

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

DIVISION OF WATER RIGHTS

IN THE MATTER OF LICENSE 1986 AND PERMITS 11885, 11886, 12721, 11967, 11887, 12722,
12723, 12725, 12726, 12727, 11315, 11316,
11968, 11969, 11970, 12860, 11971, 11972, 11973 AND 12364
(APPLICATIONS 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9366, 9367, 9368, 13370, 13371,
15374, 15375, 15376, 15764, 16767, 16768, 17374, AND 17376)
OF U.S. BUREAU OF RECLAMATION

AND PERMIT 16479 (APPLICATION 14443) OF DEPARTMENT OF WATER RESOURCES

**PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 196,000 ACRE-FEET OF WATER**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITIONS

1.1 Description of the Transfer. On May 1, 2013, the U.S. Bureau of Reclamation (Reclamation) and the Department of Water Resources (DWR) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), Petitions for Temporary Change under Water Code Section 1725, et seq.

With the petitions, Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 and DWR requests a one-year modification of Permit 16479 to temporarily change the authorized place of use of (1) the Reclamation license and permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks); and (2) the DWR permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones). The maximum total transfer quantity will be 196,000 acre-feet (af). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

2013 Water Supply Conditions

Water supply conditions are currently classified as "Dry" for the Sacramento River basin and "Critical" for the San Joaquin River basin. The dry conditions in 2013 to date have resulted in allocations of 35 percent of contract Table A amounts to the SWP contractors and only 20 percent of contract amounts to CVP agricultural contractors south of Jones.

In addition to annual hydrology conditions, the ability of DWR and Reclamation to deliver Project water south of the Sacramento-San Joaquin Delta (Delta) is affected by operational restrictions which limit diversions from the Delta. The operational restrictions include those contained in State Water Board Decision 1641 (D1641) as well as the current biological opinions issued for the protection of Delta smelt and anadromous fish and marine mammal species. Operational limitations severely restrict Project exports through June, impacting the ability of the Projects to capture excess spring flows and move water from upstream storage to contractors south of the Delta.

Changes Proposed Under the Transfer

The petitions will further the following list of projects:

- a. CVP-SWP Exchange under a Consolidated Place of Use Petition to Facilitate Conveyance of Water to Santa Clara Valley Water District

Santa Clara Valley Water District (SCVWD) contracts for a water supply from both the CVP (delivered from San Luis Reservoir through the San Felipe Division) and the SWP (delivered via the South Bay Aqueduct (SBA)). Based on projected operating conditions for 2013, total storage in San Luis Reservoir may drop to levels which can result in impaired water quality, potentially causing reductions in CVP supplies available through the San Felipe Division. Further, aging infrastructure in the San Felipe Division could result in both planned and unplanned facility shutdowns for maintenance and repair. In 2013, there are several operational and maintenance issues that may require delivery of the SCVWD's CVP or SWP supplies through an exchange. Up to 40,000 af of the SCVWD's CVP and/or SWP supplies may be subject to these alternative conveyance approaches.

When SCVWD's pumping capacity through the San Felipe Division is limited, meeting district water demands can be impacted, necessitating the request to transfer SCVWD's CVP water through an exchange with the SWP. The proposed transfer includes an exchange of CVP and SWP water to allow SCVWD's CVP water to be pumped at Jones and delivered to DWR at O'Neill Forebay for use within the SWP service area south of O'Neill, and in exchange, an equal amount of SWP water would be pumped at Banks and delivered to SCVWD through the SBA.

In addition, planned and unplanned shutdowns on the SBA as well as within SCVWD's service area may prevent deliveries of SWP water through the SBA. Reclamation and DWR propose an exchange of CVP and SWP water to allow the delivery of SCVWD's SWP through an exchange with CVP. SWP water will be pumped at Banks and delivered to the CVP at O'Neill Forebay for use within the CVP service area south of O'Neill. In exchange, an equal amount of CVP water will be pumped at Jones Pumping Plant and delivered to SCVWD through the San Felipe Division.

The proposed exchanges would not increase the total amount of CVP or SWP water allocated to SCVWD by DWR or Reclamation.

- b. Oak Flat Water District/Del Puerto Water District Exchange

Oak Flat Water District (Oak Flat), an SWP contractor, and Del Puerto Water District (Del Puerto), a CVP contractor, are adjacent districts located north of San Luis Reservoir in San Joaquin, Stanislaus and Merced Counties. The districts share common landowners with water supply allocations from both projects. These landowners have requested the ability to optimize the application of available supplies on their combined properties. The proposed exchange would allow 1) the delivery of 1,000 af of the landowners' allocated CVP supplies through SWP turnouts on the California Aqueduct to lands within Del Puerto; 2) delivery of a portion of their allocated CVP supply to lands within Oak Flat; and 3) delivery of a portion of their allocated SWP supplies through CVP turnouts on the Delta Mendota Canal to lands within Del Puerto.

