

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0066-EXEC

In the Matter of Water Right Permit 21112 (Application 5645B) of

El Dorado Irrigation District

ORDER APPROVING PETITION FOR EXTENSION OF TIME

SOURCE: South Fork American River Stream System

COUNTIES: El Dorado, Amador, and Alpine

BY THE EXECUTIVE DIRECTOR:

Background

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Water Right Permit 21112 to El Dorado Irrigation District (EID or Permittee) and El Dorado County Water Agency (EDCWA) on October 16, 2001, pursuant to Application 5645B and Water Right Decision 1635. EDCWA subsequently assigned its ownership of Permit 21112 to EID.
2. Permit 21112 allows a total diversion to storage of up to 32,931 acre-feet per annum (afa) at Caples Lake, Silver Lake, and Lake Aloha from: 1) Silver Fork American River tributary to South Fork American River at Silver Lake; 2) Caples Creek tributary to Silver Fork American River at Caples Lake; and 3) Pyramid Creek tributary to South Fork American River at Lake Aloha. Permit 21112 also allows direct diversion of 156 cubic feet per second (cfs) not to exceed 15,000 afa from South Fork American River tributary to American River at the Folsom Reservoir Pump Station Intake. Water can be rediverted at Folsom Reservoir from upstream storage in Silver Lake, Caples Lake, and Lake Aloha. The total quantity of water that may be diverted at Folsom Reservoir under Permit 21112 in any one year by direct diversion and rediversion from storage is limited to 17,000 afa. The season of diversion for both storage and direct diversion is from November 1 of each year through July 31 of the succeeding year. Water can be used for municipal, domestic, and irrigation purposes. Permit 21112 was issued pursuant to a partial assignment

of State-filed Application 5645 and therefore has the same priority as Application 5645 of July 30, 1927.

3. Permit 21112 originally required that construction begin within five years of the permit date and be completed by December 31, 2011, and that the water be applied to the authorized use by December 31, 2020.
4. On December 28, 2011, the Permittee filed a petition for an extension of time within which to complete construction work under Permit 21112. On May 7, 2018, the State Water Board approved the Permittee's petition for extension of time allowing until December 31, 2020, to complete construction work under Permit 21112.

Current Petition for Extension of Time

5. On December 30, 2020, the Permittee filed a petition for extension of time to allow until December 31, 2040, to complete construction work and apply the water to the authorized use under Permit 21112.

Public Notice and Protests

6. The Division issued public notice of the petition for extension of time on January 11, 2022. The Division received three protests of the petition: 1) a joint protest from California Sportfishing Protection Alliance, Friends of the River, and American Whitewater (hereinafter collectively referred to as CSPA, et al.); 2) the Planning and Conservation League (PCL); and 3) California Department of Fish and Wildlife (CDFW).
7. By email dated February 9, 2022, CSPA, et al. protested the petition. CSPA, et al. conveyed the concern that granting the extension of time would create conditions that facilitate out-of-basin water sales during the extended development period of the permit, which in turn might violate county-of-origin statutes of the Water Code. CSPA, et al. noted that the Permittee attempted to transfer up to 3,000 acre-feet (af) of water outside of the basin in 2015 and the Permittee's 2020 Urban Water Management Plan indicated that the Permittee proposed to seek water transfers outside of the Permittee's service area in the future. CSPA, et al. acknowledged that the Permittee has not to date sought to transfer water specifically permitted under Permit 21112, but indicated they believe that the Permittee may eventually transfer water under its pre-1914 water right at the El Dorado Canal, and then backfill the transferred water with water from Permit 21112 for use within the Permittee's service area. CSPA, et al. believe the net effect of that type of transfer would use water permitted under county-of-origin statutes to support out-of-basin water sales. CSPA, et al. stated that the sale of water permitted under county-of-origin statutes defeats the fundamental purpose of those statutes as described in Water Code section

10505¹. CSPA, et al. also stated that if the Permittee was to transfer water south of Delta, the transfer would further exacerbate negative environmental impacts associated with the Delta export facilities of the State Water Project (SWP) and Central Valley Project (CVP).

