



# State Water Resources Control Board

**Linda S. Adams**  
Secretary for  
Environmental Protection

BOARD OF SUPERVISORS  
2009 JUL -1 P 2 00

## Division of Water Rights

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**Arnold Schwarzenegger**  
Governor

**PERMIT 11360 (APPLICATION 12622)**  
**NOTICE OF PETITION FOR TEMPORARY CHANGE**  
**INVOLVING THE TRANSFER OF UP TO 6,000 ACRE FEET OF WATER**  
**FROM THE CITY OF SACRAMENTO**  
**AND SACRAMENTO SUBURBAN WATER DISTRICT**  
**TO THE 2009 DROUGHT WATER BANK**  
**ADMINISTERED BY THE DEPARTMENT OF WATER RESOURCES**

Notice is hereby given that on June 8, 2009,

City of Sacramento  
c/o Martha Lennihan  
Lennihan Law  
2311 Capitol Avenue  
Sacramento, CA 95816

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 6,000 acre-feet (af) of water to the Department of Water Resources' (DWR) 2009 Drought Water Bank (DWB). The City has a long-term water service contract to deliver up to 5,000 af of water to its co-petitioner SSWD in 2009. SSWD proposes to forgo delivery of this quantity of surface water and to transfer its entitlement to DWR's 2009 DWB for use within the service areas of the State Water Project (SWP) and the Central Valley Project (CVP). The balance of up to 1,000 af will be transferred by the City directly to DWR's 2009 DWB. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

### **BACKGROUND**

In response to Governor Schwarzenegger's June 4, 2008 Executive Order, the DWB was initiated in the summer of 2008 to help alleviate the drought conditions should they continue into 2009. DWR established the DWB to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta. This water will be transferred using

*California Environmental Protection Agency*

SWP or CVP facilities to water suppliers that are at risk of experiencing water shortages in 2009 due to drought conditions and that require supplemental water supplies to meet anticipated demands. Additional information regarding the DWB is available online at: <http://www.water.ca.gov/drought/bank/>.

## **DESCRIPTION OF THE TRANSFER**

The City proposes to transfer up to 6,000 af of water to the DWR 2009 DWB. Up to 1,000 af will be transferred directly by the City to the DWB and the other up to 5,000 af will be provided by the City to SSWD under those parties' wholesale contract, and made available by SSWD to the DWB. The 6,000 af of transfer water would be released from Folsom Reservoir, thence the American River, thence the Sacramento River and conveyed across the Delta to the SWP and CVP facilities.

The petition requests that transfer be authorized for release from July 1, 2009 through December 31, 2009; however, the water is most likely to be released during the months of August and September 2009.

Due to the additional amount of export pumping associated with this transfer, additional Delta inflow will be required to maintain water quality objectives within the Delta. Accordingly, a portion of the transfer water (typically referred to as "carriage water") will be used for salinity control, fish and wildlife enhancement, and water quality control.

To provide the 6,000 af of transfer water, the City proposes to institute a groundwater substitution program that will pump additional groundwater in an amount equivalent to up to 1,000 af between July 1, 2009 and September 30, 2009 of which it would otherwise receive through surface water diversions. SSWD proposes to institute a groundwater substitution transfer in which it would forgo receipt of up to 5,000 af of surface water that it anticipates would be available during July through September 2009 under the 2004 *Wholesale Water Supply Agreement Between the City of Sacramento and Sacramento Suburban Water District* ("Wholesale Agreement"). SSWD would pump groundwater for use by its customers in an amount equivalent to the amount of surface water that it would otherwise receive through the Wholesale Agreement.

The Wholesale Agreement provides for the City to divert and treat surface water at the City's E.A. Fairbairn Water Treatment Plant and convey the treated surface water to SSWD's South Service Area through a jointly-owned transmission pipeline when there is adequate flow in the American River. Generally, the Wholesale Agreement specifies that no water shall be delivered to SSWD when the Water Forum diversion restrictions included in the City's four American River water rights permits are in effect. If March through November unimpaired inflow is greater than 400,000 af, then the City's American River diversion is limited if flow is less than the "Hodge Flow Criteria" as measured at the City's Fairbairn Water Treatment Plant. The Hodge Flow Criteria are as follows:

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

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

In the absence of this transfer, up to 1,000 af of the subject water would be used within the City's service area, and up to 5,000 af of the subject water would be used within SSWD's South Service Area.