In addition to the transfer described above, Oak Flat and Del Puerto propose an even exchange to affect the delivery of up to 2,000 af of Del Puerto's 2013 CVP allocation. A portion of the lands within Del Puerto adjacent to Oak Flat are more efficiently served from Oak Flat's turnouts on the California Aqueduct. Del Puerto proposes to deliver a portion of its 2013 CVP allocation to the lands adjacent to Oak Flat through an even exchange with the SWP. Up to 2,000 af of SWP water will be delivered through the Oak Flat turnouts on the California Aqueduct. An equal amount of CVP water will be delivered to the SWP at O'Neill Forebay. The proposed exchanges will not result in any increase in pumping from the Delta by either the SWP or CVP, and will result in no increase in total SWP or CVP allocations to either district.

c. Kern County Water Agency – Kern Tulare Water District Exchange

Kern County Water Agency (KCWA) is an SWP contractor with numerous member units within Kern County. Kern Tulare Water District (Kern Tulare) is a CVP contractor located in Kern County with a contract for water delivered through the Cross Valley Canal (CVC). Due to limited capacity at Jones, conveyance of CVP-CVC water through SWP facilities is often required to provide deliveries to the CVC contractors. As a result of projected hydrologic conditions and anticipated operational restrictions, it is possible there will be no capacity to move CVC water through Jones or Banks until fall 2013. In order to assist Kern Tulare in meeting peak irrigation demands this summer, KCWA will deliver up to 16,000 af of SWP water to Kern Tulare through the summer months. In exchange, Kern Tulare will deliver an equivalent amount of CVP-CVC water to KCWA in the fall.

d. Castaic Lake Water Agency – San Luis Water District

Castaic Lake Water Agency (CLWA), an SWP contractor, entered in to a long-term water banking and exchange program with Rosedale-Rio Bravo Water Storage District (RRBWSD) to store up to 100,000 af of its SWP contract supply in the RRBWSD Water Banking and Recovery Program. CLWA also entered into a long-term agreement with Buena Vista Water Storage District (BVWSD) for the purchase of up to 11,000 af per year of Kern River water appropriated under BVWSD's pre-1914 water rights to high flows on the Kern River. The high flow Kern River water is diverted and placed in groundwater storage for later extraction. The pre-1914 water purchased by CLWA is stored in its share of the RRBWSD banking and storage program. CLWA is proposing to transfer up to 11,000 af of its purchased pre-1914 water to San Luis Water District (SLWD). The transfer would be accomplished by exchange. CLWA will provide up to 11,000 af of its 2013 SWP supply to SLWD. CLWA will retain up to 11,000 af of pre-1914 water in its portion of the RRBWSD program.

e. Arvin-Edison Water Storage District/Metropolitan Water District Program

Groundwater Banking

Metropolitan Water District of Southern California (Metropolitan) stores a portion of its SWP supply in CVP contractor Arvin-Edison Water Storage District's (AEWSD) groundwater banking facilities depending on annual allocations. If requested, AEWSD is obligated to return previously banked SWP water to Metropolitan. In the absence of this proposed exchange, previously banked SWP water can only be recovered from the AEWSD banking facilities through groundwater extraction. The expansion of the CVP place of use will allow AEWSD the option and flexibility to return Metropolitan's banked water through an exchange of its available CVP Delta/San Luis Reservoir, or Friant surface supplies (CVP water). The exchange will allow AEWSD greater flexibility in the scheduling and use of its CVP supplies as well as a reduction in energy and costs associated with groundwater extraction. CVP water supplied to Metropolitan by AEWSD in lieu of extraction to recover previously stored SWP water will result in a balanced exchange or one-for-one reduction of Metropolitan's groundwater banking account with AEWSD. The exchange will occur only to the extent Metropolitan has a positive bank account. Upon return of water to Metropolitan, Metropolitan's previously banked SWP water would transfer to AEWSD.

Regulation Program

Additionally, the requested change in consolidated place of use would allow AEWSD to deliver CVP water supplies to Metropolitan first and receive back SWP water supplies in exchange at a later time. This program better facilitates the use of AEWSD CVP water supplies that have a limited opportunity for use under current CVP operations. The ability to regulate water in this manner reduces the need to directly recharge and subsequently extract supplemental water on a one-for-one basis.