CSPA, et al. discussed the proposed Alder Reservoir on Alder Creek, which is a tributary of the South Fork American River. CSPA, et al. indicated that diversion of water to the proposed Alder Reservoir, downstream of the confluence of Silver Fork American River and Caples Lake, would substantially dewater the lower 15 miles of the Silver Fork American River, negatively impacting the trout population and reducing whitewater boating opportunities both in Silver Fork and South Fork American River downstream of Kyburz. CSPA, et al. believe that it is not in the public interest for the Permittee to seek further assignment of State-filed Application 5645 to build a reservoir and diversion system, particularly when the Permittee is filing for an extension of time to develop water use under its prior partial assignment of State-filed Application 5645.

In its initial protest, CSPA, et al. provided two conditions under which their protest may be dismissed: 1) the Permittee commits in writing that it will not sell water out of basin until Permit 21112 goes to license; and 2) the Permittee commits in writing not to seek assignment of State-filed Application 5465 for the purposes of furthering the development of any reservoir on Alder Creek and/or any new diversions upstream of Kyburz on the Silver Fork American River or the South Fork American River.

8. By email dated February 9, 2022, PCL protested the petition. PCL contended that allowing a time extension for the diversion of water under Permit 21112 would impact the Lower American River, the Sacramento River, and the Sacramento-San Francisco Bay Delta with reduced flows, higher temperatures, and degradation of water quality. PCL claimed that diversion of water pursuant to a time extension would also affect water quantity and quality of water to satisfy the needs of riparian water right holders on the South Fork American River. PCL indicated that the Environmental Impact Report (EIR) prepared for the original project under Application 5645B is over 30 years old and does not adequately address climate change and it is therefore not possible to determine the extent and severity of impacts related to climate change until the Permittee has completed additional review under the California Environmental Quality Act (CEQA). PCL also stated that the Permittee's water use demands have not approached the levels that were projected when Permit 21112 was initially approved. PCL further indicated that the Permittee has needed little of the water under Permit 21112 considering in 2015, a

¹ Water Code section 10505: "No priority under this part shall be released nor assignment made of any application that will, in the judgment of the board, deprive the county in which the water covered by the application originates of any such water necessary for the development of the county."

critically dry year, the Permittee was able to transfer water under their pre-1914 water right and License 2184 (Application 1692).

PCL initially indicated that the following measures should be taken by the Permittee in order for PCL to withdraw its protest: 1) complete a new EIR with climate change analysis; 2) implement state-of-the-art demand management programs; 3) perform critical analysis of realistic water demand projections with state-of-the-art demand management programs; 4) prohibit sale of excess water from the Permittee's rights or entitlements; and 5) prohibit any activities in pursuit of Alder Creek Reservoir. PCL stated that if the five issues above were not satisfactorily addressed by the Permittee, the petition for extension of time should be denied.

9. On September 8, 2022, the Permittee provided the Division a letter indicating that following discussions with both CSPA, et al. and PCL, both protests were resolved with the inclusion of the following term in Permit 21112:

Prior to transferring any water under this right pursuant to Water Code sections 1435 or 1725, right holder shall prepare and submit to the Division of Water Rights, in conjunction with the temporary change petition for the proposed water transfer, a report documenting the right holder's evaluation of water availability that includes consideration of the following factors:

- 1) The quantity of water currently in storage and the forecasted end-of-October carryover storage (with and without the proposed transfer) in each reservoir associated with this water right, and in Jenkinson Reservoir, and projected contract and/or agreement allocations of contractual or agreement supplies;*
- 2) Actual and forecasted hydrologic conditions;*
- 3) Federal Energy Regulatory Commission license conditions, water right/permit conditions, and related settlements that may affect water availability;*
- 4) Projected availability of water under right holder's water rights; and*
- 5) Forecasted water demands for the customers served by this water right.*

In a separate communication, CSPA, et al. and PCL also confirmed that they consider the protests resolved. The State Water Board considers CSPA et al.'s and PCL's protests resolved with the inclusion of the above protest dismissal term in Permit 21112.

10. By letter dated February 10, 2022, CDFW protested the petition. CDFW asserted that the Permittee had not adequately demonstrated that the failures to comply with previous time requirements were due to obstacles that could not have been reasonably avoided. CDFW stated that the Permittee's claims of decreased water availability during droughts and water conservation practices resulting in less water used under Permit 21112 were unlikely to change in the Permittee's requested period of time extension from 2020 through 2040, and rather than pursuing long-term time extension based on new climate and conservation norms, it would be

