

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

DIVISION OF WATER RIGHTS

AMENDED ORDER WR 2010-0032-DWR

IN THE MATTER OF PERMIT 16482 (APPLICATION 17512)
OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE SPECIFIED LICENSE AND PERMITS
OF THE UNITED STATES BUREAU OF RECLAMATION
PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER/EXCHANGE OF 220,000 ACRE-FEET OF WATER

AMENDED ORDER AUTHORIZING TEMPORARY CHANGES IN PLACE OF USE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITIONS

On August 18, 2010,

Department of Water Resources
c/o Nancy Quan, Chief
Program Development and Water Supply and Transfers
P.O. Box 942836
Sacramento, CA 94236-0001

and

United States Bureau of Reclamation
c/o Richard Stevenson, Acting Regional Manager
2800 Cottage Way
Sacramento, CA 95825

filed with the State Water Resources Control Board (State Water Board), Petitions for Temporary Change under Water Code section 1725, et seq. The petitions request the temporary addition of the Central Valley Project (CVP) place of use "downstream"¹ of the Jones Pumping Plant to Permit 16482 (Application 17512) and the temporary addition of the State Water Project (SWP) place of use "downstream" of the Banks Pumping Plant to the specified permits and license of the CVP (listed in Table 1, shown on page 2 of this Amended Order). These changes are intended to facilitate three specific transfers/exchanges involving a total of up to 220,000 acre-feet (AF) of water. The petitions request the changes be effective through September 30, 2011.

1.1 Description of the Transfer. The SWP and CVP permits and license subject to the proposed changes are listed in Table 1, on the following page. The Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) submitted the petitions to more effectively and efficiently utilize the operational flexibility of the combined SWP and CVP facilities and water supply "downstream" of the Banks and Jones Pumping Plants. The petitions request approval for three separate "south-of-Delta"

¹ The petitions use the term "downstream" to identify that portion of the SWP and CVP that is served by water diverted from the Jones and Banks Pumping Plants. These areas are served via a system of canals and holding reservoirs that is within the petitioners' control. These areas are not within the downstream water supply as defined in Water Code section 1725.

transfers/exchanges of CVP or SWP water. The petitions request that these changes be effective through September 30, 2011. The petitions state that while the total quantity of water pumped by the CVP/SWP from the Delta during this period will not change as a result of these transfers/exchanges, a slightly different ratio of CVP to SWP pumping may occur in 2011. These transfers/exchanges are each summarized in the following sections. The petitions are available for viewing online with the public notice for these petitions at:

www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/

**Table 1
SWP and CVP License and Permits Subject to Temporary Change**

SWP Water Rights			
Application No.	Permit No.	License No.	Description
17512	16482	n/a	San Luis Reservoir
CVP Water Rights			
Application No.	Permit No.	License No.	Description
23	273	1986	Friant Project
234	11885	n/a	Friant Project
1465	11886	n/a	Friant Project
5626	12721	n/a	Shasta Project
5628	11967	n/a	Trinity Project
5638	11887	n/a	Friant Project
9363	12722	n/a	Shasta Project
9364	12723	n/a	Shasta Project
9368	12727	n/a	Tracy Pumping Plant
13370	11315	n/a	Folsom Project
13371	11316	n/a	Folsom Project
15374	11968	n/a	Trinity Project
15375	11969	n/a	Trinity Project
15376	11970	n/a	Trinity Project
15764	12860	n/a	San Luis Reservoir
16767	11971	n/a	Trinity Project
16768	11972	n/a	Trinity Project
17374	11973	n/a	Trinity Project
17376	12364	n/a	Whiskeytown Lake

1.2 Arvin-Edison/Metropolitan. The Metropolitan Water District of Southern California (MWD) has historically delivered excess SWP supplies to the Arvin Edison Water Storage District (AEWSD) for groundwater banking. MWD has requested the return of this previously-banked groundwater in 2010 and 2011. AEWSD receives CVP supplies from the Friant Reservoir. AEWSD proposes to return some of MWD's previously-banked groundwater by allowing its Friant CVP water to be delivered directly to MWD. A like amount of water within AEWSD's groundwater banking facilities would be reduced from MWD's groundwater banking account (and added to AEWSD's groundwater banking account). The maximum amount of Friant CVP water proposed for delivery to MWD pursuant to this portion of the subject petition is 40,000 AF. Water would be delivered via the Friant-Kern Canal and AEWSD'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).

