

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMITS 11358, 11359, 11360, 11361
(APPLICATIONS 12140, 12321, 12622, 16060) OF CITY OF SACRAMENTO**

**PETITIONS FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 14,650 ACRE-FEET OF WATER
TO SANTA CLARA VALLEY WATER DISTRICT AND STATE WATER
CONTRACTOR DRY YEAR TRANSFER PROGRAM**

**ORDER DENYING TEMPORARY CHANGE IN POINT OF DIVERSION,
PLACE OF USE AND PURPOSE OF USE**

SOURCE: American River and Sacramento River

COUNTY: Sacramento

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On April 30, 2021, the City of Sacramento (Sacramento or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) petitions for temporary change (Petitions) involving the transfer of water under water right Permits 11358, 11359, 11360, and 11361 (Applications 12140, 12321, 12622, and 16060), pursuant to Water Code section 1725 et seq. Pursuant to the petitions, Sacramento seeks to transfer the following amount for each permit: 1,440 af under Permit 11358, 5,900 af under Permit 11359, 5,900 af under Permit 11360, and 1,410 af under Permit 11361. Under the proposed transfers, up to 14,650 acre-feet (af) of water would be transferred to the Santa Clara Valley Water District (SCVWD) and State Water Contractor (SWC) agencies participating in the State Water Project's (SWP) Dry Year Transfer Program (DYTP). The SWC agencies will include Dudley Ridge Water District, Central Coast Water Authority, County of Kings, San Geronio Pass Water Agency, Metropolitan Water District of Southern California, San Gabriel Valley Water Company, Antelope Valley East Kern Water Agency, Zone 7 Water Agency, San Bernardino Valley Municipal Water District, Santa Clara Valley Water District, County of Napa Flood Control and Water Conservation District, Palmdale Water District, Santa Clarita Valley Water District, Kern County Water Agency, and Alameda County Water District (hereinafter collectively referred to as SWC Agencies).

2.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER

2.1 Description of the proposed temporary changes

In order to facilitate the transfer, Sacramento proposes to temporarily add the following to Permits 11358, 11359, 11360, and 11361: (1) SWP's Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, (2) North Bay Aqueduct Intake via Barker Slough as a point of diversion, (3) San Luis Reservoir as a point of rediversion, (4) a portion of the service area of the State Water Project as an additional place of use; and (5) municipal, industrial, irrigation and domestic purposes of use.

Sacramento proposes to transfer water to SCVWD and the SWC Agencies through groundwater substitution. Sacramento will pump up to 5,390 af of groundwater in lieu of using surface water under Permits 11358, 11359, 11360, and 11361. Sacramento Suburban Water District will pump up to 9,260 af of groundwater to replace surface water that would have been used under Sacramento Permits 11358, 11359, 11360, and 11361 and Carmichael Water District License 1387. Carmichael will pump up to 1,889 af, under their petitioned License 1387, in lieu of using surface water. Absent the proposed temporary transfer, Sacramento states it would divert the entire quantity of surface water proposed for transfer from the American River and Sacramento River pursuant to Permits 11358, 11359, 11360, and 11361 to meet its consumptive demands.

2.2 Summary of Sacramento's Petitioned Permits

Permit 11358: Authorizes direct diversion of up to 500 cfs from the American River in Sacramento County from November 1 to August 1 of the following year for municipal uses.

Permit 11359: Authorizes direct diversion and storage from the South Fork of Silver Creek in El Dorado County. Permit 11359 also authorizes three points of diversion/re-diversion on Silver Creek in El Dorado County. Points of Re-diversion for Permit 11359 are located on the South Fork American River, American River, and the Sacramento River. The maximum rate of direct diversion is 310 cfs and the maximum storage amount is 275,000 acre-feet annually (afa). Water diversion and storage is authorized between November 1 to August 1 of the following year for municipal uses.

Permit 11360: Authorizes direct diversion from the Rubicon River in El Dorado County. Permit 11360 also authorizes points of diversion and/or re-diversion and storage on Rockbound Creek, Gerle Creek, South Fork Rubicon River, Silver Creek, and Brush Creek. Points of re-diversion for Permit 11360 are located on the South Fork American River, American River, and the Sacramento River. The maximum rate of direct diversion is 1,200 cfs and maximum authorized storage is 314,000 afa. Water diversion

and storage is authorized between November 1 to August 1 of the following year for municipal uses.

Permit 11361: Authorizes direct diversion of up to 175 cfs from the American River in Sacramento County from November 1 to August 1 of the following year for municipal, industrial and recreational uses.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 10, 2021, a public notice of the transfers was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on May 10, 2021, Petitioner noticed the Petition via publication in the Sacramento Bee and mailed the notice via first class mail to interested and downstream parties.

The comment deadline was June 9, 2021. Timely comments on the transfers were received from the California Department of Fish and Wildlife, Central Delta Water Agency, U.S. Bureau of Reclamation, and AquAlliance. Petitioner provided responses to the comments by letters to the Division and are available in the record for Permits 11358, 11359, 11360, and 11361.

4.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water 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 water, or reduction in return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

5.0 WATER UNAVAILABLE FOR TRANSFER UNDER PERMITS 11358, 11359, 11360, and 11361

The State Water Board has developed a methodology to identify when supply and demand data indicate that water is unavailable for diversion by water right holders in the Sacramento-San Joaquin Watershed, referred to as the Water Unavailability Methodology for the Delta Watershed, or Methodology. This Methodology was most recently updated on June 15, 2021; a summary report describing the Methodology (titled “Water Unavailability Methodology for the Delta Watershed”), as well as the dataset used to implement the Methodology (titled “wua_spreadsheet_061621.xlsx”), are available at the following website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_to_ols_methods/delta_method.html. Based on the available data and Methodology, the information available to the State Water Board indicates that available supplies in the Sacramento River watershed is insufficient to support diversion of any post-1914 water right, which includes Permits 11358, 11359, 11360, and 11361. On June 15, 2021, the State Water Board mailed a *Notice of Unavailability of Water for Post-1914 Water Right Holders and Warning of Impending Water Unavailability for Pre 1914 and Riparian Claimants in the Sacramento-San Joaquin Delta Watershed* (Notice of Unavailability) to water users including Sacramento to notify them that the State Water Board’s best available information indicated that there is insufficient water for diversions under post-1914 rights.

Further, transferable water is limited to the extent of the surface water direct diversion rights of the water right holder at the time of the transfer. It is unclear whether water would be lawfully diverted and consumptively used in the absence of the transfer given that the Methodology indicates supplies are insufficient to meet the priorities of Permits 11358, 11359, 11360, and 11361.

The evidence, including the Methodology and related dataset and the information supplied by Sacramento, shows that diversions pursuant to Permits 11358, 11359, 11360, and 11361 could injure senior diverters in the Sacramento River watershed.

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 2012-0029.

7.0 CONCLUSION

Given the information available to the State Water Board as described in Section 5.0, the State Water Board is unable to make the findings required by Water Code section 1727, subdivision (b)(1), that this transfer will not injure any legal user of water.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions submitted by the City of Sacramento under Permits 11358, 11359, 11360, and 11361 for temporary changes in the point of diversion, place of use, and purpose of use, to authorize the transfer of up to a total of 14,650 af of water to the Santa Clara Valley Water District and State Water Contractor Agencies is denied. All existing terms and conditions of Permits 11358, 11359, 11360, and 11361 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

JULE RIZZARDO, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUL 07 2021