

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 6,000 ACRE-FEET OF WATER
FROM SOUTH SUTTER WATER DISTRICT
TO SEVERAL STATE WATER CONTRACTOR AGENCIES**

SOURCE: Bear River

COUNTIES: Yuba, Nevada, Placer and Sutter

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 22, 2015, South Sutter Water District (District) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change involving a Water Transfer pursuant to Water Code section 1725 et seq. The District has requested to transfer up to 6,000 acre-feet (af) of water from the Bear River approximately between July 1 and September 30, 2015. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer

The District proposes to transfer up to 6,000 af of previously stored water from Camp Far West Reservoir (Reservoir) and Camp Far West Diversion Dam (Diversion Dam) on the Bear River to several State Water Contractor (SWC) Agencies: Central Coast Water Authority, County of Kings, Dudley Ridge Water District, Kern County Water Agency, Metropolitan Water District of Southern California, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, and Santa Clara Valley Water District. From approximately July 1, 2015 through September 30, 2015, the District proposes to release up to 6,000 af of water currently stored in the Reservoir and the Diversion Dam into the Bear River tributary to the Feather River, thence the Sacramento River, thence the Sacramento-San Joaquin River Delta. The water would be available for rediversion at the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir for use within the service area of the participating SWC Agencies.

2.0 BACKGROUND

License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per year from the Bear River between October 1 of each year to June 30 of the succeeding year. License 11118 also authorizes the direct diversion of up to 330 cubic feet per second (cfs) from the Bear River between May 1 and September 1 of each year. The Diversion Dam (located about one mile downstream of the Reservoir) is an authorized point of direct diversion and rediversion to storage.

Water diverted under License 11118 is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net 59,000 acres within a gross area of 65,796 acres within the District, 4,180 acres within

the Camp Far West Irrigation District (including 102 acres outside its boundaries served under contract), and a power generation plant located on the District's conveyance canal.

In order to protect fish resources downstream of the Diversion Dam, the District is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 of each year to March 31 of the succeeding year.

The District, along with other parties within the Bear River watershed, has entered into the Bear River Agreement with the Department of Water Resources (DWR) to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This Bear River Agreement requires the District to make up to 4,400 af of water available to DWR during dry and critical water years. The District's petition states that the water intended for transfer is in addition to the water made available to DWR pursuant to the Bear River Agreement.

2.1 Operational Criteria and Plan (OCAP) Biological Opinions

The operations of the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir are governed by OCAP Biological Opinions issued by the United States Fish and Wildlife Service (USFWS) and the National Marine Fishery Services (NMFS) for the long-term operations of the Central Valley Project (CVP) and the State Water Project (SWP) (referred to as BOs). The BOs were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period of July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfer (including the subject transfer) in 2015 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir associated with the subject transfer between July 1 and September 30, 2015, is in conformance with the BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2015.

2.2 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (January Proclamation). The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The January Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor reiterated direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), Water Code section 13247 is suspended. Water Code section 13247 requires state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or

adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

On January 29, 2014, DWR and the Bureau of Reclamation (Reclamation) jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code section 1435 et seq., to temporarily modify requirements in their water right permits and license for the SWP and CVP for the next 180 days in response to drought conditions. An Order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, February 28, March 18, April 9, April 11, April 18, and May 2, 2014. The Order restricted exports in the Delta at the SWP and CVP pumping facilities to health and safety needs of no more than 1,500 cfs, with the exception of transfers. Any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flows, or transfers.

On December 22, 2014, Governor Brown issued Executive Order B-28-14 which extended the waiver of Water Code Section 13247 in paragraph 9 of the January 2014 Proclamation, and paragraph 19 of the April 2014 Proclamation, through May 31, 2016.

On April 1, 2015, the Governor issued Executive Order B-29-15 to save water, increase enforcement of water laws, streamline government response to the drought, and invest in new water. It references that the orders and provisions of the January and April 2014 Proclamations are still in effect, unless otherwise modified. The provisions of the January and April 2014 Proclamations relating to streamlining approval of water transfers are still in effect.

2.3 State Water Board Curtailment Actions

On May 1, 2015, the State Water Board issued curtailment notices for those diverting water in the Sacramento River watershed with post-1914 water rights. The District is located within the Sacramento River watershed and has been notified to curtail its diversions under License 11118. The 6,000 af proposed for the transfer will be from the Reservoir and Diversion Dam where water was diverted and placed into storage prior to notification of curtailment. Curtailment actions from the State Water Board will not impact the proposed transfer.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On June 1, 2015, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, on June 1, 2015, the District noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties.

3.1 Comments of Reclamation

On June 15, 2015, Reclamation submitted comments on the proposed transfer requesting that the Order approving the transfer be conditioned to include that:

1. The District shall apply a streamflow depletion factor to the transfer water released from the Reservoir and Diversion Dam similar to last year's transfer based upon the recommendation of DWR, and
2. The transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

3.2 State Water Board Response to Comments

The State Water Board has considered the comments and has reviewed the information in the record in evaluating the proposed transfer. Further discussion is provided in Section 5.2. As requested by Reclamation, comments 1 and 2 will be included as conditions in this Order.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Water Code section 1729 exempts petitions for temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act. The State Water Board will issue a Notice of Exemption for this project.