Fall/Winter Supplies Exchange

In the event that hydrologic conditions become wetter than expected later in the year (2013 fall or 2013/2014 winter), and AEWS D believes that there may be limited ability to carry over 2013 CVP supplies in CVP reservoirs, AEWS D CVP water supplies would be delivered to Metropolitan to reduce risk of spill and subsequent potential loss of water supplies. The CVP water will be delivered to Metropolitan by exchange in San Luis Reservoir or directly into the California Aqueduct via the Friant Kern Canal and AEWS D facilities. Metropolitan would later return a lesser amount (return 2 af for every 3 af regulated) to AEWS D. The unbalanced nature of the exchange reflects the compensation to Metropolitan for its water management services, which would protect a portion of the water from spilling. In the absence of the exchange with Metropolitan, AEWS D would attempt to avoid spilling the water by delivering the available CVP contract supplies to groundwater banking programs within the AEWS D service area or other areas that are within the CVP place of use.

One of the benefits of the above exchanges is reduction of the impacts to AEWS D of the San Joaquin River Restoration Program (SJRRP). The exchanges increase AEWS D's ability to efficiently use water supplies and increase the opportunities to complete the return of SJRRP releases to AEWS D.

The proposed exchanges total up to 100,000 af of CVP water supplies for all three programs described above. CVP Delta supplies will be provided as stated above. Friant Division CVP water will be provided directly via delivery from the Friant-Kern Canal and AEWS D's distribution system, including its connections to the California Aqueduct at Milepost 227 (Reach 14C) or via its capacity in the Cross Valley Canal to the California Aqueduct at Tupman/Milepost 238 (Reach 12E).

f. Kern County Water Agency to Westlands

KCWA proposes to deliver up to 10,000 af of its 2013 SWP allocation to land within Westlands Water District (Westlands) to facilitate the delivery of previously stored CVP water in the Semitropic Water Storage District (Semitropic) groundwater banking program. Two landowners, Paramount Farming Company and Poso Creek Water Company, have agricultural operations in both KCWA and Westlands and have both a SWP and CVP contract supply. The landowners have banked CVP water in the Semitropic program. The landowners plan to recover up to 10,000 af of their previously stored CVP water. Delivery of the CVP water currently stored in Semitropic will be accomplished through exchange. KCWA will deliver up to 10,000 af of SWP water to Westlands turnouts on the joint use facilities. An equivalent amount of the landowners' water stored in Semitropic will be transferred to KCWA.

g. Kern County Water Agency to Westlands – Kern River Water

KCWA proposed to deliver up to 16,000 af of its 2013 SWP allocation to Westlands to facilitate the delivery of Kern River water rights water purchased by Westlands. Up to 7,600 af of Nickel Kern River water rights previously stored in Semitropic along with up to 8,400 af of 2013 Kern River water will be assigned to KCWA. The exchange will be a one for one exchange. The KCWA SWP Table A water will be delivered to Westlands turnouts in Reaches 4-7 of the joint-use San Luis Canal.

2.0 BACKGROUND

2.1 Existing Place of Use

The service areas of the SWP is shown on maps 1878-1, 1878-2, 1878-3, and 1878-4 (on file under Application 5629) and the service areas of the CVP is shown on map 214-208-12581 (on file under Application 5626).

2.2 Place of Use under the Proposed Transfer

The petitioners request the temporary addition of the CVP service area downstream of Jones to the place of use under DWR's Permit 16479. The petitioners also request the temporary addition of the SWP service area downstream of Banks to the place of use under Reclamation license and permits noted above. These temporary additions would be for the purpose of completing the transfers/exchanges described above and would be effective from the date the petitions are approved for a period of one year. The areas to be added to the SWP are shown on Map 214-202-83 and the areas added to CVP are shown on Map 214-202-84 on file with the State Water Board under Applications 14443 and 5626, respectively.

2.3 Governor's 2013 Executive Order to Streamline Approvals for Water Transfers

On May 20, 2013, Governor Edmund G. Brown Jr. issued Executive Order B-21-13 to streamline approvals for water transfers to address the dry conditions and water delivery limitations in 2013 to protect California's agriculture. The Governor's Order directs the State Water Board and DWR to expedite the review and processing of temporary transfers for 2013 (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

3.0 LEGAL REQUIREMENTS FOR TEMPORARY TRANSFERS

Temporary change petitions receive approval where the water 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, would not injure any legal user of water, and would not unreasonably affect fish, wildlife or other instream beneficial uses." (Wat. Code, §§ 1725, 1727.) Contractors are "legal users of water" for purposes of the no injury rule for transfers. However, the extent to which they are protected from injury is only to the extent that their contractual rights are violated: a harm within the bounds permitted by their contract is not legally cognizable. (*State Water Resources Control Board Cases* (2006) 135 Cal.App.4th 674, 803-805).

4.0 PUBLIC NOTICE AND COMMENTS

On May 7, 2013, public notice of the petitions for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's Lyris email notification program; and 4) by publication in the Sacramento Bee and the Stockton Record. California Water Impact Network (C-WIN), California Sportfishing Protection Alliance (CSPA), and AquAlliance submitted a joint comment letter to the State Water Board on June 3, 2013.