### **PROPOSED TEMPORARY CHANGE**

The proposed transfer would temporarily add the SWP's Banks Pumping Plant and Barker Slough Pumping Plant, the CVP's Jones Pumping Plant, and the Contra Costa Canal. Also, the service areas of the SWP and CVP would be added to the authorized place of use under Permit 11360. The SWP's service area is shown on Map 1878-1, 2, 3, and 4 on file with Application 5629. The CVP's service area is shown on Map 214-208-12581 on file with Application 5626. In addition, domestic, industrial, irrigation, salinity control, fish and wildlife enhancement, and water quality control should be temporarily added as purposes of use under Permit 11360 consistent with the carriage water requirements described above.

### **PETITIONER'S WATER RIGHTS**

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. This permit authorizes the direct diversion and accumulation of water in storage between November 1 of each year and August 1 of the succeeding year. The authorized purpose of use under Permit 11360 is municipal.

### **COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Temporary changes involving the transfer of water that was previously stored are exempt from the requirements of the California Environmental Quality Act (CEQA). However, the State Water Board must consider potential impacts to other legal users of the water and to fish, wildlife, or other instream beneficial uses.

## **STATE WATER RESOURCES CONTROL BOARD'S STATUTORY PROVISIONS**

Pursuant to Water Code sections 1725, et seq., the State Water Board is authorized to issue temporary change orders, allowing the transfer or exchange of water or water rights after completing an evaluation and finding that the proposed temporary changes:

1. Involve only water that would otherwise have been consumptively used, stored, or conserved pursuant to Water Code section 1011, by Permittee;
2. Would not injure any legal user of the water;
3. Would not unreasonably affect fish, wildlife, or other instream beneficial uses; and
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code sections 1745.10 and 1745.11.

If the State Water Board cannot satisfy, in a timely manner, the provisions of Water Code section 1725, et. seq., then the State Water Board may deny the petition or schedule and notice a hearing regarding the proposed transfer or exchange of water.

## **OPPORTUNITY FOR COMMENT**

Pursuant to the requirements outlined above, the State Water Board is seeking information to assist in the evaluation of the proposed temporary change of water rights. Any person may file comments concerning the petition for temporary change. The comments must address the required findings set forth above. The petitioner has the burden of establishing that the proposed temporary change will not injure any legal user of water, or unreasonably affect fish, wildlife, or instream beneficial uses. If the State Water Board determines that the petitioner has established a prima facie case, the burden of proof then shifts to the party that has filed comments (Water Code section 1727). While such a determination has not been made in this case, commenters should provide sufficient information to support claims of injury or effects on fish, wildlife, or other instream beneficial uses.

Due to the relative brevity of the temporary transfer process, the Division of Water Rights (if necessary) may request that the petitioner submit additional information during the comment period. Any such requests and any additional information submitted by the petitioner regarding this proposed temporary change **during the comment period** will be posted with this notice on the Division of Water Rights' website at: [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/). Potential commenters are strongly urged to check the website for such information prior to filing a comment.

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Comments filed in response to this notice must be received in the office of the State Water Board's Division of Water Rights, at the first address listed below by **2:00 p.m. on July 31, 2009**. Additionally, a copy of the comments must be filed with the City and SSWD. **Comments must be accompanied by proof of service of a separate copy of the materials on the petitioner.** Interested parties are encouraged to file comments by FAX and to notify the following contact persons by telephone of any materials that will be submitted. An original copy of all materials, however, must be received for the State Water Board to consider your comments.

Division of Water Rights  
c/o Greg Wilson  
P.O. Box 2000  
Sacramento, CA 95812-2000  
FAX: (916) 341-5400

Sacramento Suburban Water District  
c/o Joshua Horowitz  
Bartkiewicz, Kronick, & Shanahan  
1011 22<sup>nd</sup> Street  
Sacramento, CA 95816-4907  
FAX: (916) 446-4018

Please address questions about this notice to Greg Wilson at (916) 341-5427. Questions regarding the petitioner, co-petitioner, or transferee should be addressed as follows:

City of Sacramento (petitioner):	Martha Lennihan (916) 321-4460 FAX: (916) 321-4422
SSWD (co-petitioner):	Joshua Horowitz (916) 446-4254 FAX: (916) 446-4018
DWR (transferee):	Teresa Geimer (916) 651-7194 FAX: (916) 651-0726

*ORIGINAL SIGNED BY*

Leslie F. Grober, Manager  
Hearings and Special Programs Section

Dated: June 29, 2009