In addition to any obligation the State Water Board may have under CEQA, the 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.). The State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Wat. Code, § 1727, subd. (b)(2).). The independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code section 1727 evaluation.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored

Before approving a temporary change due to a transfer or exchange of water, the State Water Board must find that the change will only involve the amount of water that would have been consumptively used, stored, or conserved 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".

To provide water for the transfer, the District proposes to forgo distribution of up to 6,000 af of water stored at the Reservoir and Diversion Dam which the District anticipates would have either stayed in storage or would have been consumptively used by the District's customers during July, August and September 2015. Customers within the District's service area utilize stored surface water provided by the District to meet irrigation requirements. When additional water is necessary above the amount of water received from the District, the District's customers meet those needs with groundwater pumping.

Absent the proposed change, the District would either retain the water in storage or release the water proposed for transfer from the Reservoir for rediversion at the Diversion Dam into the Main Canal for consumptive use within the District's place of use during the months of July, August and September.

5.2 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 Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows (Wat. Code, § 1727, subd. (b)(1).).

The State Water Board solicited input from DWR on June 16, 2015 on an applicable streamflow depletion factor since the transfer water would be provided to SWC Agencies who would be affected by the available downstream water supply. DWR responded stating that the proposed transfer would be treated similar to the District's previous transfer in 2014 with a slight adjustment to the streamflow depletion factor. Water proposed for the transfer consists of surface water released from the Reservoir and Diversion Dam, made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. DWR has determined

that 7% of the additional groundwater pumped has the potential to affect streamflow. This Order limits the amount of water available for transfer to 93% of the surface water released from the Reservoir and Diversion Dam as a result of this transfer.

In general, the transfer of water that would otherwise be consumptively used or stored will not result in injury to other legal users of the water. In the absence of the transfer, the District would have released the stored water for delivery to the District's service area or retained that water in storage.

Water Code section 1745.10 (a) states that a groundwater substitution transfer must be consistent with a groundwater management plan adopted pursuant to state law for the affected area. The District adopted the South Sutter Water District Groundwater Management Plan (Plan) in 1995. The Plan was subsequently updated in 2009. Conjunctive use of surface water and groundwater within the District has been successful as a result of implementation of the Plan and related monitoring pursuant to California Statewide Groundwater Elevation Monitoring (CASGEM).

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal users of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10, subdivision (a). That section requires groundwater use associated with a groundwater substitution transfer to be in conformance with the approved groundwater management plan for the affected area.

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

Before approving a temporary change due to a transfer or exchange 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)). In accordance with California Code of Regulations Section 794 (c), District provided California Department of Fish and Wildlife (CDFW) and the applicable Regional Water Quality Control Board (Regional Board) with a copy of the petition. CDFW and the Regional Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

The Order limits the transfer period from July 1 through September 30, 2015 to ensure conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation.

Additional instream flows will occur during the transfer period. However, the transfer period of July through September avoids impacts to anadromous fish species by timing the increased flows when the fish are not seasonally present. This additional flow release from storage to the Bear River tributary to the Feather River, thence the Sacramento River, thence the Sacramento-San Joaquin River Delta will boost streamflow which is likely beneficial to instream resources especially during the current drought.

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

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2012-0029.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code sections 1725 and 1745.10, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The temporary change involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The temporary change will not injure any legal user of the water.
3. The temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The temporary change is consistent with a groundwater management plan.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 6,000 af of water under License 11118 is approved.

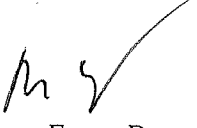
All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order issuance and continuing through September 30, 2015.
2. The District shall release water from the Reservoir and Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. The amount of water transferred pursuant to this Order shall not exceed 93% of the rate of additional release from the Reservoir and Diversion Dam for the transfer.
3. The place of use under License 11118 is temporarily amended to include a portion of the service area of the State Water Project (as shown on Maps 1878-1 through 4 on file with Application 5630). Water transferred pursuant to this Order shall only be delivered to Central Coast Water Authority, County of Kings, Dudley Ridge Water District, Kern County Water Agency, Metropolitan Water District of Southern California, Napa County Flood Control and Water Conservation District, Oak Flat Water District, Palmdale Water District, and Santa Clara Valley Water District.
4. The following points of rediversion shall be temporarily added to License 11118. The water diverted at these facilities is limited to the quantities made available as transfer water, as specified above:
 - a. Banks Pumping Plant via the Clifton Court Forebay – being within the NW ¼ of SE ¼ of projected Section 20, T1S, R4E, MDB&M.

- b. Barker Slough Pumping Plant – being within the NE ¼ of SW ¼ of projected Section 18, T5N, R2E, MDB&M.
 - c. San Luis Reservoir – being within the SW ¼ of SE ¼ of projected Section 15, T10S, R8E, MDB&M.
5. Municipal and industrial are temporarily added as purposes of use under License 11118.
6. Rediversion of water at the Banks Pumping Plant, Barker Slough Pumping Plant and San Luis Reservoir is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641, or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation. Rediversion 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.
7. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
8. 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.
9. This Order 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 Order, right holder shall obtain any authorization for an incidental take prior to commencing the transfer of water. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. The State Water Board reserves jurisdiction 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


Barbara Evoy, Deputy Director
Division of Water Rights

Dated: JUL 03 2015