

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 15,000 ACRE-FEET OF WATER
FROM SOUTH SUTTER WATER DISTRICT
TO FOUR STATE WATER CONTRACTOR AGENCIES**

SOURCE: Bear River

COUNTIES: Placer and Yuba

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 9, 2018, the South Sutter Water District (District or Petitioner) 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 15,000 acre-feet (af) of water from the Bear River beginning July 1, 2018 and ending September 30, 2018. The District intends to make the transfer water available by reducing surface water supplies to its agricultural customers, which will be augmented by additional groundwater pumping. 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 15,000 af of previously stored water from Camp Far West Reservoir (Reservoir), which flows downstream to Camp Far West Diversion Dam (Diversion Dam) on the Bear River to four State Water Contractor Agencies: Dudley Ridge Water District, Kern County Water Agency, Metropolitan Water District of Southern California, and Palmdale Water District (State Water Contractor Agencies). From July 1 through September 30, 2018, the District proposes to release up to 15,000 af of water currently stored in the Reservoir into the Bear River, tributary to the Feather River, thence the Sacramento River, thence the San Francisco Bay/Sacramento-San Joaquin Delta. The District's agricultural customers would increase their groundwater pumping to replace their reduced surface water supply due to the transfer. The water would be available for rediversion at the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) and San Luis Reservoir for use within the service areas of the participating State Water Contractor Agencies.

The District would make previously stored surface water available for temporary transfer via groundwater substitution, or through release of water that would have otherwise remained in storage. Groundwater substitution involves the use of groundwater pumped from within the District's boundaries to irrigate crops within District's boundaries in exchange for a corresponding amount of surface water (minus a streamflow depletion loss) that will remain instream for rediversion at the proposed additional points of rediversion. Absent the proposed temporary transfer, the District would divert the entire quantity of stored surface water proposed for transfer from the Bear River pursuant to its water right for irrigation use within District boundaries or retain the water in storage.

1.2 Groundwater Substitution Transfers

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of the Petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater pumping. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped by the Petitioner to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion). Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to injure other legal users of water if it occurs when the Delta is in balanced conditions¹ or there is limited streamflow in the channel from which the water is being transferred.

Proposals for transfers of water through Central Valley Project (CVP) and/or SWP facilities that involve groundwater substitution are developed to be consistent with the Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), dated December 2015, prepared by the DWR and the U.S. Bureau of Reclamation (Reclamation). Depending on well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use, or if an alternative accounting method may be applied. The DWR and Reclamation criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

The District has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, the groundwater substitution component of this transfer is conditioned to allow use of the groundwater accounting and monitoring criteria, as well as the application of the streamflow depletion factor as approved by DWR and Reclamation. The District, DWR, and Reclamation have a previously agreed upon streamflow depletion factor of 7 percent that will also be applied to the District's 2018 transfer. Therefore, to account for streamflow depletion related to groundwater pumping, the District will be credited with 93 percent of the total quantity of groundwater pumped in exchange for the surface water available for transfer.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfer. The boundaries of the District are within the North American Subbasin. The District is participating in a Groundwater Sustainability Agency (GSA), and is in the process of preparing a Groundwater Sustainability Plan (GSP). Moving forward, groundwater substitution transfers are also required to comply with current groundwater management law under the water code provisions pursuant to the 2014 Sustainable Groundwater Management Act (SGMA).

Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers

Depletion of surface stream flows due to groundwater pumping, including groundwater substitution transfers, has been a long-standing issue of concern in California. Part of the concern involves whether the streamflow depletion factors being used pursuant to groundwater substitution transfers are stringent enough to protect against long-term negative impacts to surface water flows.

Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation have estimated impacts on streamflow due to groundwater pumping by using analytical and numerical groundwater models. DWR and Reclamation have based the overall impacts to streamflow on the previously agreed upon minimum 7 percent average streamflow depletion factor for single year transfers requiring the use of SWP or CVP facilities.

¹ The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from upstream reservoirs, plus unregulated flow, approximately equal 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.

DWR and Reclamation have indicated that to address continued concerns related to streamflow depletion, they have initiated development of a new modeling tool to more accurately estimate an appropriate streamflow depletion factor for individual transfer proposals. In addition, DWR and Reclamation have developed a Sacramento Valley Stream Flow Depletion Factor Management Group, composed of key stakeholders in the Sacramento Valley and the areas south and west of the Delta, to provide management and technical guidance to the groundwater modeling improvements being undertaken by DWR, Reclamation, and the State Water Contractors. DWR and Reclamation anticipate on-going refinement of groundwater substitution transfer modeling will allow them to more accurately evaluate potential long and short-term surface water depletion impacts from individual transfers and be able to condition future transfers as necessary to protect against those impacts.

