

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT PERMITS 1267 AND 2492
(APPLICATIONS 1651 AND 2778)
OF SOUTH FEATHER WATER & POWER AGENCY**

**PETITIONS FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
10,000 ACRE-FEET OF WATER TO SANTA CLARA VALLEY WATER DISTRICT**

SOURCES: Lost Creek and South Fork Feather River

COUNTIES: Butte and Plumas

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On May 13, 2022, South Feather Water & Power Agency (South Feather WPA or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) petitions for temporary change (Petition) involving the transfer of water under water right Permits 1267 and 2492 (Applications 1651 and 2778), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 10,000 acre-feet (af) of water (up to 5,000 af under water right Permit 1267 and up to 5,000 af under water right Permit 2492) will be transferred to the Santa Clara Valley Water District (Valley Water). The temporary changes approved pursuant to Water Code section 1725 under this petition may be effective until November 30, 2022.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by releasing water that would otherwise be stored in Little Grass Valley Reservoir and Sly Creek Reservoir under Permits 1267 and 2492.

2.1 Reservoir Release

Under a reservoir release transfer, surface water supply is made available for transfer as a result of a petitioner releasing water held in storage that would remain in storage and/or diverted if the transfer were not to occur. The transfer proposed by South Feather WPA involves water currently stored in Little Grass Valley Reservoir and Sly Creek Reservoir. Following the transfer, the reservoir may have additional storage capacity that will result in diversion that would not occur in the absence of the transfer, referred to as reservoir refill. Reservoir refill has the potential to injure other legal users of water if it occurs when the San Francisco Bay/Sacramento-San Joaquin Delta (Delta) is in balanced conditions¹ or there is limited streamflow in the channel from which the water is being transferred.

Refill criteria developed in conjunction with the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) can ensure that the future refill of the reservoir space made available in Little Grass Valley Reservoir and Sly Creek Reservoir from this transfer does not adversely impact other legal users of water.

3.0 BACKGROUND

3.1 Summary of the South Feather WPA's Permits

Permit 1267 (Application 1651)

Permit 1267, which has a priority date of February 2, 1920, authorized the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River from October 1 of each year to July 1 of the succeeding year. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) from April 1 to July 1 of each year. The point of diversion to storage under Permit 1267 is located at the Little Grass Valley Dam. Points of re-diversion include the South Fork Diversion Dam, Sly Creek Storage Dam, Lost Creek Storage Dam, Forbestown Diversion Dam, and Ponderosa Dam. The water is used for domestic, municipal, industrial, and irrigation purposes within the authorized place of use, and for recreational purposes within Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Storage Dam, and Ponderosa Reservoir.

¹ The Delta is in balanced conditions when the State Water Project (SWP) and Central Valley Project (CVP) agree that releases from upstream reservoirs, plus unregulated flow, approximately equal the water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

Permit 2492 (Application 2778)

Permit 2492, which has a priority date of March 6, 1922, authorizes the diversion to storage of up to 25,000 af of water per annum from Lost Creek between October 1 of each year to June 1 of the succeeding year. Permit 2492 also authorizes the direct diversion from Lost Creek of up to 50 cfs from April 1 to June 1 of each year. The point of diversion to storage under Permit 2492 is located at the Sly Creek Storage Dam and the points of re-diversion are located at the Lost Creek Storage Dam, Ponderosa Dam, and Forbestown Diversion Dam. The water is used for domestic, municipal, industrial, and irrigation purposes within the authorized place of use, and for recreational purposes within Sly Creek Reservoir, Lost Creek Storage Dam, and Ponderosa Reservoir.

3.2 Description of the proposed temporary changes

In order to facilitate the transfer, South Feather WPA proposes to temporarily add the following to Permits 1267 and 2492:

- 1) State Water Project's (SWP) Barker Slough Pumping Plant as a point of rediversion, located within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M;
- 2) SWP's Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay as a point of rediversion, located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M;
- 3) Central Valley Project's (CVP) Bill Jones Pumping Plant (Jones Pumping Plant) as a point of rediversion, located within NE $\frac{1}{4}$ or SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M;
- 4) Oroville Dam as a point of rediversion, located within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1, T19N, R4E, MDB&M;
- 5) San Luis Reservoir as a point of rediversion, located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M; and
- 6) Service area of Valley Water as an additional place of use.