4.1 Joint Comments of C-WIN, CSPA, and AquAlliance

On June 3, 2013, the commenters indicated their concerns regarding the transfer proposal. The concerns extend beyond the scope of the current transfer, and encompass all pending 2013 water transfers being processed by the State Water Board. To expedite transfer processing, the concerns are not repeated herein; however, the State Water Board response letter dated June 27, 2013 is incorporated by reference. The response letter details the issues raised by the commenters. Reclamation also responded to the commenters' letter and a summary of their response is provided below as well.

Reclamation Response:

On June 14, 2013, Reclamation responded to the commenters letter and indicated that Reclamation

and DWR filed almost identical petitions to consolidate the CVP and SWP places of use on three previous occasions, and the State Water Board has made findings on each previous petition that the consolidation of the places of use, and the actions implemented by the consolidation, will not harm other legal users of water, fish, wildlife, or other instream beneficial uses. Reclamation believes it established a prima facie case regarding the petition pursuant to Water Code section 1727 (c) since the State Water Board has approved three similar petitions in the past.

Water Code section 1727 (c) requires that the commenters bear the burden of proof that the proposed consolidated place of use is injurious to other legal users of water or fish, wildlife, or other instream beneficial uses if the State Water Board has determined the petitioners have established a prima facie case. Reclamation claims the commenters have not provided any specific evidence that meets their burden of proving that the proposed temporary change would not comply with paragraphs (1) and (2) of Water Code section 1727 (b).

State Water Board Response:

The State Water Board response letter identifies a need to evaluate the following issues in the present order: (a) whether there is a change in return flow associated solely with the transfer, and (b) whether the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011.

In addition, the response letter indicates that use of the Delta Pumps for transfer purposes should be conditioned on compliance by DWR and Reclamation with D1641, all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

The objection is addressed upon a finding that: (a) no change in return flows is occurring, and (b) the transfer only involves water that would have been consumptively used or stored. Approval of the petition is also contingent on inclusion of condition 6 of this order. The required evaluations are found in Section 5 of this order.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored

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 projects proposed under these petitions involve water that would have been consumptively used or stored in the absence of the transfers/exchanges. According to the petitions, the transfer/exchange will not result in the diversion of additional water from the Delta or the delivery of more water to any individual water supplier or user than has been delivered historically. Instead, the requested change will provide the operational flexibility the Projects need to get available supplies where they are needed most and in the most efficient manner possible. The water proposed for transfer/exchange consists of either:

- a) Water stored pursuant to the specified license and permits of the CVP and SWP; or
- b) Water directly diverted pursuant to the specified license and permits of the CVP and SWP for use outside of the Delta watershed, and thus removed from use in the downstream water supply.

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.

5.2 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).)

The total quantity of diversions from the Delta will not change. The timing of diversions from the Delta will not change, however the timing of deliveries south of the Delta diversion facilities to specific SWP or CVP contractors will change as detailed above in paragraphs 1.1 (b), (d) and (f). The delivery rates from San Luis Reservoir may be slightly different. The scheduling of the deliveries will be coordinated between DWR and Reclamation so as not to adversely impact any SWP or CVP contractor deliveries. Adequate capacity in the California Aqueduct and in the Delta Mendota Canal is available, and will not be adversely impacted as a result of the exchanges. The terms and conditions contained in D1641 protect other in-basin diverters from any potential impacts of Project diversions of natural flow. DWR and Reclamation are required to operate in conformance with D1641 and all other applicable regulatory restrictions governing SWP and CVP operations. There are no other legal users downstream of the points of diversion that would be affected by the exchanges. Overall, there will be no impact to other legal users of water.

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

5.3 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 (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(b)(2).

The water is diverted out of the watershed from which it originates in conformance with the provisions of the respective DWR and Reclamation water right license and permits governing those diversions. There will be no change in the amount of SWP or CVP water diverted at the Banks or Jones Pumping Plants. Therefore, there will be no change in flow or water quality conditions in the Delta. All water exported at the SWP and CVP pumping plants is pumped consistent with the criteria contained in D1641 and all other applicable regulatory restrictions governing SWP and CVP operations.

Exchanges similar to those proposed herein occurred in 2009, 2010 and 2012 consistent with the provisions of WR 2009-0033, WR 2010-0032-DWR and a July 6, 2012 State Water Board order on transfer. No measurable effects on fish and wildlife or the environment were noted from those transfers. The exchanges will not result in an increase in deliveries to any drainage impaired lands, or in a measurable change in quantity or quality of return flows.

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.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, 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 2010-0029.

7.0 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 transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary change for transfer of 196,000 af of water are approved.