prudent to adjust expectations for what water is needed considering continued conservation measures and future water availability constraints due to increasing frequency and intensity of drought. In its protest, CDFW contended that the Permittee had not adequately demonstrated that 2040 would be the appropriate time period within which the Permittee should be permitted to perfect water use under Permit 21112, as demand projections were tied to all of the Permittee's rights and not specific to Permit 21112. CDFW was concerned that approving a time extension for Permit 21112 would potentially impact the timing and volume of inflows into Folsom Reservoir, and subsequently impact listed species downstream in the Lower American River which are reliant on Folsom cold water pool availability and management. CDFW noted that previously the Permittee's diversions from Folsom Reservoir were constrained based on the Permittee's contract with the U.S. Bureau of Reclamation (Reclamation) and the incomplete status of the Permittee's temperature control device at its Folsom Reservoir intake facility. CDFW recommended that the Permittee's petition for extension of time be denied based on anticipated continued conservation and periods of drought, and the lack of justified need.

11. Following discussions between CDFW staff and the Permittee, CDFW provided the Division a letter dated June 13, 2022, stating that their protest was withdrawn predicated on the following: 1) a functioning temperature control device that successfully mitigates Permit 21112 diversion impacts to the cold-water pool in Folsom Reservoir; 2) the Permittee's characterization of water diverted under Permit 21112 as a critical supply to the Permittee's service area during drought periods; 3) integration of conservation practices into water use and delivery practices within the Permittee's service area; 4) reasonable progress on capital expenditures and projects necessary to enable full beneficial use of Permit 21112 within the requested 20-year extension; 5) an acknowledgment that CDFW's protest withdrawal is focused only on the requested extension of time for the beneficial uses with the place of use described in Permit 21112, and the protest withdrawal does not comment on or support water transfers that could be facilitated with the time extension; and 6) a shared understanding between the Permittee and CDFW's interests in preserving adequate volume and timing of flows necessary to support ecosystem function. CDFW also stated that it believed the Permittee would not be filing for additional extensions of time beyond the 20-year extension requested with the current petition. By letter dated August 1, 2022, the Permittee acknowledged CDFW's withdrawal of its protest based on both parties' good faith efforts.

Compliance with the California Environmental Quality Act

12. In 1999, the Permittee certified a Final EIR entitled, "Acquisition, Permanent Repair, and Operations of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet Per Year of New Consumptive Water," (1999 EIR) (SCH No. 1998082005). The 1999 EIR analyzed: 1) the Permittee acquiring the El Dorado Hydroelectric Project, which is operated under Federal Energy Regulatory

Commission (FERC) License No. 184 (Project 184); 2) conducting various permanent repairs and continuing to operate Project 184 consistent with FERC requirements; and 3) acquiring 17,000 afa of consumptive water supplies via Permit 21112 to be diverted at Folsom Reservoir through a Warren Act Contract with Reclamation. In July 2016, the Permittee prepared an Addendum (2016 Addendum) to the 1999 EIR analyzing the Project 184 Long-Term Warren Act Contract with Reclamation because the 1999 EIR did not specify the duration of the Warren Act Contract; therefore, the 2016 Addendum analyzed the change of the original 14-year term of the Warren Act Contract. The 2016 Addendum incorporated the additional analyses included in Reclamation's 2016 National Environmental Policy Act (NEPA) documentation for the Long-Term Warren Act Contract with Reclamation, as well as the 2016 NEPA documentation for the Coordinated Operations of the CVP with the SWP. The 2016 Addendum incorporated an updated hydrologic analysis for the lower American River from the 2016 NEPA documentation, including a lower American River hydrologic analysis and potential changes to the Folsom Reservoir cold water pool. The 2016 Addendum indicated that changes to the project since the 1999 EIR were addressed in the 2016 NEPA documentation. The 2016 Addendum found that although the project with the defined term of the Long-Term Warren Act Contract could have a significant effect on the environment, nothing further was required to mitigate or avoid these significant effects, because all potentially significant effects had been (1) analyzed adequately in the 1999 EIR pursuant to applicable standards, and (2) avoided or mitigated pursuant to the 1999 EIR, including revisions or mitigation measures that are imposed upon the project.