South Feather WPA will make surface water available for temporary transfer via reservoir release. Absent the proposed temporary change, the transferred water would remain in storage and/or diverted in Little Grass Valley Reservoir and Sly Creek Reservoir. Water would be delivered for use in Valley Water's service area via releases from Lake Oroville to the Feather River thence the Sacramento River thence the Delta for re-diversion at the SWP Banks Pumping Plant and/or Barker Slough Pumping Plant, and/or the CVP Jones Pumping Plant.

3.3 Governor Newsom's 2021 and 2022 Proclamations of a Drought State of Emergency

California is experiencing severe to exceptional drought conditions across the state. Water Year 2020-2021 was a second consecutive dry year with record-breaking high temperatures. In response to California's severe drought conditions in 2021, Governor Gavin Newsom proclaimed a regional drought state of emergency on April 21, 2021 for the Russian River Watershed, and on May 10, 2021 he signed a proclamation expanding the drought state of emergency to the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds. On July 8, 2021, the Governor signed a proclamation further expanding the regional drought state of emergency to include nine counties where drought effects are increasingly severe or where state emergency response may be needed. The Governor's drought proclamations brought a total of 50 of the state's 58 counties under the drought state of emergency.

The Governor's July 8, 2021 Proclamation states:

“since my May 10, 2021 Proclamation, California's water supplies continue to be severely depleted, and high temperatures are now increasing water loss from reservoirs and streams (especially north of the Tehachapi Mountains), and thus demands by communities and agriculture have increased, supplies of cold water needed for salmon and other anadromous fish that are relied upon by tribal, commercial, and recreational fisheries have been reduced, and risk has increased of drought impacts continuing in 2022 because of continued water loss from climate change-driven warming temperatures and less water available in reservoirs and streams from two years of below average precipitation.

The July 8, 2021 Proclamation directed the State Water Board to consider,

“modifying requirements for reservoir releases or diversion limitations to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, enhance instream conditions for fish and wildlife, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. The Water Board shall require monitoring and evaluation of any such changes to inform future actions.”

On October 19, 2021, the Governor extended the drought emergency proclamation to include California's remaining eight counties.

On March 28, 2022, the Governor issued Executive Order N-7-22, finding that “early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply” and that “the ongoing drought will have significant, immediate impacts on communities with

vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water.” The March 28, 2022 Order applies various measures to encourage water conservation and to increase resilience of state water supplies during prolonged drought conditions.

4.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TRANSFER

Governor Newsom’s May 10, 2021 drought proclamation modified noticing requirements and notice duration for temporary transfers of water. Consistent with the Governor’s proclamation, the Division noticed South Feather WPA’s petitions on May 23, 2022, to the Division’s website and via the State Water Board’s electronic subscription mailing list pursuant to modified Water Code section 1726, subdivision (d).

Timely comments on the proposed transfer were received from 1) Mr. Richard Morat; 2) California Department of Fish and Wildlife (CDFW); 3) Reclamation; and 4) Central Delta Water Agency (CDWA). Petitioner provided responses to timely comments by letter to the Division dated June 21, 2022 and are available in the record for Permits 1267 and 2492.

4.1 Comments of Mr. Richard Morat

By email dated June 2, 2022, Richard Morat commented on the proposed transfer. Mr. Morat stated that approving the petition without mitigation measures will result in incremental adverse impacts to aquatic resources. Additionally, Mr. Morat stated that the transfer petition will further lessen Lake Oroville’s ability to meet fishery flow and water temperature requirements downstream to and through the estuary. Mr. Morat provided the following comments regarding the proposed transfer: 1) Delay the refill of storage from the transfer until aquatic resources are recovered; 2) Require a refill agreement to offset fishery impacts; and 3) Condition the transfer to have inflow be bypassed (except minimum flow releases) in Little Grass Valley Reservoir and Sly Creek Reservoir until 5,000 af of water in each reservoir has passed before diversion of storage can commence.