All existing terms and conditions of the DWR and Reclamation license and permits remain in effect, except as temporarily amended by the following provisions:

1. The transfer/exchanges of water are limited to the period commencing on the date of this Order and continuing for one year.
2. The place of use under DWR Permit 16479 is temporarily expanded to include portions of the CVP service area shown on map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use*, Map 214-202-83.
3. The place of use under Reclamation License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 is temporarily expanded to include portions of the SWP service area as *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use*, Map No.214-202-84.
4. Water transferred/exchanged pursuant to this Order shall be limited to 196,000 af as specifically described in item 1.1 (a) through (g) in "Substance of Petitions" above. Although the transfer limits water service as noted herein, the one-for-one repayment of exchanged transfer water is not limited to service areas (a) through (g), but may occur within the more general service areas shown on Maps 214-202-83 and 214-202-84.
5. DWR and Reclamation shall not increase their allocations of water to the transfer/exchange parties beyond the quantities authorized by existing contract for purposes of this transfer/exchange.
6. Diversion of water at the Delta Pumps pursuant to this Order is subject to compliance by the SWP and CVP project operators with the objectives set forth in Tables 1, 2 and 3 on page 181 to 187 of State Water Board's 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 Reclamation. Diversion of water at the Delta Pumps 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.
7. Within 90 days of the completion of the transfer; but no later than September 30, 2014, the Petitioners 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. Separate data identifying the monthly and total volumes of water delivered to each of the transfer/exchange parties pursuant to this Order.
 - b. The monthly and total amounts of Delta and delivered water to each of the transfer/exchange parties for the period covered by this transfer. This total shall include SWP and CVP deliveries, other water transfers, and any other amount of Delta water each location received.
 - c. Documentation that the water transferred/exchanged did not result in an increase in water diverted to SWP and CVP facilities from the source waters of DWR's permit and Reclamation's license and permits beyond the quantities that would otherwise have been diverted absent the transfer.

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 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 that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this transfer, the petitioners shall obtain authorization for an incidental take permit prior to construction or operation. Petitioners 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

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUL 01 2013

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 12860 (Application 15764)
U.S. Bureau of Reclamation

**ORDER APPROVING CHANGE IN PLACE OF USE
AND AMENDING THE PERMIT**

SOURCE: Old River
COUNTY: Alameda

WHEREAS:

1. Permit 12860 was issued to U.S. Bureau of Reclamation on August 4, 1961, pursuant to Application 15764.
2. A petition to change the place of use was filed with the State Water Resources Control Board (SWRCB) on May 23, 2001, and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on November 16, 2001, and no protests were received.
3. The SWRCB has determined that the petition for change in place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 12860 IS AMENDED TO READ AS FOLLOWS:

1. The place of use as shown on USBR Map No. 214-208-12581 on file with the Board, and as further delineated in the GIS maps on file with the Board and attached to Board Decision 1641, is amended to include the following:

71 acres within E½ of Section 12, T14S, R11E, MDB&M.
160 acres within NW¼ of Section 29, T14S, R12E, MDB&M.
2. All other conditions of Permit 12860 are still applicable.

STATE WATER RESOURCES CONTROL BOARD



*Edward C. Anton, Chief
Division of Water Rights*

Dated: JUL 29 2002

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

DIVISION OF WATER RIGHTS

In the Matter of Permit 12860 (Application 15764)
U.S. Bureau of Reclamation

**ORDER APPROVING CHANGE IN PLACE OF USE
AND AMENDING THE PERMIT**

SOURCE: Sacramento River
COUNTY: Shasta

WHEREAS:

1. Permit 12860 was issued to U.S. Bureau of Reclamation on August 4, 1961, pursuant to Application 15764.
2. A petition to change the place of use was filed with the State Water Resources Control Board (SWRCB) on November 21, 1996, and the SWRCB has determined that good cause for such change has been shown. Public notice of the change was issued on March 12, 1997, and the protests have been resolved.
3. The SWRCB has determined that the petition for change in place of use does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 12860 IS AMENDED TO READ AS FOLLOWS:

1. The place of use as shown on USBR Map No. 214-208-12480 on file with the SWRCB, and as further delineated in the GIS maps on file with the SWRCB and attached to SWRCB Decision 1641, is amended to include the following:

30,000 net acres within a gross area of 70,000 acres within the Pajaro Valley Water Management District, as shown on USBR Map No. 214-208-12480 dated November 1, 1996, on file with the SWRCB.

2. All other conditions of Permit 12860 are still applicable.

STATE WATER RESOURCES CONTROL BOARD


for Edward C. Anton, Chief
Division of Water Rights

Dated: JUL 19 2002

[For full information concerning the filling out of this form refer to Article 4 of Rules and Regulations Pertaining to Appropriation of Water]

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

Application No. 15764 Filed March 8, 1954 at 3:00 P.M.

