposed Temporary Changes. The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of rediversion under Permits 13856 and 13858. Folsom Reservoir would be added as an alternate point of rediversion under Permits 13856 and 13858. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and the CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use under Permits 13856 and 13858. For purposes of meeting carriage water requirements and conforming to the CVP's purposes of use, salinity control, fish and wildlife enhancement, water quality control, domestic, and stockwatering would be temporarily added as purposes of use under Permits 13856 and 13858.

2.4 Water Quality Requirements. In Revised Decision 1641 (D-1641) the State Water Board added the requirement to meet water quality objectives for the protection of municipal and industrial, agricultural, and fish and wildlife beneficial uses, including salinity objectives at three southern Delta locations, to the SWP and CVP water rights. In order to maintain consistency in pumping requirements,

petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP may be conditioned with compliance with all the objectives contained in Tables 1, 2, and 3 located on pages 181 to 187 of D-1641.

Additionally, in D-1641 the State Water Board authorized DWR and USBR to use each other's Delta points of diversion, also referred to as joint points of diversion (JPOD) operations, subject to certain conditions. One of the conditions of approval was the requirement that the SWP and CVP meet all other provisions of their permits to perform JPOD operations. Other conditions include adherence to response plans intended to protect other legal users of water from water level and water quality impacts, and an operations plan to protect fish, wildlife, and other legal users of water. Petitions for temporary change (such as the subject petition) which add either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP, are not considered JPOD operations. However, the potential impacts to other legal users of water and to fish, wildlife, and other instream beneficial uses associated with adding either the Banks Pumping Plant or the Jones Pumping Plant as points of diversion/rediversion to water rights other than those of the SWP or CVP are similar to the impacts of JPOD operations. As such, the orders approving these petitions include conditions similar to those required of JPOD operations.

Computer modeling of salinity in the southern Delta for the period from May 10 through September 27, 2009 predicts that southern Delta salinity will be very close to the values contained in Table 2 of D-1641. Modeling also indicates that increased pumping necessary to effectuate water transfers this summer, including the subject transfer, will not adversely affect salinity in the southern Delta. One limitation of the model is that it tends to underestimate the measured salinity because it does not accurately represent local discharges in the southern Delta. Despite its tendency to under-predict southern Delta salinity, however, the modeling presented is currently the best tool available to predict the real-time effects of Delta export pumping on water levels and water quality in the southern Delta.

Over the long-term, the delivery of exported Delta water to the San Joaquin Valley has the potential to increase the salinity of agricultural drainage to the San Joaquin River, resulting in increased salinity within the southern Delta. The list of potential buyers for DWB water includes the San-Luis and Delta Mendota Water Authority (Authority). Some areas within the Authority have been shown to drain directly to the San Joaquin River. The total amount of DWB water (which includes transfers other than the subject transfer) intended for delivery to the Authority (including conveyance losses) is approximately 24,000 af. Due to dry conditions and springtime Delta pumping restrictions, the total amount of water exported from the Delta (including transfers) during 2009 is expected to be about 70% of the average amount of water exported for the years 2000 through 2008. Given the significant reduction in deliveries of exported Delta water this year (including transfers) as compared to the average deliveries from 2000 through 2008, the additional deliveries of Delta water pursuant to the DWB will not result in significant long-term increases in southern Delta salinity above what would be expected to occur with average amounts of water exported from the Delta.

If the actual salinity at any of the three southern Delta compliance locations were to exceed the values contained in D-1641, rediversion of water at either the Banks Pumping Plant or the Jones Pumping Plant in order to implement this transfer would be prohibited unless an exception is included in this Order. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petition for temporary change (dated June 4, 2009) was provided via regular mail to interested parties and by publication in the Sacramento Bee on June 6, 2009. The California Salmon and Steelhead Association (CSSA), the California Water Impact Network (CWIN), the California Sportfishing Protection Alliance (CSPA), and Sacramento Groundwater Authority (SGA) submitted timely comments regarding the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Salmon and Steelhead Association. CSSA requested the delay of the petition until the Placer County Water Agency, Sacramento Suburban Water District, and the Department of Water Resources consult with the US NOAA Fisheries and comply fully with the recent Biological Opinion and the federal ESA, and prevent any future losses to endangered salmon, threatened steelhead, striped bass, and other fish species.