Petitioner Response

The Petitioner stated that the proposed 2022 water transfer will be subject to a refill agreement; thus, it is not accurate that “these petitioned operations further lessen Lake Oroville’s ability to deliver satisfactory fishery flow and water temperature conditions downstream to and through the estuary.” Further, the Petitioner noted that its facilities are located upstream of Lake Oroville, and the Petitioner’s operations do not influence downstream flow of the Feather River, Sacramento River, or inflow to the Delta. The Petitioner stated that there are no adverse public trust or other fishery impacts as a result of the Petitioner’s 2022 water transfer and the transfer will comply

with all applicable outflow and water quality requirements, including State Water Board Revised Water Right Decision 1641 (D-1641), any applicable Temporary Urgency Change Petition (TUCP) governing Delta operations, biological opinions, and the 2022 interim operations plan governing operations of the CVP and SWP.

State Water Board Response

The proposed temporary transfer by South Feather WPA is for water that would have otherwise been stored pursuant to their permits. By approving the transfer, additional water will flow down the Feather River to the Sacramento River and to the Delta. Furthermore, DWR is responsible for fulfilling its in-delta and export commitments, consistent with D-1641, related to any storage releases from Lake Oroville. The water used or transferred under Permits 1267 and 2492 cannot be redirected for existing or potential aquatic resources needs upstream or downstream of Lake Oroville.

Current outflow and water quality requirements are established by D-1641 and applicable biological opinions and are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer, and thereafter during the refill period.

The State Water Board is supportive of transfers to provide water where it is needed. It is anticipated that Valley Water will receive only five percent of their SWP allocation this year, which is far lower than the initial fifteen percent SWP allocation. The State Water Board believes that the proposed transfer will help provide additional water for health and safety needs.

4.2 Comments of CDFW

By letter dated June 6, 2022, CDFW commented on the proposed water transfer, citing concerns about the potential direct and cumulative adverse impacts from changes in the quantity, timing, temperature, and duration of water transfers on the sensitive resident fisheries within the South Fork Feather River (SFFR). CDFW is particularly concerned about potential impacts of hydropower operations to foothill yellow-legged frog (FYLF), a California Endangered Species Act candidate, and other aquatic species, due to changes in streamflow and temperature. CDFW states that the proposed transfer, even occurring under standard project operations, has the potential to significantly impact FYLF during vulnerable life states.

CDFW indicated that FYLF breeding in the Sierra Nevada system typically occurs between late April and early July after winter runoff has subsided and water temperatures increase. Rates of embryonic development and length of tadpole period are both highly temperature dependent. Tadpole rearing sites require some level of protection from unpredictable scouring flows and appropriate ramp down rates to prevent desiccation after egg mass oviposition.

CDFW acknowledges that the South Feather WPA proposed transfer will comply with Condition 3(A) of the Water Quality Certification (WQC) for Federal Energy Regulatory Commission (FERC) Project No. 2088 issued in 2018. The transfer would occur outside of the FYLF breeding season of April 16 through July 15 and will therefore incorporate the down-ramping rates set forth in Exhibit D of the Petition for the non-FYLF breeding season. Additionally, CDFW requested the following: 1) Petitioner to notify CDFW in the event of unscheduled rapid flow fluctuations in Lost Creek or SFFR below Forbestown Reservoir and above Ponderosa Dam that occur outside of the parameters of regular project operations; 2) Document observed impacts to FYLF as a result of unanticipated, rapid flow changes in the aforementioned reaches; and 3) Provide CDFW all stream gauge data for Lost Creek below Lost Creek Reservoir and SFFR reach below Forbestown Reservoir and above Ponderosa Dam from July 1 through November 30 within 15 days of the end of the transfer period.