(Applicant must not fill in the above blanks)

APPLICATION TO APPROPRIATE UNAPPROPRIATED WATER

The United States of America, pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, known as the Federal Reclamation laws, and acting for this purpose by H. P. Dugan, Regional Director, Bureau of Reclamation, Region 2, P. O. Box 2511, Sacramento 11, County of Sacramento, State of California, by virtue of delegation of authority from the Secretary of the Interior through the Commissioner of the Bureau of Reclamation, pursuant to the Act of Congress of December 19, 1941, c. 595 (55 Stat. 842), does hereby make application for a permit to appropriate the

following described unappropriated waters of the State of California, SUBJECT TO VESTED RIGHTS:

Source, Amount, Use and Location of Diversion Works

1. The source of the proposed appropriation is Old River located in Alameda County, tributary to San Joaquin River

2. The amount of water which applicant desires to appropriate under this application is as follows:

(a) For diversion to be directly applied to beneficial use (See Supplement) 1,500 cubic feet per second, to be diverted from February 1 to November 30 of each year.

(b) For diversion to be stored and later applied to beneficial use 1,000,000 acre-feet per annum, to be collected between October 1 and April 30 of each season.

NOTE.—Answer (a) or (b) or both (a) and (b) as may be necessary. If amount under (a) is less than .025 cubic foot per second, state in gallons per day. Neither the amount nor the season may be increased after application is filed. If underground storage is proposed a special supplemental form will be supplied by the State Water Rights Board upon request.

3. The use to which the water is to be applied is Irrigation and incidental domestic and stockwatering, municipal, industrial and recreational purposes.

4. The point of diversion is to be located (See supplement)

being within the (See supplement) of Section B. & M., in the County of

5. The main conduit terminates in (See supplement) of Sec. B. & M.

Description of Diversion Works

NOTE.—An application cannot be approved for an amount grossly in excess of the estimated capacity of the diversion works.

6. Intake or Headworks (fill only those blanks which apply)

(a) Diversion will be made by pumping from (See supplement)

(b) Diversion will be by gravity, the diverting dam being (See supplement) feet in height (stream bed to level of overflow); feet long on top; and constructed of

(c) The storage dam will be 202 feet in height (stream bed to overflow level); approx. 12,000 feet long on top; have a freeboard of 6.8 feet, and be constructed of earth

7. Storage Reservoir San Luis Reservoir, located about 12 miles west of Los Banos.

The storage reservoir will flood lands in T. 9S., R. 8E.; T. 10 S., R. 7 E.; T. 10S., R. 8E.; T. 11S., R. 8E.; M.D.B. & M. as projected. It will have a surface area of 10,250 acres, and a capacity of 1,000,000 acre-feet.

In case of insufficient space for answers in form, attach extra sheets at top of page 3 and cross reference.

Supplement to petition for change

3. Conduit System (describe main conduits only)

(a) Canal, ditch, flume: Width on top (at water line) (See supplement) feet; width at bottom Cross out two not used feet; depth of water feet; length feet; grade feet per 1,000 feet; materials of construction
Earth, rock, timber, etc.
 (b) Pipe line: Diameter (See supplement) inches; length feet; grade feet per 1,000 feet; total fall feet; kind
Riveted steel, concrete, wood-stave, etc.

NOTE.—If a combination of different sizes or kinds of conduit is to be used, attach extra sheets with complete description, also show location of each clearly on map.

9. The estimated capacity of the diversion conduit or pumping plant proposed is (See supplement)
State cubic feet per second or gallons per minute
 The estimated cost of the diversion works proposed is (approximately \$400,000,000)
Give only cost of intake, or headworks, pumps, storage reservoirs and main conduits described herein

Completion Schedule

10. Construction work will begin on or before July 1, 1962
 Construction work will be completed on or before July 1, 1976
 The water will be completely applied to the proposed use on or before July 1, 2000

Description of Proposed Use

11. Place of Use. Alameda, San Joaquin Valley and Santa Clara, and San Benito Counties; see attached
State 40-acre subdivisions of the public land survey. If area is unsurveyed indicate the location as if lines of the public land maps numbered 214-208-3348, 214-208-3349 and 214-208-3350, all dated
December 1, 1960
survey were projected. In the case of irrigation use state the number of acres to be irrigated in each 40-acre tract, if space permits. If space does not permit listing of all 40-acre tracts, describe area in a general way and show detail upon map.

Do (es) applicant (s) own the land whereon use of water will be made? No Jointly? No
Yes or No Yes or No

Irrigation and water districts existing or to be formed within the service area
If applicant does not own land whereon use of water will be made, give name and address of owner and state what arrangements have been made with him. service contracts being negotiated.

12. Other Rights. Describe all rights except those on file with the State Water Rights Board under which water is served to the above named lands.