State Water Board Response:

The computer modeling used in both the Delta Smelt and Salmon Biological Opinions assumed water transfers occurring during the July through September time period. Accordingly, this Order limits rediversion of water at the Banks Pumping Plant and Jones Pumping Plants to the July through September time period. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations. Rediversion of water at the Banks Pumping Plant and Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Finally, DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change.

3.2 Comments of the California Water Impact Network. CWIN requested the withdrawal of the petition based on the following:

- a. The petition relies upon a categorical exemption prepared by the DWB. The exemption is illegal and the environmental documentation is inadequate.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer would adversely affect listed species dependent on Delta waters as critical habitat.

State Water Board Responses:

- a. Temporary changes pursuant to sections 1725 through 1732 are exempt from CEQA requirements. (Wat. Code, § 1729.) Accordingly, the State Water Board need not reach the issue of whether the transfer also may be exempt pursuant to the Governor's February 27, 2009 Drought Emergency Proclamation and the statutory exemptions for emergency projects contained in CEQA.

- b. The petition requests the addition of the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal as points of diversion and the addition of the SWP and CVP as places of use to Permits 13856 and 13858. Nothing in the Water Code precludes these changes simply because they entail the use of both SWP and CVP facilities.
- c. The "cap" on cross-Delta transfers contained in Order 2009-0033 applies to DWB transfers of water appropriated pursuant to SWP or CVP water rights. This cap does not apply to DWB transfers of water appropriated under water rights held by parties other than the SWP and CVP.
- d. DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations. There is no evidence that the proposed transfer, subject to these conditions, will adversely affect fishery resources or water quality.

3.3 Comments of the California Sportfishing Protection Alliance. CSPA requested the withdrawal of the petition based on the following:

- a. The petition requests a temporary urgency change based on the Governor's declaration of drought conditions. The declaration is based on conditions that are perennial and thus avoidable conditions occasioned by poor management choices. For this and other reasons, the DWB exemption from the California Environmental Quality Act (CEQA) is without legal basis. Additionally, the DWB is relying on "an improper [Environmental Impact Statement/Environmental Impact Report] and an uncertified and improper supplemental [Environmental Impact Statement/Environmental Impact Report] for the Environmental Water Account" and thus is contrary to law.
- b. The petition requests the addition of the points of diversion of both the SWP and CVP. There is no legislative authorization for this 'consolidation', therefore it is illegal.
- c. The proposed transfer quantities exceed the cap on cross-Delta Drought Water Bank transfers contained in State Water Board Order 2009-0033.
- d. The proposed transfer, in combination with other DWB transfers, will adversely affect Delta pelagic fish (notably Delta smelt) and other listed species such as Central Valley Chinook salmon (both spring- and winter-run), and steelhead. The additional pumping associated with the DWB transfers has the potential to impact water quality and adversely affect pelagic fishes and migrating anadromous salmonids through increased entrainment.

State Water Board Responses:

- a. The subject petition was filed pursuant to Water Code section 1725 (Temporary Changes), and not Water Code section 1435 (Temporary Urgency Changes), as alleged by CSPA. Temporary changes pursuant to Water Code sections 1725 through 1732 are exempt from the requirements of CEQA. (Wat. Code, § 1729.) Accordingly, the State Water Board need not reach the issue of whether the transfer also may be exempt pursuant to the Governor's February 27, 2009 Drought

Emergency Proclamation and the statutory exemptions for emergency projects contained in CEQA.

- b. See the State Water Board response to CWIN in 3.2b., above.
- c. See the State Water Board response to CWIN in 3.2c., above.
- d. See the State Water Board response to CWIN in 3.2d., above.

3.4 Comments of the Sacramento Groundwater Authority. SGA supports the petition based on the following:

- a. SSWD's proposed water transfer is consistent with SGA's long-term groundwater management objectives, which require members to use surface and groundwater conjunctively to enhance water supply reliability and to improve the health and long-term sustainability of the North Area Basin. SSWD's proposal is not expected to harm other groundwater pumpers or the North Area Basin because any additional pumping for the transfer will not cause overall pumping in the North Area Basin to exceed its sustainable safe yield. The expected lack of impacts is due in part to the significant investment SSWD has made to conjunctively managing its water resources and its participation in and support of SGA's efforts to effectively manage the North Area Basin.
- b. SGA believes that the State Water Board should encourage creative water management solutions such as SSWD's conjunctive use program by approving the proposed transfer. The State Water Board's approval of SSWD's temporary transfer petitions will make surface water available during a time of critical water shortage in other regions of the state, which furthers the objectives stated in the Governor's February 27, 2009 drought emergency proclamation. Its approval also will encourage and reward SSWD's and other agencies' efforts to efficiently and cost-effectively manage groundwater resources not only in the North Area Basin, but throughout California.