Petitioner Response

The Petitioner stated that CDFW conflates normal South Feather WPA operations of its water delivery and hydroelectric power generation with its temporary modified operations that would convey transfer water almost exclusively through man-made facilities outside of the natural waterways. Further, CDFW “acknowledges” and expresses no concerns with the Petitioner’s proposed ramping rates in Exhibit D of the Petition.

Regarding CDFW’s first through third requests, the Petitioner stated that the proposed water transfer would not be conveyed in Lost Creek or SFFR below Forbestown Reservoir and above Ponderosa Dam. The Petitioner will operate its facilities consistent with all applicable laws and regulations, including its April 14, 2009 “Notice of Authorization for Continued Project Operation” issued by FERC which mandates that the Petitioner continue to operate the project consistent with its current FERC license.

The Petitioner will continue to monitor its operations to ensure legal and regulatory compliance and believes the CDFW requests for notification and documentation are not related to the temporary modified operations to implement the proposed transfer, and thus the requests should not be included in the Order. The Petitioner indicated that they will provide records within 15 days of the end of the transfer period.

State Water Board Response

As indicated in the Petition and CDFW’s June 6, 2022 comment letter, this Order conditions the transfer to use the ramping rate requirements specified in Condition 3 of the WQC for FERC Project No. 2088 (Exhibit D of the Petition) issued in 2018. In the event a new FERC license is issued for Project No. 2088 with different ramping rates, those ramping rates may be provided to CDFW and the Deputy Director for Water Rights with a request to use in lieu of Condition 3 of the WQC for FERC Project

No. 2088. Although the proposed water transfer will not be directly conveyed in Lost Creek or SFFR below Forbestown Reservoir and above Ponderosa Dam, the flow in both reaches can be affected by South Feather WPA operations that accommodate the conveyance of the proposed transfer water. Thus, this Order conditions the Petitioner to comply with CDFW's requests as indicated in CDFW's June 6, 2022 comment letter.

4.3 Comments of Reclamation

By letter dated June 7, 2022, Reclamation commented on South Feather WPA's proposed water transfer. Reclamation requested that the Order approving the proposed transfer includes the following conditions to protect Reclamation's water rights and operations for the Jones Pumping Plant.

- 1) The transfer is subject to the refill criteria specified in a refill agreement between South Feather WPA, Reclamation, and DWR.
- 2) Transferable water may be credited only during balanced conditions in the Delta.
- 3) Execution of a Warren Act contract is required for South Feather WPA to use the Jones Pumping Plant.

Petitioner Response

The Petitioner indicated that they do not object to the conditions proposed by Reclamation. The Petitioner also agreed to obtain a Warren Act contract if one is legally required to convey the transfer water to Valley Water.

State Water Board Response

This Order includes a condition requiring South Feather WPA to obtain a reservoir refill agreement with Reclamation and DWR prior to initiating the transfer. This Order also includes a condition that requires South Feather WPA to obtain a Warren Act contract with Reclamation if South Feather WPA uses the Jones Pumping Plant for water delivery under the transfer. Further, the Delta was declared to be in balance by DWR on June 15, 2022 and is expected to remain so through at least the end of the transfer period.

4.4 Comments of CDWA

By letter dated June 7, 2022, CDWA commented on the proposed transfer. CDWA's comments are summarized as follows:

- 1) Transfer water should not be exported from the Delta unless D-1641 requirements (without temporary urgency changes) are and will be met.
- 2) The Petitioner did not provide adequate information to show that the proposed water transfer is excess stored water originally diverted in compliance with Permits 1267 and 2492.
- 3) The accurate analysis and quantification of losses that occur is required to prevent injury to legal users of water. CDWA requested that this analysis include losses from the source of the transferred water to the export pumps, carriage losses, and losses from the export pumps to the ultimate places of use.
- 4) The Petition lacks the proper environmental analysis to demonstrate that the proposed transfer will not unreasonably affect fish, wildlife and other instream beneficial uses.
- 5) The serial nature of previous and the proposed transfer should prohibit analysis under Water Code section 1725 et seq. and should instead be evaluated as long-term transfers pursuant to Water Code section 1735 et seq.
- 6) Valley Water is a party to other transfers this year, including a transfer under Reclamation and DWR water rights. CDWA believes that the State Water Board analyzes petitions for temporary change involving transfers of water in a piecemealed fashion resulting in cumulative impacts being redirected to non-parties to the transfers and to other legal users of water (including third party groundwater impacts), the public trust and threatened and endangered species. CDWA ultimately believes that due to piecemealing, a proper analysis of the transfer pursuant to Water Code section 1725 et seq. is precluded.
- 7) The proposed transfer would be a waste or unreasonable use of water under Article 10, section 2 of the California Constitution due to conveyance losses and increase in electrical consumption and carbon emissions.