In the absence of this transfer, AEWS's Friant CVP water would be diverted to groundwater storage and an equivalent amount of previously-stored SWP water would be pumped from AEWS's groundwater storage for delivery to MWD.

1.3 Santa Clara Valley Water District. Santa Clara Valley Water District (SCVWD) receives water from both the CVP (delivered from San Luis Reservoir via the CVP's San Felipe Division) and the SWP (delivered via the South Bay Aqueduct). In late 2010 and early 2011 maintenance is scheduled on the San Felipe Division which may constrain its conveyance capacity. The petitions request an exchange of CVP and SWP water to allow for up to 30,000 AF of SWP water to be delivered to SCVWD through the South Bay Aqueduct during periods when maintenance is constraining capacity in the San Felipe Division. An equal amount of CVP water will be delivered to the SWP at the O'Neill Forebay for use within the SWP service area south of the Banks Pumping Plant. The proposed exchange would not increase the total amount of CVP/SWP water delivered to SCVWD. In the event the scheduled maintenance does not occur, or conveyance disruptions are not experienced within the next year, SCVWD's CVP water would be delivered directly to SCVWD via the San Felipe Division.

In the absence of this exchange, SCVWD would receive its CVP water via the San Felipe Division or, if scheduled maintenance disrupts conveyance capacity, SCVWD's CVP entitlement would remain in storage in San Luis Reservoir and additional groundwater could be pumped within SCVWD and/or water shortages could occur within SCVWD.

1.4 Westlands/San Luis/Metropolitan. Westlands Water District (Westlands) and San Luis Water District (San Luis) each receive their principal water supplies from the CVP. Recent dry conditions and the adoption of Biological Opinions in 2008 and 2009 have significantly reduced the amount of water available for export to SWP and CVP contractors. Westlands and San Luis have acquired substantial additional water from other CVP contractors which is currently stored in San Luis Reservoir. Unusual hydrologic conditions in 2010 resulted in an increase in CVP allocations to Westlands and San Luis after their users had made planting decisions based on forecasted shortages. As a result, Westlands and San Luis had water stored in San Luis Reservoir that was surplus to their 2010 water needs. Westlands and San Luis were concerned that if San Luis Reservoir filled during the winter of 2011, which it did, the additional water acquired by Westlands and San Luis would be reassigned to other CVP contractors. Further, Westlands and San Luis believe that their ability to carry over their CVP Water in San Luis Reservoir into the 2011-2012 water year may be limited as well.

In order to reduce the risk that their 2010 CVP water stored in San Luis Reservoir would be reassigned to other CVP contractors, Westlands and San Luis proposed an exchange with MWD. Westlands and San Luis proposed to deliver up to 150,000 AF (up to 120,000 AF from Westlands and up to 30,000 AF from San Luis) of their 2010 CVP Water supplies (stored in San Luis Reservoir) to MWD. During 2011, MWD would return two-thirds of the total amount of water delivered to Westlands and San Luis (up to 80,000 AF to Westlands and up to 20,000 AF to San Luis) from its 2011 SWP Table A supplies. Both exchanges would occur at the O'Neill Forebay. The petitioners submitted a table containing the annual quantities (reported for calendar years) of water exported from the Delta and delivered to Westlands and San Luis for the years 2000-2009. These quantities include CVP deliveries and water transfers. The average amount of water delivered to Westlands from 2000-2009 is 871,296 AF. The average amount of water delivered to San Luis from 2000-2009 is 85,705 AF. Due to the current CVP allocation of 80 percent, which is in excess of allocations in previous years, Westlands and San Luis request to receive Delta exports above the 2000-2009 averages described above, (including CVP deliveries and water transfers) in the 2011 calendar year. Specifically, Westlands and San Luis request that the Board eliminate the 871,296 AF limitation on water delivered to Westlands, and the 85,705 AF limitation on water delivered to San Luis. The parties state the limit was imposed, "because of apparent concerns that deliveries to Westlands and San Luis would increase salinity in the San Joaquin River." Based on information provided to the State Water Board, Westlands and San Luis do not discharge agricultural drainage water, tailwater, or tile water outside of their boundaries. Therefore, the proposed temporary change will not result in a significant increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations.