13. The Permittee, as lead agency under CEQA, determined that the proposed time extension for Permit 21112 differed sufficiently from the project described in the 1999 EIR, but that none of the changes to the original project would result in significant new or substantially more severe environmental impacts. Thus, neither preparation of a Subsequent EIR nor a Supplement to an EIR was deemed necessary. (Cal. Code Regs., tit. 23, §§ 15162-15163.) As a result, in accordance with section 15164 of the CEQA Guidelines, the Permittee prepared an Addendum in November 2021 (2021 Addendum). The 2021 Addendum addressed the proposed extension of time to (1) complete construction of facilities necessary to deliver the full allocation of water under Permit 21112, and (2) complete full beneficial use of water under Permit 21112, both of which were originally evaluated in the 1999 EIR and further in the 2016 Addendum. The 2021 Addendum analyzed the potential for new or more severe significant environmental impacts that could result from extending the period of time to complete construction and use under Permit 21112 through December 2040. The 2021 Addendum referenced the 2016 Addendum and Reclamation's 2016 NEPA documentation in addressing potential impacts on fisheries and aquatic resources associated with the diversion of 17,000 afa which included analysis of potential changes in Folsom Reservoir cold water pool volume and determined that the diversion of 17,000 afa would not result in changes in flow, flow fluctuations, or water temperature increases of sufficient magnitude to appreciably affect special-status salmonids or their habitat. The 2021

Addendum stated that the time extension for Permit 21112 would not result in a change in the volume of water diverted at Folsom Reservoir not already considered in the 1999 EIR or the 2016 Addendum. The 2021 Addendum stated that the conclusions of the 1999 EIR remain valid and approval of the petition for extension of time for Permit 21112 would not result in new or substantially severe significant impacts on the environment.

14. In its role as a responsible agency, the State Water Board has considered the 2021 Addendum, the 1999 EIR, the 2016 Addendum, and the associated NEPA documents. A responsible agency must account for monitoring and reporting of mitigation measures within its purview. (See Cal. Code Regs., title 14, §§ 15096(g) and 15097(d).) This Order includes an additional term with reporting requirements (referenced in Paragraph No. 9) and contains updates to mandatory permit terms and conditions. Otherwise, this Order does not change implementation or reporting for any other existing permit conditions previously included to address the broader Project's negative effects on the environment that fall within the Board's purview as a responsible agency. The State Water Board will file a Notice of Determination within five days of the issuance of this Order.

15. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed change on public trust resources and to protect those resources where feasible. (National Audubon Society v. Superior Court (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].) The analyses detailed in Paragraph Nos. 12 through 14 also serve to address the Board's obligation to consider potential effects on public trust resources that might stem from granting the proposed time extension. As described in those paragraphs, there is no evidence that extending the complete use deadline of Permit 21112 until December 31, 2040 will have adverse impacts on public trust resources.

Criteria for Approving a Petition for Extension of Time

16. Water Code section 1396 requires a right holder to prosecute project construction and beneficial use of water with due diligence, in accordance with the Water Code, the State Water Board's regulations, and the terms specified in the permit. The State Water Board may approve a request for an extension of time if the Board finds that there is good cause for the extension. (Wat. Code, § 1398, subd. (a).) The State Water Board's regulations allow an extension of time to be granted only on such conditions as the Board determines to be in the public interest, and on a showing to the Board's satisfaction that (1) due diligence has been exercised, (2) failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and (3) satisfactory progress will be made if an extension of time is granted. (Cal. Code Regs., tit. 23, § 844.) Lack of finances, occupation with other work, physical disability, and other conditions

incident to the person and not to the enterprise will not generally be accepted as good cause for delay. (Ibid.)