Petitioner Response

Regarding CDWA's concern of insufficient information in the petition, the Petitioner stated that the petition included the required forms, information, and associated documentation. The Petitioner stated that it provided adequate information with the petition demonstrating that the proposed transfer would not violate the conditions set

forth in Water Code section 1727, subdivision (b). The Petitioner indicated that with the information cited in the June 21, 2022 response letter, and as provided in the Petition, has complied with its initial burden to demonstrate that the proposed water transfer will neither injure any legal user of water, nor cause any unreasonable effects to fish, wildlife, or other instream beneficial uses.

Regarding CDWA's concern of a lack of an adequate analysis and quantification of losses from the sources of transferred water to the export pumps and thence to the Valley Water service area, the Petitioner stated that it will continue to be bound by the 2021 refill agreement until the criteria is satisfied. Additionally, the Petitioner is entering a 2022 refill agreement with DWR and Reclamation to address and resolve any potential injury as a result of the 2022 proposed transfer. The proposed 2022 water transfer would be subject to DWR and Reclamation's Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information). DWR would convey the transfer water and assess any losses beyond the point of delivery.

The Petitioner stated that CDWA offered broad generalizations as to "precipitous decline of aquatic biodiversity", but nothing specific to the Petitioner's 2022 water transfer or why it would impact fishery resources. The Petitioner will continue to operate in compliance with all applicable legal and regulatory requirements. Additionally, the Petitioner proposed ramping rates applicable for the 2022 water transfer, which are protective of resident aquatic species, including FYLF.

The Petitioner stated that the Water Code does not require petitioners for temporary changes under Water Code section 1725 et seq. to seek approval for the proposed changes under other provisions of the Water Code or prohibit the approval of a series of similar temporary changes. A proposed temporary change is exempt from the requirements of the California Environmental Quality Act (CEQA), therefore there are no CEQA requirements for a cumulative review.

Regarding CDWA's concern of the proposed transfer being an unreasonable use of water, the Petitioner indicated that the proposed transfer is consistent with the Governor's drought proclamations and is entitled to prioritization. Additionally, Valley Water is facing critical/emergency water shortages given its current CVP and SWP allocation (health and safety volumes only and five percent of contract amount, respectively).

State Water Board Response

- 1) The State Water Board's April 4, 2022 TUCP approval Order applies only to Reclamation and DWR water rights and does not involve South Feather WPA's Permits 1267 and 2492. Further, Water Code section 1727, subdivision (e) indicates that when determining whether to approve a temporary change involving a transfer, "...the board shall not deny, or place conditions on, a

temporary change to avoid or mitigate impacts that are not caused by the temporary change.” Reclamation and DWR filed the TUCP in response to the 2022 drought conditions. Reclamation and DWR did not file the TUCP to mitigate potential impacts from South Feather WPA’s proposed transfer, therefore the State Water Board cannot deny South Feather WPA’s petition for temporary changes based on Reclamation and DWR filing the TUCP to achieve compliance with D-1641.

- 2) Water Code section 1725 et. seq indicates that a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if 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 propose change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. As described in Sections 8.1 through 8.3 of this Order, the State Water Board believes adequate information has been included in the Petition and finds that the proposed transfer is water that would have been stored or consumptively used by the permittee in the absence of the proposed change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.
- 3) The Draft Technical Information requires a conveyance agreement between South Feather WPA, Reclamation, and DWR, as the transferred water is non-project water being conveyed through CVP and SWP facilities. According to the Draft Technical Information, only that portion of the proposed transfer that is determined to represent new water to the system is transferable using CVP or SWP facilities. This water, frequently referred to as “new water” or “real water”, is the net addition of water to the downstream system that would not be available absent the transfer.