Nature of Right (riparian, appropriative, purchased water, etc.)	Year of First Use	Use made in recent years including amount if known	Season of Use	Source of Other Supply
1.				
2.				
3.				
4.				

Attach supplement at top of page 3 if necessary.

13. Irrigation Use. The area to be irrigated is (See supplement) acres.

The segregation of acreage as to crops is as follows: Cotton, alfalfa, cereals, fruits, hay and other
State net acreage to be irrigated
Rice acres; alfalfa acres;
 crops adaptable to the service areas.
orchard acres; general crops acres; pasture acres.

NOTE.—Care should be taken that the various statements as to acreage are consistent with each other, with the statement in Paragraph 11, and with the map.

The irrigation season will begin about January 1 and end about December 31
Beginning date Closing date

14. Power Use. The total fall to be utilized is feet.

The maximum amount of water to be used through the penstock is cubic feet per second.

The maximum theoretical horsepower capable of being generated by the works is horsepower.
Second feet X fall ÷ 5.5

The use to which the power is to be applied is
For distribution and sale or private use, etc.

The nature of the works by means of which power is to be developed is
Turbine, Pelton wheel, etc.

The size of the nozzle to be used is inches.

The water will be returned to in of
Name stream State 40-acre subdivision

Sec. , T. , R. , B. & M.

15. **Municipal Use.** This application is made for the purpose of serving (See supplement)
Name city or cities, town or towns. Urban areas only
having a present population of _____

The estimated average daily consumption during the month of maximum use at the end of each five-year period until the full amount applied for is put to beneficial use is as follows: 2,148,000 GALLONS PER DAY

16. **Mining Use.** The name of the mining property to be served is _____
Name of claim
and the nature of the mines is _____
Gold placer, quartz, etc.

The method of utilizing the water is _____

It is estimated that the ultimate water requirement for this project will be _____
Cubic feet per second, gallons per minute. State basis of estimate

The water ^{will} be polluted by chemicals or otherwise _____
_{will not} Explain nature of pollution, if any

and it ^{will} be returned to _____ in _____ of
_{will not} Name stream State 40-acre subdivision

Sec. _____, T. _____, R. _____, B. & M.

17. **Other Uses.** The nature of the use proposed is Industrial use in the San Luis service area,
Industrial, recreational, domestic, stockwatering, fish culture, etc.
and in coastal counties served by the Pacheco Pass Conduit.

State basis of determination of amount needed. _____
Number of persons, residences, area of domestic lawns and gardens, number and kind of stock, type industrial use, and unit requirements

General

18. Are the maps as required by the Rules and Regulations filed with Application? Yes If not, state specifically the time required for filing same _____
Yes or No

19. Does the applicant own the land at the proposed point of diversion? Yes If not, give name and address of owner and state what steps have been taken to secure right of access thereto Other lands required for diversions, canals, dams and reservoir will be acquired pursuant to legal processes.
Yes or No

20. What is the name of the post office most used by those living near the proposed point of diversion?
Tracy and Los Banos, California

21. What are the names and addresses of claimants of water from the source of supply below the proposed point of diversion?
None known

[SIGNATURE OF APPLICANT:]

[Handwritten Signature]

PERMIT No. _____

This is to certify that the application of which the foregoing is a true and correct copy has been considered and approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used, and shall not exceed _____
2. The maximum amount herein stated may be reduced in the license if investigation so warrants.
3. Actual construction work shall begin on or before _____ and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.
4. Said construction work shall be completed on or before _____
5. Complete application of the water to the proposed use shall be made on or before _____
6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.
7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: _____

STATE WATER RIGHTS BOARD

1. The quantity of water to be appropriated ~~from Old River for irrigation, incidental domestic, stockwatering, municipal, industrial and recreation purposes~~ shall be limited to the amount which can be beneficially used and shall not exceed 1,000,000 acre-feet per annum to be diverted from about November 1 of each year to about April 30 of the succeeding year. The maximum rate of diversion to offstream storage shall be 4200 cubic feet per second.

2. The maximum rate of diversion through the Delta-Mendota Canal under this permit, together with other rights of permittee, shall not exceed 4600 cubic feet per second.

3. The maximum quantity of water herein stated may be reduced in the license if investigation warrants, and all rights and privileges under ^{this} ~~the~~ permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use and unreasonable method of diversion of said water.

4. Construction work shall commence on or before December 1, 1965.

5. Construction work shall be completed on or before December 1, 1985.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1990.

See
next
page

7. Progress reports shall be filed promptly by permittee on

forms to be provided annually by the State Water Rights Board until license is issued.

8. This permit shall be subject to rights initiated by applications for use within the Sacramento-San Joaquin Delta* and the watershed of the Sacramento River Basin** regardless of the date of filing said applications.