17. The Permittee's maximum annual beneficial use of water under Permit 21112 was 5,960 af in 2015, with a maximum annual direct diversion use of 1,206 af, and a maximum collection to storage of 4,754 af. At the time of the maximum use of water, the Permittee's Warren Act Contract with Reclamation limited the Permittee's annual diversion from Folsom Reservoir to 8,500 af. In August 2016, the Permittee obtained a long-term Warren Act Contract with Reclamation for diversion of the full 17,000 afa from Folsom Reservoir under Permit 21112 through February 28, 2030. The Permittee also completed the following projects since issuance of Permit 21112: 1) expansion of the El Dorado Hills Water Treatment Plant and the Folsom Reservoir Pump Station Raw Water Intake to increase capacity from 16 million gallons per day (mgd) to 19.5 mgd; 2) installation of the Silva Valley Water Transmission Main in 2006; 3) expansion of the El Dorado Hills Water Treatment Plant and the Folsom Reservoir Pump Station Raw Water Intake in 2009-2010 to increase from 19.5 mgd capacity to 26 mgd capacity; and 4) improvements to the Folsom Reservoir Pump Station Raw Water Intake in 2021-2022 to replace and upgrade portions of the raw water intake facility and incorporate temperature control facilities.
18. The Permittee provided a memo dated June 21, 2023, summarizing their compliance with terms and conditions in Permit 21112. In the memo, the Permittee described the implementation status of several environmental permit terms including Terms 19 through 23, 25, and M of Permit 21112, including concrete steps the Permittee has taken to comply with these terms.
19. Based on information in Paragraph Nos. 17 and 18, the State Water Board finds that the Permittee has shown that due diligence has been exercised pursuant to Permit 21112.
20. The Permittee indicated that planned growth and the associated projected increase in water demand occurred at a slower rate than previously forecasted. The Permittee stated that other contributing factors affecting water demand beyond the control of the Permittee included implementation of mandatory water conservation measures, decreased use during recent periods of drought, and an increase in customer awareness of the importance of water conservation. Further, the quantity of water the Permittee could divert at Folsom Reservoir under Permit 21112 was limited until its long-term Warren Act Contract with Reclamation was executed in 2016. The State Water Board is not persuaded by the Permittee's assertion that conservation measures, including those necessitated by recent periods of drought, qualify as 'obstacles which could not reasonably be avoided.' (Cal. Code Regs., tit. 23 § 844.) Water conservation should not be construed as an obstacle to developing a water right since efficient use of water resources will continue to be essential for California water right holders as the state experiences more frequent and prolonged dry periods. The development of a water right is based on the amounts needed for a

given purpose. The needs of a municipal water right will always be informed by the necessity of conservation and efficient use of an increasingly variable and limited resource. In its February 10, 2022 protest letter, CDFW similarly reasoned that current water conservation practices are unlikely to change in the foreseeable future, and that new conservation norms cannot justify approval of a time extension. Nevertheless, having considered other impediments identified by the Permittee, including the prior lack of a long-term Warren Act Contract, the Board finds that the Permittee has demonstrated that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided.

21. The Permittee's future anticipated construction projects include: 1) replacement of pumps at the intake facility that were not being replaced as part of the recent Folsom Lake Intake Improvements Project to reliably meet a future expanded capacity of 30 mgd; 2) expansion of the El Dorado Hills Water Treatment Plant to 30 mgd; 3) construction of a new raw water line to provide additional capacity from the intake to the El Dorado Hills Water Treatment Plant; and 4) construction of several conveyance pipelines and an additional pump station to meet future water demands. The Permittee's draft updated El Dorado Hills Water Treatment Plant Water Master Plan indicates that replacement and/or upgrade of major water treatment plant processes may add some limited additional treatment capacity and the design for those improvements is scheduled for 2024 through 2025. Construction of treatment plant upgrades is anticipated to occur from 2026 through 2029. Expansion of the water treatment plant capacity to 30 mgd, replacement of pumps at the Folsom Lake intake, and replacement of the raw waterline will be implemented as water demands increase with new development. To fund these improvements to its water treatment plant, the Permittee forecasts investing approximately \$63 million through 2028. The Permittee anticipates completing future construction projects prior to 2040. In addition, the Permittee provided a technical memorandum evaluating the estimated future water demands within the place of use of Permit 21112. The evaluation projected that by 2040, water demands for the zones served by Permittee may exceed the 17,000 afa authorized under Permit 21112, and additional water supplies would then be necessary to meet future water demands. Based on information submitted by the Permittee, the State Water Board finds that the Permittee has shown that satisfactory progress will be made if a time extension is granted.
22. As described in Paragraph Nos. 17 through 21, the State Water Board finds that the Permittee has shown good cause and it is in the public interest to approve the petition for extension of time.
23. Permit 21112 will include a new condition limiting diversions under the permit relative to the State Water Board's Cannabis Cultivation Policy.
24. Permit 21112 will be subject to the Division's current mandatory permit terms and conditions which shall supersede permit Conditions A through Q that were included

pursuant to the May 7, 2018 Order amending Permit 21112.

25. Pursuant to Resolution No. 2012-0061, the State Water Board has delegated authority to the Executive Director to conduct and supervise the activities of the State Water Board.

THEREFORE, IT IS ORDERED THAT THE PETITION FOR A 20-YEAR EXTENSION OF TIME FOR WATER RIGHT PERMIT 21112 (APPLICATION 5645B) OF EL DORADO IRRIGATION DISTRICT IS APPROVED, AND AMENDED WATER RIGHT PERMIT 21112 IS ISSUED WITH THE FOLLOWING CHANGES:

All existing terms and conditions of Permit 21112 will remain in effect, except for the modified or new conditions as detailed below:

1. Condition 14 of Permit 21112 shall be removed.
2. Conditions 15 and 16 of Permit 21112 will be included as Condition 14 of the amended permit and shall be amended to read as follows:

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2040.