Reclamation and DWR have a shared responsibility for meeting Delta water quality and environmental requirements. Appendix A of the Draft Technical Information addresses adverse effects of transfer on the CVP and SWP. If water transferred is not new water to the system, it will instead come out of the supply for CVP and SWP contractors. The Draft Carriage Water Overview for Non-Project Water Transfers (Carriage Water Overview) dated October 2019, describes how Reclamation and DWR account for the losses of water as it is transferred from the seller to the buyer. The document provides a methodology for determining carriage losses through the Delta. The transfer proposed by South Feather WPA will be subject to this accounting as part of the conveyance agreement between South Feather WPA and DWR. Once the water has been conveyed through the Delta, the SWP and the CVP are responsible for delivering the transferred quantities and making up any potential conveyance losses to the final place of use for the transfer.

- 4) See the State Water Board's response in Section 4.4, subsection 2 of this Order.
- 5) The serial nature of previous and approved transfers does not transmute those changes into "long-term" changes, which would otherwise be subject to environmental and legal requirements under Water Code section 1735 et seq. Approval of a temporary change lasts at most one year and must be petitioned for, defended, and approved according to the criteria in Water Code section 1725 et seq., each and every year the Petitioner wishes to operate in accordance with the change. In contrast, a long-term transfer need only be approved once before the transfer can proceed in each subsequent year. The one-year transfer that is the subject of this Petition meets the statutory definition of a "temporary" transfer, and Water Code section 1729 therefore exempts approval of the Petition from CEQA. Given the water transfer is for a one-year duration or less and the variance of South Feather WPA's proposed place of use in its past transfers and current proposed transfer, it does not meet the criteria for a long-term transfer and is not subject to the environmental and legal analyses pursuant to Water Code section 1735 et seq.
- 6) Valley Water is purchasing water from several parties to provide critical water supplies to its service area this year due to extreme drought conditions. Water Code section 1725 et seq. requires an analysis based on each individual water right that is subject to a change petition and the analysis required is focused on the water right holder petitioning for the change. Consequently, the State Water Board believes regardless of whether Valley Water will be the recipient of several water transfers, each transfer will be evaluated appropriately as required pursuant to Water Code section 1725 et seq.
- 7) As indicated in the State Water Board's response in Section 4.1 of this Order, the State Water Board is supportive of transfers to where water is needed. Given that the CVP and SWP allocation for Valley Water is limited to minimum health and safety needs, as well as the proposed transfer being aligned with the Governor's drought proclamation, the State Water Board believes the proposed transfer is reasonable as it will alleviate Valley Water's extreme drought conditions, including additional water for health and safety needs.

5.0 POTENTIAL CURTAILMENT

During any period in 2022 that Permits 1267 and 2492 are curtailed, South Feather WPA will be required to cease all diversion under Permits 1267 and 2492 in accordance with the curtailment order, including any diversions for temporary transfer, regardless of whether the actual diversion be facilitated by DWR, Reclamation, or other SWP/CVP facilities. A condition is therefore included in this Order that only water collected to

storage prior to issuance of the curtailment order may be used and/or transferred. Additionally, water may only be diverted and temporarily retained by DWR in Lake Oroville when water is available under Permits 1267 and 2492, thus only storage releases would be permitted during a period of water unavailability that affects DWR's water rights.

6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000 et seq.) The State Water Board will file a Notice of Exemption.

7.0 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).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) "The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out." (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its

evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).

8.0 REQUIRED FINDINGS OF FACT

8.1 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 Water Code 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.”

In the absence of the proposed transfer, South Feather WPA indicated the transfer water would have remained in storage in Little Grass Valley Reservoir and Sly Creek Reservoir. South Feather WPA indicated that its combined end of year storage target is 60,000 af in 2022 without the proposed transfer.

