

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

DIVISION OF WATER RIGHTS

ORDER WR 2010-0025-DWR

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IN THE MATTER OF PERMIT 11360 (APPLICATION 12622)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 4,377 ACRE FEET OF WATER  
FROM CITY OF SACRAMENTO AND  
SACRAMENTO SUBURBAN WATER DISTRICT  
TO EIGHT STATE WATER CONTRACTOR AGENCIES

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

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On April 20, 2010,

City of Sacramento  
c/o Joe Robinson, Senior Deputy City Attorney  
City Attorney's Office  
915 I Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814

and

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

filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. Pursuant to the petition, City of Sacramento (City) and Sacramento Suburban Water District (SSWD) seek to transfer up to 4,377 acre-feet (af) of water to eight State Water Contractor Agencies. Water would be used within the State Water Project (SWP) service area. 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.** SSWD has a long-term water service contract with the City to provide capacity within the City's water diversion and treatment works on the American River and convey the treated surface water to SSWD. SSWD and the City propose to transfer up to 4,377 af of water under Permit 11360 (Application 12622) to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale

Water District, and the San Bernardino Valley Municipal Water District (hereinafter collectively referred to as the Agencies). To facilitate this transfer, SSWD will pump additional groundwater and reduce the amount of water the City directly diverts from the American River by approximately 24 cubic feet per second (cfs). At times when pumping capacity is available in the Delta, the additional flow in the American River thence the Sacramento River would be available for diversion at the SWP's Banks Pumping Plant or the Barker Slough Pumping Plant and delivery to the Agencies. The petition states that the physical transfer of water would occur between July 1 and September 30, 2010, and that the water would be used within the Agencies' service area within a year from the date of approval. A copy of SSWD's petition is posted with the copy of the notice for this transfer on the Division of Water Rights' website at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/)

In the absence of this transfer, up to 4,377 af of water would be diverted by the City and used within SSWD's service area.

**1.2 Groundwater Substitution.** To provide the 4,377 af of transfer water, SSWD proposes to forgo receipt of up to 4,377 af of surface water that it anticipates would be available during July through September 2010 under an agreement with the City. SSWD would pump groundwater for use by its customers in an amount equivalent to the amount of surface water that it would otherwise receive through this agreement. The Department of Water Resources (DWR) has entered into an agreement with SSWD, titled *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Sacramento Suburban Water District for the Storage and Conveyance of 2010 Transfer Water (Agreement)* for the conveyance of water pursuant to this temporary change. The Agreement includes an 8% (eight percent) 'depletion loss' to protect the SWP and the United States Bureau of Reclamation's (USBR) Central Valley Project (CVP) from injury associated with the transfer. SSWD will only transfer 92% (ninety-two percent) of the total quantity of groundwater pumped. The Agreement also includes a monitoring and reporting plan to address the impacts of additional groundwater pumping within SSWD.

**1.3 Other Agency Consultation.** Prior to submitting the petition to the State Water Board the petitioners submitted a copy to the Department of Fish and Game (DFG). DFG did not submit comments regarding the proposed temporary change. State Water Board staff contacted DFG staff in June, 2010 to discuss the proposed temporary change and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff also provided notice of the petition to the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). State Water Board staff announced the issuance of the public notice for this petition at the Delta Operations for Salmonids and Sturgeon Group (DOSS) teleconference call on May 18, 2010. NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses.

## **2.0 BACKGROUND**

**2.1 Substance of City's Permit.** Permit 11360 (Application 12622), issued on May 7, 1958, authorizes the City to divert 500 cubic feet per second (cfs) from Rubicon River, 500 cfs from South Fork Rubicon River, 200 cfs from Rock Bound Creek, 75,000 af per year (afa) by storage collected from Rubicon River, 200,000 afa by storage collected from South Fork Rubicon River, 14,000 afa by storage collected from Rock Bound Creek and 25,000 afa by storage collected from Gerle Creek. The primary points of rediversion under Permit 11360 are the Fairbairn diversion and water treatment plant on the lower American River and the Sacramento River diversion and treatment plant facilities at the confluence of the American and Sacramento Rivers. Permit 11360 authorizes the direct diversion for use and accumulation of water in storage between November 1 of each year and August 1 of the succeeding year. Between August 2 and October 31 of each year, the City rediverts water released from storage for use within its service area. The authorized purpose of use under Permit 11360 is municipal.