State Water Board Response: The State Water Board thanks the SGA for its comments.

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 or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "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." The water proposed for transfer consists of surface water released from Middle Fork Project Reservoirs made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR has reviewed the transfer proposal and associated groundwater pumping and determined that 12% of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 88% of the surface water released from Middle Fork Project Reservoirs as a result of this transfer.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed 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 article 1 of 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).) DWR and USBR have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in Sections 1.1 and 1.2 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. The Agreement also includes mitigation and monitoring plans to address the impacts of additional groundwater pumping within SSWD as a result of this transfer. This Order requires compliance with these plans.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Jones Pumping Plant as a point of rediversion to Permits 13856 and 13858. Since the pumping associated with this transfer will not adversely affect salinity in the southern Delta in the short-term, and will not adversely affect salinity in the long-term above what is expected to occur with average export amounts, this Order does not require compliance with the salinity objectives in the southern Delta.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires groundwater use that is part of a groundwater substitution transfer be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

DFG was provided a copy of the subject petition and did not submit comments or concerns regarding the temporary change. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of DWR and USBR set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR (with the exception for southern Delta salinity noted above). Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions, including the Delta Smelt Biological Opinion and the Salmon Biological Opinion, and any court orders applicable to these operations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect 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.
- 3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
- 4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary change in the place of use under Permits 13856 and 13858 (Applications 18085 and 18087) of the Placer County Water Agency (PCWA) and co-petitioner Sacramento Suburban Water District (SSWD) for the transfer of up to 6,400 acre-feet (af) of water are approved.

All existing terms and conditions of Permits 13856 and 13858 remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on the effective date of this Order and continuing through September 30, 2009.
2. Petitioners shall implement the monitoring and mitigation plans contained in Exhibit E of the *Agreement Between the Department of Water Resources of the State of California and Sacramento Suburban Water District for Short-Term Purchase of Water for the 2009 Drought Water Bank* (Agreement) as a condition of transferring water pursuant to this Order.
3. PCWA shall release water from Middle Fork Project Reservoirs on the same pattern as otherwise would have been delivered to its co-petitioner, SSWD absent the transfer. SSWD shall not take delivery of the water released for purposes of the transfer. The amount of water transferred pursuant to this Order shall not exceed 88% (eighty-eight percent) of the rate of releases for the transfer from Middle Fork Project Reservoirs.
4. The place of use under Permits 13856 and 13858 is temporarily expanded to include the service areas of the State Water Project (SWP) as shown on Maps 1878-1, 2, 3 & 4 on file with Application 5629 and the Central Valley Project (CVP) as shown on Map 214-208-12581 on file with Application 5626.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal are temporarily added as authorized points of rediversion under Permits 13856 and 13858. Folsom Reservoir is added as an additional point of rediversion under Permits 13856 and 13858.

Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (USBR) set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR, with the exception of the three interior southern Delta salinity compliance locations.

Rediversion of water at either the Barker Slough Pumping Plant or the Contra Costa Canal is subject to compliance by the pumping plant operators with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

6. Domestic, salinity control, fish and wildlife enhancement, water quality control, and stockwatering are temporarily added as purposes of use under Permits 13856 and 13858.
7. Within 60 days of the completion of the transfer, SSWD shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer at the Middle Fork Project Reservoirs pursuant to this Order; and
 - c. The daily average pumping rate of groundwater pumped by SSWD in excess of that which would have been pumped in the absence of this transfer; and
 - d. Groundwater elevations within the vicinity of SSWD prior to the proposed transfer, as required by Exhibit E of the Agreement.

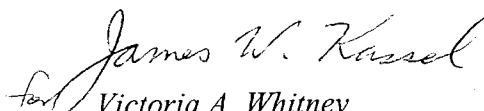
SSWD shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2010, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

8. 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.

9. 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 and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, 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.
10. 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


Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUL 30 2009**