The State Water Board conducted an independent evaluation of its records. The combined annual use under Permits 1267 and 2492 was 6,956 af, 12,925.5 af, 31,435 af, 23,672.4 af, and 22,769 af during 2017, 2018, 2019, 2020, and 2021, respectively. The maximum authorized storage is 109,012 af under Permit 1267 and 25,000 af under Permit 2492. According to the Petitioner, in 2022 the combined end of year storage in the absence of the transfer is 60,000 af. The end of year storage target with the transfer is 50,000 af.

In light of the above, and in accordance with Water Code section 1726, subdivision (e), the State Water Board finds that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

8.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water, 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 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 the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).)

Thus, with respect to the “no injury” inquiry under Water Code section 1727, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board’s inquiry is the effect of the change on the rights of others. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her right to use the water, whatever the source of that right may be.” (Id. at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*)

In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water. The water proposed for transfer pursuant to this temporary change consists of water previously stored in Little Grass Valley Reservoir and Sly Creek Reservoir pursuant to Permits 1267 and 2492. In the absence of the proposed transfer, the water would remain in storage for future use by South Feather WPA and would not be available to other water users. Further, the release of the water from storage at Little Grass Valley Reservoir and Sly Creek Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream.

The refill criteria provide for an accounting of refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and Reclamation, according to a schedule agreed to by South Feather WPA, DWR, and Reclamation.

South Feather WPA will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Little Grass Valley Reservoir and Sly Creek Reservoir created by the transfer will not reduce the amount of water that Reclamation, DWR, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of the water would occur due to the transfer.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(1), the State Water Board finds that the proposed temporary changes would not injure any legal user of the 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 the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

8.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a temporary change in order to facilitate a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Central Valley Water Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding the transfer as described in Section 4.2 of this Order. Conditions 10, 11, and 12 have been included in this Order based on CDFW's comments. The Central Valley Water Board did not provide any comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

In general, North of Delta transfers result in an incremental increase in instream flows between the Petitioner's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures or water quality. The transfer will also be subject to all applicable federal and State Endangered Species Act requirements, including applicable biological opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversion and exports of water at the SWP and CVP Delta pumps.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(2), the State Water Board finds that, as conditioned, the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

9.0 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. Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated June 6, 2022.

10.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1725 et seq.

The State Water Board concludes that, based on the available information:

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 neither injure, nor unreasonably affect, any legal user of water, including 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 water or return flows.
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 the transfer of up to 10,000 acre-feet (af) of water under South Feather Water & Power Agency's (South Feather WPA or Petitioner) Permits 1267 and 2492 are approved.

All existing conditions of Permits 1267 and 2492 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through November 30, 2022.
2. The following points of diversion are temporarily added to Permits 1267 and 2492:

Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay:

California Coordinate System of 1983 (CCS83), Zone 3, North 2,126,440 feet and East 6,256,425 feet, being within NW $\frac{1}{4}$ or SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M.

Barker Slough Pumping Plant:

CCS83, Zone 2, North 1,862,435 feet and East 6,619,928 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M.

Bill Jones Pumping Plant (Jones Pumping Plant):

CCS83, Zone 3, North 2,121,505 feet and East 6,255,368 feet, being within NE¼ or SW¼ of projected Section 29, T1S, R4E, MDB&M.

Oroville Dam:

CCS83, Zone 2, North 2,322,087 feet and East 6,707,558 feet, being within NW¼ of NW¼ of Section 1, T19N, R4E, MDB&M.

San Luis Reservoir:

CCS83, Zone 3, North 1,845,103 feet and East 6,393,569 feet, being within SW¼ of SE¼ of projected Section 15, T10S, R8E, MDB&M.