(0000009)

3. Condition 29 of Permit 21112 will be included as Condition 28 of the amended permit and shall be amended to read as follows:

Permittee shall maintain a contract with Reclamation for the use of Folsom Reservoir. No water shall be diverted under this permit unless such a contract has been executed and is in effect, with a copy delivered to the Deputy Director for Water Rights.

(0450300)

4. The following term shall be added to Permit 21112:

Prior to transferring any water under this right pursuant to Water Code sections 1435 or 1725, right holder shall prepare and submit to the Division of Water Rights, in conjunction with the temporary change petition for the proposed water transfer, a report documenting the right holder's evaluation of water availability that includes consideration of the following factors:

- 1) The quantity of water currently in storage and the forecasted end-of-October carryover storage (with and without the proposed transfer) in each reservoir associated with this water right, and in Jenkinson Reservoir, and projected

contract and/or agreement allocations of contractual or agreement supplies;

2) Actual and forecasted hydrologic conditions;

3) Federal Energy Regulatory Commission license conditions, water right/permit conditions, and related settlements that may affect water availability;

4) Projected availability of water under right holder's water rights; and

5) Forecasted water demands for the customers served by this water right.

(0460999)

5. The following term will be added to Permit 21112:

No water shall be diverted or used under this right for commercial and applicable personal medical use cannabis cultivation unless the water right holder is in compliance with all applicable conditions, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation, which is available online at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy.pdf

(0000120)

6. Conditions A through Q, as included in Permit 21112 pursuant to the May 7, 2018 Order amending the permit, shall be updated and superseded by the mandatory permit terms and conditions as follows:

A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.)

(0000016)

B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) Civil liability may be imposed administratively by the State Water Board pursuant to Wat. Code, § 1055, or may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums. (Wat. Code, § 1846.)

(0000017)

- C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board.

(0000018)

- D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions beyond the maximum annual amount diverted or used during the authorized development schedule prior to submitting a time extension petition and obtaining approval of the State Water Board.

(0000019)

- E. The amount of water for consideration when issuing a license shall be limited to only the amount of water diverted and applied to beneficial use in compliance with the terms and conditions of this right, as determined by the State Water Board. (Wat. Code, § 1610.)

(0000006)

- F. Right holder shall measure the amount of water beneficially used under this right using devices and/or methods satisfactory to the Deputy Director for Water Rights.

In order to demonstrate compliance with the beneficial use monitoring requirements of this right, right holder shall provide evidence that the devices and/or methods are functioning properly, in a manner satisfactory to the Deputy Director of Water Rights, within thirty days of first use of the device and/or method, with the reports required by chapter 2.7, title 23, California Code of Regulations, and whenever requested by the Division of Water Rights.

(0000015)

- G. Right holder shall comply with the reporting requirements as specified in the terms of this right or any reporting requirements by statute, order, policy, regulation, decision, judgment or probationary designation. The more stringent requirement shall control in each instance where there is conflict or inconsistency between the requirements.

Right holder shall comply with the reporting requirements of chapter 2.7, title 23, California Code of Regulations.

Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to

documentation of water diversion and beneficial use under this right, and documentation of compliance with the terms and conditions of this right.

(0000010)

- H. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;
 2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
 3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
 4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

- I. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

- J. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

- K. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

- L. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

- M. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An “urban water supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. All Urban Retail Water Suppliers shall comply with the provisions of Division 6, Part 2.55 (commencing with Chapter 9, section 10609.20) and Part 2.6 (commencing with Chapter 3, section 10608.34) of the Water Code. An “urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

Agricultural water users and suppliers shall comply with the provision of Division 6, Part 2.55 of the Water Code and the Agricultural Water Management Planning Act (Water Code, § 10800 et seq.). An “agricultural water supplier” means a supplier, either publicly or privately owned, providing water (excluding recycled water) to 10,000 or more irrigated acres, including a supplier or contractor for

water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

- N. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine all rights and privileges under this right, 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 may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- O. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action

will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- P. This right does not authorize any act which results in the taking of a candidate, 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall obtain any required authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(0000014)

Dated: December 18, 2023



Eileen Sobeck
Executive Director