In the absence of this exchange, Westlands's and San Luis's surplus CVP supplies would remain in storage in San Luis Reservoir and MWD would receive all of its 2011 SWP Table A supplies.

2.0 BACKGROUND

2.1 Existing Place of Use. The service area of the SWP is shown on maps 1878-1, 2, 3, & 4 (on file with the State Water Board under Application 5629) and the service area of the CVP is shown on map 214-208-12581 (on file with the State Water Board under Application 5626).

2.2 Place of Use under the Proposed Transfer. The petitions request the temporary addition of the CVP service area "downstream" of the Jones Pumping Plant to the place of use under DWR's Permit 16482 (Application 17512). The petitions also request the temporary addition of the SWP service area "downstream" of the Banks Pumping Plant to the USBR license and permits listed in Table 1 (shown on page 2 of this Amended Order). These temporary additions would be for the purpose of completing the three transfers/exchanges described above and would be effective from the date the petition was approved through September 30, 2011. The CVP service area "downstream" of the Jones Pumping Plant and the SWP service area "downstream" of the Banks Pumping Plant are shown on maps available for viewing online with the public notice for these petitions at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

Public notice of the petitions for temporary change (dated September 15, 2010) was provided via first class mail to interested parties and by publication in the Fresno Bee on September 18, 2010. The California Fisheries and Water Unlimited (CFWU) and the State Board of Food and Agriculture (SBFA) submitted timely comments to the proposed temporary change. These comments and the State Water Board's responses are summarized below.

3.1 Comments of the California Fisheries and Water Unlimited. CFWU's comments focus on concerns regarding the State Water Board's findings in previous water transfers. CFWU also referenced its comments regarding previous water transfers.

State Water Board Response: The public notice for these petitions requested information specific to findings required for the State Water Board to approve the proposed transfers/exchanges. The State Water Board has reviewed information contained in the petitions and other information in its files and made the required findings to approve the proposed transfers/exchanges. These findings are discussed in Section 4.0 of this Amended Order, below.

3.2 Comments of the State Board of Food and Agriculture. SBFA supports the Westlands/San Luis/MWD portion of the proposed temporary change. SBFA requests that processing and approval of these petitions be expedited.

State Water Board Response: The State Water Board thanks the SBFA 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. (Wat. Code, § 1725.) "[C]onsumptively used' means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise

removed from use in the downstream water supply as a result of direct diversion." (*Ibid.*) The water 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(e) that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

4.2 No Injury to Other Legal Users of Water. Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) The water proposed for transfer/exchange consists of portions of the CVP entitlements of AEWS, SCVWD, Westlands, and San Luis, and the SWP entitlement of MWD. In the absence of the proposed transfers:

- a. AEWS's Friant CVP water would be diverted to groundwater storage and an equivalent amount of previously-stored SWP water would be pumped from AEWS's groundwater storage for delivery to MWD;
- b. SCVWD would receive its CVP water via the San Felipe Division or, if scheduled maintenance disrupts conveyance capacity, SCVWD's CVP entitlement would remain in storage in San Luis Reservoir and additional groundwater could be pumped within SCVWD and/or water shortages could occur within SCVWD; and
- c. Westlands's and San Luis's surplus CVP supplies would remain in storage in San Luis Reservoir and MWD would receive all of its 2011 SWP Table A supplies.