3. The place of use under Permits 1267 and 2492 is temporarily expanded to include the service area of Santa Clara Valley Water District (Valley Water) as shown on Map 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630, and on Central Valley Project Map 214-202-84 filed with the Division.
4. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies, including the Federal Energy Regulatory Commission (FERC). This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
5. If, at any time prior to or during the period of transfer, the State Water Board curtails diversions pursuant to Permits 1267 and 2492, only water collected to storage prior to issuance of the curtailment may be transferred pursuant to this Order.
6. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
7. Rediversion of water at the Barker Slough, the Banks, or the Jones Pumping Plants is subject to compliance by the operators with the objectives currently required of Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Resources Control Board Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at that point of diversion, including compliance with the various plans required under D-1641. Diversion of water is also subject to compliance by DWR and Reclamation with all applicable biological opinions and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
8. Rediversion of water at the Barker Slough, the Banks, or the Jones Pumping

Plant is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.

9. Petitioner shall ensure that any required Warren Act contract with Reclamation is executed prior to use of the Jones Pumping Plant for the delivery of water to Valley Water under this transfer. Petitioner shall provide confirmation to the Deputy Director for Water Rights (email confirmation is acceptable) that this condition has been complied with, within 30 days of issuance of this Order.
10. During the period of this transfer, South Feather WPA shall use the ramping rate requirements specified in Condition 3 of the Water Quality Certification (WQC) for FERC Project No. 2088 issued in 2018. In the event a new FERC license is issued for Project No. 2088, the ramping rates in the new FERC license may be used in lieu of the Condition 3 of the WQC if agreed to by the California Department of Fish and Wildlife (CDFW) and the Deputy Director for Water Rights.
11. Petitioner shall notify CDFW in the event of unscheduled, rapid flow fluctuations in Lost Creek or South Fork Feather River (SFFR) below Forbestown Reservoir and above Ponderosa Dam that occur outside of the parameters of regular project operations. Additionally, the Petitioner shall document observed impacts to foothill yellow-legged frog as a result of unanticipated, rapid flow changes in the aforementioned reaches.
12. Petitioner shall provide all stream gauge data to CDFW for Lost Creek below Lost Creek Reservoir and SFFR reach below Forbestown Reservoir and above Ponderosa Dam from July 1 through November 30 within 15 days following the end of the transfer period. Petitioner shall provide confirmation to the Deputy Director for Water Rights (email confirmation is acceptable) that this condition has been complied with, within 15 days following the end of the transfer period.
13. Water may not be transferred through the Barker Slough, the Banks, or the Jones Pumping Plants until South Feather WPA has executed a Refill Agreement between Reclamation, DWR, and South Feather WPA to address potential refill concerns in Little Grass Valley Reservoir and Sly Creek Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and South Feather WPA shall be submitted to the Division within 15 days of the date of execution of the agreement. The terms of the Refill Agreement shall be binding until such time as all the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill

Agreement. South Feather WPA may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.

14. By December 15, 2022, South Feather WPA shall provide to the Deputy Director for Water Rights a report including one or more tables describing the transfer authorized by this Order. The report shall include the following information:
 - a. The general location of where water was delivered, and the acreage and/or population served by water delivered to Valley Water pursuant to this Order;
 - b. The average daily release rates and corresponding volume of water released from Little Grass Valley Reservoir and Sly Creek Reservoir as a result of this transfer (reported on a daily basis);
 - c. For each day of the transfer, the daily average rate of water diverted and daily volume of water diverted at the Barker Slough, the Banks, or the Jones Pumping Plants pursuant to this Order;
 - d. The daily amounts of water delivered to Valley Water pursuant to this Order;
 - e. The amount of the Refill Reservation as defined in the Refill Agreement (reported on a daily basis); and
 - f. Recognizing that reservoir refill will occur after the transfer ends, monthly reporting of reservoir refill is not required during the transfer period. However, South Feather WPA shall provide reservoir refill reporting in its Report of Permittee by April 1 of each year on monthly reservoir refill until the reservoir Refill Agreement has been satisfied. This occurs when the value of the Refill Reservation, as defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to South Feather WPA in time for inclusion in a submittal, South Feather WPA shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

15. 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.

16. This 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 (ESA) (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531-1544). If a “take” will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take prior to commencing transfer of water. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
17. The State Water Board reserves authority 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

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: July 18, 2022