9. The State Water Rights Board reserves continuing jurisdiction over this permit until March 1, 1964, or such additional time as may be prescribed by the Board, for the purpose of formulating terms and conditions relative to salinity control in the Sacramento-San Joaquin Delta. Permittee shall on or before January 1, 1962, and each six months thereafter submit to the Board a written report as to the

*see
next
page*

* For the purpose of this ^{permit} ~~Order~~ the Sacramento-San Joaquin Delta shall be that area defined in Water Code Section 12220.

** For the purpose of this ^{permit} ~~Order~~ the Sacramento River Basin shall be that portion of the State encompassed by a line beginning at the Sacramento-San Joaquin Delta at Collinsville thence northeasterly to the crest of the Montezuma Hills; thence northwesterly through the crest of the Vaca Mountains; thence northerly along the crest of Putah, Cache, Stony, Thomes and Cottonwood Creek Basins and along the crest of the Trinity Mountains to Mt. Eddy; thence easterly through Mt. Shasta and along the northern boundary of the Pit River Basin to the crest of the Warner Mountains; thence southerly and westerly along the boundary of the Pit River Basin to Red Cinder Cone Peak; thence easterly along the northern boundary of the Feather River Basin to the crest of the Sierra-Nevada; thence southerly along the crest of the Sierra-Nevada to the southern boundary of the American River Basin; thence westerly along the southern boundary of the American River Basin to the eastern boundary of said Delta; thence northerly, westerly and southerly along the boundary of the Delta to the point of beginning.

progress of negotiations relative to agreement between the permittee and the State of California and/or the permittee and the water users in the Delta and in Northern Contra Costa County.

10. The Board reserves continuing jurisdiction over this permit for an indefinite period not to extend beyond the date of issuance of license for the purpose of coordinating terms and conditions of the permit with terms and conditions which have been or which may be included in permits issued pursuant to other applications of the United States in furtherance of the Central Valley Project and applications of the State of California in furtherance of the State Water Resources Development System.

11. Upon request of the Board, permittee shall make such measurements and maintain and furnish to the Board such records and information as may be necessary to determine compliance with the terms and conditions of this ^{permit} ~~order~~ including the recognition of vested rights and for the further purpose of determining the quantities of water placed to beneficial use under the permit.

12. This permit shall be subject to "Agreement between the United States of America and the Department of Water Resources of the State of California for the Coordinated Operation of the Federal Central Valley Project and the State Feather River and Delta Diversion Projects", dated May 16, 1960, filed of record as Bureau of Reclamation Exhibit 3.

13. Subject to the existence of long-term water delivery contracts between the United States and public agencies and subject to

see
next
page

compliance with the provisions of said contracts by said public agencies, this permit is further conditioned as follows:

(a) The right to the beneficial use of water for irrigation purposes, except where water is distributed to the general public by a private agency in charge of a public use, shall be appurtenant to the land on which said water shall be applied, subject to continued beneficial use and the right to change the point of diversion, place of use and the purpose of use as provided in Chapter 10 of Part 2 of Division 2 of the Water Code of the State of California and further subject to the right to dispose of a temporary surplus.

(b) The right to the beneficial use of water for irrigation purposes shall, consistent with other terms of the permit, continue in perpetuity.

14. In accordance with Water Code Section 1393 permittee shall clear the site of the proposed reservoir of all structures, trees and vegetation which would interfere with the use of the reservoir for water storage and recreation purposes.

See next page

(D-1020) PERMIT TERMS

Application No. 15764 Filled out by JUL 10 '61 Date _____

This is to certify that the application of which the foregoing is a true and correct copy has been considered and is hereby approved SUBJECT TO VESTED RIGHTS and the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall

The permit does not authorize the direct diversion of 1500 cfs until further order of the State Water Rights Board

No. This permit does not authorize use of water on lands within Alameda, Santa Cruz, and San Benito Counties until further order of the State Water Rights Board.

MINIMUM FEE \$5.00 FOR ALL PERMITS

IRRIGATION			POWER		
SCHEDULE	ACRES	CHARGE	SCHEDULE	THEO. HORSE POWER	CHARGE
0 to 50 COVERED BY MINIMUM FEE	50	\$5.00	0 to 50 COVERED BY MINIMUM FEE		\$5.00
Over 50 to 100 @ 10¢	50	—	Over 50 to 100 @ 10¢		
Over 100 to 1000 @ 5¢	900	—	Over 100 to 1000 @ 5¢		
Over 1000 @ 3¢	339,000	—	Over 1000 @ 1¢		
<i>No fees paid by U.S. B. R.</i>					
TOTALS	340,000	—			

Terms OK. *LLS 7-18-61*

Permit No. 12860

Date approved AUG 4 1961