**2.2 Proposed Temporary Changes.** The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion/rediversion to Permit 11360. The service area of the SWP would also be temporarily added to the place of use under Permit 11360. The SWP points of diversion and service area are identified on Maps 1878-1, 2, 3 & 4 on file with the State Water Board Division of Water Rights under Application 5629. Domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, and water quality control would be temporarily added as purposes of use under Permit 11360.

**2.3 OCAP Biological Opinions.** The operations of the Banks Pumping Plant are governed by Biological Opinions issued by USFWS and NMFS for the long-term operations of the CVP and the SWP (referred to as OCAP BOs). These Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period from July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives (RPAs) contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfers (including the subject transfer) in 2010 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2010, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2010.

### **3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE**

Prior to issuance of the public notice for this temporary change, the Sacramento Groundwater Authority (SGA) submitted comments regarding the proposed groundwater substitution associated with the transfer. The public notice (dated May 13, 2010) was provided via first class mail to interested parties and by publication in the Sacramento Bee on May 15, 2010. The California Water Impact Network and AquAlliance (CWINA), the California Sportfishing Protection Alliance (CSPA), and the California Fisheries and Water Unlimited (CFWU) submitted timely comments regarding the proposed temporary change. State Water Board staff reviewed these comments and requested that SSWD address the portion of the comments regarding groundwater substitution. These comments, SSWD's additional information, and the State Water Board's responses are briefly summarized below. The comments and SSWD's additional information are also available for viewing online with this Order at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_orders/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_orders/)

**3.1 Comments of the Sacramento Groundwater Authority.** SGA states that SSWD's 2010 transfer proposal is within the sustainable yield of the North Area Basin. SSWD performed a similar transfer in 2009 and by the Spring of 2010, groundwater elevations had returned to pre-transfer conditions. SGA's comments include information regarding historical (since 1963) groundwater elevations at eleven locations throughout the SGA Area. SGA's comments also include information regarding the average biennial static groundwater elevations near SSWD for the period from October 2003 through October 2008. SGA concludes that 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.

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

**3.2 Comments of the California Water Impact Network and AquAlliance.** CWINA objects to the proposed temporary change based on the following concerns:

- a. SSWD must demonstrate, not merely assert, that its transfer of surface water will have little to no impact on other parties within or downstream of its service area. CWINA states that the long-term hydrographs contained in SGA's comments show clear long-term declines which the petitioners

(City of Sacramento and Sacramento Suburban Water District) do not acknowledge or explain. CWINA states that the *Sacramento County Water Agency Water Management Plan* indicates that intensive use of the groundwater basin has resulted in general lowering of groundwater elevations, which will require extensive conservation measures to remediate. CWINA recommends that SSWD reduce its use of groundwater, instead of increasing its groundwater pumping to transfer water outside of its service area. CWINA also notes that the proposed groundwater substitution may have third-party impacts.

- b. CWINA notes that SSWD petitioned for a similar temporary change in 2009. CWINA believes that SSWD's one-year transfers in 2009 and 2010 are a long-term transfer and should be subject to the requirements of Water Code section 1735 et seq. CWINA concludes that the proposed temporary change should be subject to the requirements of the California Environmental Quality Act (CEQA). CWINA notes that the CEQA exemption based on the Governor's 2009 declaration of drought conditions was disallowed by the Alameda County Superior Court in March, 2010.
- c. CWINA asserts that the proposed temporary change would have adverse environmental impacts. CWINA states that the impacts of changes in flow timing, water temperatures, and water levels should be reviewed pursuant to CEQA. CWINA also asserts that the proposed temporary addition of the Barker Slough Pumping Plant and the Banks Pumping Plant would result in increased inflow to the Delta without a corresponding increase in Delta Outflow.