We note that in the State Water Boards' Final Environmental Impact Report for Implementation of the 1995 Bay-Delta Plan, p. VIII-5, and Water Right Decision 1641, p. 110, it states that Westlands does not discharge agricultural drainage water, tailwater, or tile water outside of its boundaries. We also note per a recent discussion with Westlands and San Luis that, similarly, San Luis also does not discharge agricultural drainage water, tailwater, or tile water outside of its boundaries. We understand based on the above-mentioned information, the proposed temporary change will not result in a significant increase in salinity in the San Joaquin River above what would be expected to occur as a result of average year operations. In addition, the State Water Board will require as a condition of approval that Westlands and San Luis implement all reasonable measures to prevent surface and sub-surface drainage of poor quality water to the San Joaquin River.

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

4.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses. In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727(b)(2) and its public trust authority.

The petitions state that the total quantity of water pumped by the CVP/SWP from the Delta during this period will not change as a result of these transfers/exchanges. Water diverted from the Delta at the Jones or Banks Pumping Plants is subject to the provisions of the CVP and SWP license and permits as amended by State Water Board Decision 1641 and is also subject to the requirements of Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act. Therefore, the proposed temporary changes would have no significant effect on

AMENDED ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary changes in the place of use under the United States Bureau of Reclamation's (USBR) License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 (Applications 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15376, 15764, 16767, 16768, 17374, and 17376) and the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 220,000 acre-feet (AF) of water is approved.

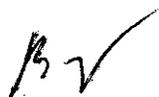
All existing terms and conditions of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, 12364, and 16482 remain in effect, except as temporarily amended by the following provisions:

1. The transfers/exchanges are limited to the period commencing on the date of approved Order WR 2010-0032-DWR and continuing through September 30, 2011.
2. The place of use under License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 is temporarily expanded to include the portions of the State Water Project (SWP) service area shown on a map prepared by DWR for this transfer titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use* (August 18, 2010), on file with the State Water Board under Application 23.
3. The place of use under Permit 16482 is temporarily expanded to include the portions of the Central Valley Project (CVP) service area shown on a map prepared by DWR for this transfer titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use* (August 18, 2010), on file with the State Water Board under Application 23.
4. Water transferred/exchanged pursuant to this Amended Order shall be limited to the following locations and quantities:
 - a. Up to 40,000 AF of CVP water (from the Friant Project) to the Metropolitan Water District of Southern California (MWD);
 - b. Up to 30,000 AF of SWP water (exported from the Delta) to the Santa Clara Valley Water District;
 - c. Up to 30,000 AF of CVP water (exported from the Delta) to the SWP;
 - d. Up to 150,000 AF of CVP water (exported from the Delta) to MWD;
 - e. Up to 80,000 AF of SWP water (exported from the Delta) to the Westlands Water District (Westlands); and
 - f. Up to 20,000 AF of SWP water (exported from the Delta) to the San Luis Water District (San Luis).
5. Water made available pursuant to this Amended Order shall be used in a method consistent with good water management practices. In addition, Westlands and San Luis shall implement all reasonable measures to prevent surface and sub-surface drainage of poor quality water to the San Joaquin River. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.

6. By January 31, 2012, the petitioners shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Amended Order. The report shall provide a summary of the monthly amounts of water actually transferred under this Amended Order and include the following information:
 - a. The monthly volume of water delivered to MWD, SCVWD, Westlands, and San Luis pursuant to this Amended Order; and
 - b. The total amount of water exported from the Delta and delivered to Westlands and San Luis for the calendar year 2011. This total shall include CVP deliveries, other water transfers, and any other amount of Delta water each location received.
7. 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 Amended 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 Amended Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
8. This Amended 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, 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 Amended Order.
9. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Amended Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



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

Dated: JUN 14 2011