State Water Board Responses:

- a. The State Water Board requested additional information from SSWD regarding the issue of groundwater substitution. SSWD reiterated that the SGA implements the Groundwater Management Plan (GMP) for the North Area Basin and that SGA has stated that SSWD's proposed groundwater substitution plan is consistent with the GMP. SSWD's additional information includes the average biennial static groundwater elevations near SSWD for April 2004 through April 2010 (these are updated from the similar information contained in SGA's comments). These average biennial static groundwater elevations show no indication of decline since 2003, including after SSWD's 2009 transfer. SSWD also notes that the long-term hydrographs (referenced by CWINA) show a long-term decline in groundwater elevations that the SGA and its members (including SSWD) have arrested though increased use of surface water. SSWD reiterates SGA's assertion that the additional groundwater pumping associated with the proposed temporary change is within the safe yield of the North Area Basin. SSWD states that the proposed 2010 water transfer will be conducted consistent with the Groundwater and Surface Water Monitoring and Reporting Program and Mitigation Plan (Monitoring Plan) developed cooperatively with DWR. A similar plan was in place for SSWD's previous water transfer, during which no third-party impacts were reported.

Based on this information, the proposed groundwater substitution is consistent with the GMP and thus in conformance with the provisions of Water Code section 1745.10, subdivision (a). This Order requires SSWD to implement the Monitoring Plan to mitigate potential impacts of the proposed groundwater substitution on other legal users of water.

- b. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and WR 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, this order does not rely on a CEQA exemption

contained in the Governor's 2009 Drought Emergency Proclamation.

- c. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/redirection of water at the Banks Pumping Plant and Barker Slough 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. Diversion/redirection of water at the Banks 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 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/redirection, 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.

**3.3 Comments of the California Sportfishing Protection Alliance.** CSPA objects to the proposed temporary change based on the following:

- a. CSPA notes that SSWD received approval for a similar temporary change in 2009. CSPA states that SSWD's one-year 2009 and 2010 transfers should not be considered a temporary change and should be subject to the requirements of Water Code section 1735 et seq. CSPA concludes that the proposed temporary change should be considered a long-term transfer subject to the requirements of CEQA, and that the State Water Board should undertake a public trust analysis of Permit 11360.
- b. CSPA states that the State Water Board should not draw conclusions of substance regarding potential impacts of the proposed temporary change based on failure by DFG to comment. CSPA notes that DFG submitted substantial written and oral testimony in the Delta Flow Proceeding conducted by the State Water Board in January through March, 2010 regarding the dire condition of Bay-Delta fisheries, and also submitted extensive recommendations for greatly increased Delta outflow based on an equitable allocation of responsibility.

State Water Board Responses:

- a. The State Water Board has addressed the issue of a series of similar temporary changes in previous orders (see State Water Board Orders WR 2002-0005-DWR, WR 2005-0025-DWR, WR 2006-0010-DWR, and WR 2007-0012-DWR). As stated in these previous orders, the Water Code does not require petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq. Additionally, Water Code section 1729 states that a temporary change is exempt from the requirements of CEQA. Finally, Water Code section 1727, subdivision (d) prohibits the State Water Board from modifying any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change. Water Code section 1727, subdivision (e) prohibits the State Water Board from denying or placing conditions upon a temporary change to mitigate effects that are not caused by the temporary change. Thus, the State Water Board will not undergo a public trust analysis to modify or amend the City's permit, or

place conditions upon this temporary change to mitigate alleged affects of the City's ongoing operations as a condition of approval of the subject petition.

- b. As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. DFG's comments on the Delta Flow Criteria Informational Proceeding (Proceeding) address setting flow criteria for the protection of the Delta ecosystem. DFG's recommendations for the Delta Flow Criteria do not address potential impacts of the proposed temporary change. Additionally, the only recommendation submitted by DFG regarding the Proceeding for the time period from July 1 through September 30 is a minimum flow requirement of 6,000 cfs on the Sacramento River. The proposed temporary change will increase flow on the Sacramento River during this time period.

**3.4 Comments of the California Fisheries and Water Unlimited.** CFWU objects to the proposed temporary change. CFWU's comments cite concerns regarding consultation with DFG, compliance with federal and State Endangered Species Act requirements, and impacts related to the underlying operations of the SWP.

State Water Board Response: As stated in Section 1.3 of this Order, State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/rediversion of water at the Banks Pumping Plant and Barker Slough 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. Diversion/rediversion of water at the Banks 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 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.

#### **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 made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents the amount of 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 8% (eight percent) of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 92% (ninety-two percent) of the amount of surface water made available at the Fairbairn Water Treatment Plant 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 in the absence of the proposed temporary change.

**4.2 No Injury to Other Legal Users of the 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 has reviewed the proposed transfer and determined that, with inclusion of the 8% (eight percent) depletion factor described in Section 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 the 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 as a point of diversion/rediversion to Permit 11360.

SGA adopted a revised Groundwater Management Plan on December 11, 2008. As referenced in Section 3.1 above, 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.

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 in an area 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).)

State Water Board staff discussed the proposed temporary change with DFG staff and DFG did not identify any significant concerns regarding impacts to fish, wildlife, or other beneficial uses. State Water Board staff announced the issuance of the public notice for this petition at the May 18, 2010 DOSS teleconference call, and NMFS and USFWS did not comment on the proposed temporary change or identify any concerns regarding potential impacts to fish, wildlife, or other instream beneficial uses. This Order limits the transfer period from July 1 through September 30, 2010 to ensure conformance with the OCAP BOs. Diversion/rediversion of water at the Banks 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. Diversion/rediversion of water at the Banks 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 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



## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change in the place of use, points of diversion/rediversion, and purpose of use under Permit 11360 (Application 12622) of the City of Sacramento (City) and co-petitioner Sacramento Suburban Water District (SSWD) for the transfer of up to 4,377 acre-feet (af) of water is approved.

All existing terms and conditions of Permit 11360 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, 2010.
2. SSWD shall implement the monitoring and mitigation plans and reporting requirements contained in Exhibit 1 of the *Agreement Among the Department of Water Resources of the State of California, Antelope Valley-East Kern Water Agency and Sacramento Suburban Water District for Storage and Conveyance of 2010 Transfer Water* (Agreement) as a condition of transferring water pursuant to this Order.
3. The City shall reduce its diversion rate at the Fairbairn Water Treatment Plant under Permit 11360 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured on a monthly basis). The City shall reduce diversions at Fairbairn Water Treatment Plant 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 surface water made available for purposes of the transfer. The amount of water transferred pursuant to this Order shall not exceed 92% (ninety-two percent) of the rate of reduced diversion at the City's Fairbairn Water Treatment Plant.
4. The place of use under Permit 11360 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. Water transferred pursuant to this order shall only be delivered to the Antelope Valley-East Kern Water Agency, the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the Napa County Flood Control and Water Conservation District, the Oak Flat Water District, the Palmdale Water District, or the San Bernardino Valley Municipal Water District, or any combination of the above.
5. The SWP's Banks Pumping Plant and Barker Slough Pumping Plant are temporarily added as authorized points of diversion/rediversion under Permit 11360.

Diversion/rediversion of water at the Banks 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. Diversion/rediversion of water at the Banks 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 the 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.

Diversion/rediversion of water at the Barker Slough Pumping Plant 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, industrial, irrigation, salinity control, fish and wildlife enhancement, and water quality control are temporarily added as purposes of use under Permit 11360.
7. Within 90 days of the completion of the transfer, but no later than December 31, 2010, 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 monthly volume of water made available for transfer at the City's Fairbairn Water Treatment Plant pursuant to this Order;
  - c. The monthly volume of water diverted pursuant to Permit 11360 during the transfer period;
  - d. The average daily streamflow measured at the nearest representative gaging station on the American River; and
  - e. Groundwater elevations within the vicinity of SSWD prior to the proposed transfer, as required by Exhibit 1 of the Agreement.

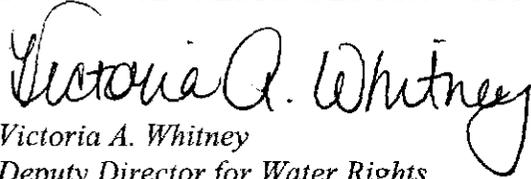
SSWD shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year starting in 2011, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

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 take 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 02 2010**