2.0 BACKGROUND

2.1 Substance of the District's License

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 from 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 and wildlife resources in the Bear River 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 in 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 critically dry 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.

2.2 Proposed Temporary Changes

The proposed transfer would temporarily add the Banks Pumping Plant and San Luis Reservoir as points of rediversion under License 11118. A portion of the SWP service area (as shown on Maps 1878-1, 2, 3, and 4 on file with Application 5630) would be temporarily added as to the place of use of License 11118. Municipal and industrial would be added as purposes of use under License 11118.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On April 19, 2018, 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 April 19, 2018, the District noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties. The comment deadline was May 21, 2018. Comments were timely received from the U.S. Bureau of Reclamation (Reclamation), California Department of Fish and Wildlife (CDFW), and Mr. Richard Morat.

3.1 Comments of Reclamation

On May 21, 2018, Reclamation submitted comments on the proposed transfer requesting that the Order approving the transfer be conditioned as follows:

- A refill agreement is necessary in order for a reservoir release transfer proposal to not adversely affect the water rights or operations of the CVP. Reclamation requests that in the Board's order granting approval of such an action it is noted that the transfer is subject to such an agreement. Such an agreement would need to protect CVP water rights and operations from injury.
- To the extent that the transfer is occurring via groundwater substitution:
 - Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
 - The amount of transferable water credited to the District's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
 - Before commencing the groundwater substitution operation, the District shall submit a Monitoring Program Plan and Mitigation Plan to DWR and Reclamation for evaluation and prior approval.
 - The amount of transferred water pursuant to the Order shall not exceed the streamflow depletion factor of 13 percent as set forth in the Draft Technical Memorandum.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

District Response:

The District responded in a comment letter dated June 8, 2018, that as indicated in the Petition, in the absence of the proposed reservoir release transfer, water may be held in storage or provided to the District's service area. Each year, the District provides an initial allocation of surface water supplies to growers at the beginning of the irrigation season, which meets a portion of crop water demands. These surface water supplies supplement groundwater pumping by growers (i.e. privately-owned groundwater wells, as the District does not own or operate any wells) in order to meet crop water demands throughout the irrigation season. Due to uncertain hydrologic and operational factors throughout the season, whether surface water would be held in storage or replaced with additional groundwater pumping is unknown at this time. The District would comply with a Conveyance Agreement between the District and DWR which describes the approach together with additional conditions imposed by DWR. One such condition is a streamflow depletion factor (SDF) of 7 percent that has been agreed upon with DWR for the District's recent water transfers. The transfer must also comply with the 2015 Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), prepared by DWR and Reclamation. For these reasons, this approach does not involve the criteria identified in Reclamation's comments that apply to a groundwater substitution transfer, with the exception of the SDF of 7 percent. The Draft Technical Information specifies a minimum 13 percent SDF unless a site-specific SDF is developed. The site-specific SDF of 7 percent was applied to this transfer per agreement with DWR. Based on discussions with DWR for the 2018 water transfer, the District anticipates terms and conditions in a conveyance agreement similar to the District's prior water transfers.

In 2014, Reclamation provided comments on the District's similar petition for temporary transfer and also asked for a refill agreement; however, the request for a refill agreement was withdrawn by Reclamation via email prior to the order being issued. In 2015, for a similar transfer, Reclamation provided comments but did not ask for a refill agreement. Reclamation confirmed in an email dated June 21, 2018 that it stands by its 2018 comment letter and the need for a refill agreement to the extent water that would have remained in storage will be transferred.

State Water Board Response:

The District clarified in their response to comments that the operation of Camp Far West Reservoir and associated water storage would be the same in 2018 with or without the transfer, and a refill agreement should not be required. However, since the petition indicated some of the transfer water may otherwise have remained in storage, the District will be required to enter into a refill agreement with Reclamation and DWR, unless it is subsequently determined that this is not the case (i.e. that none of the water that is subject to transfer would have remained in storage absent the transfer) and an exemption is obtained from Reclamation. Most of the transfer water is being made available by additional groundwater pumping. Therefore, this transfer is also considered a groundwater substitution transfer. The groundwater substitution provisions, including groundwater monitoring and streamflow depletion factor requirements pursuant to a conveyance agreement entered into with DWR and consistent with the 2015 Draft Technical Information will be applied as conditions of this order. DWR confirmed in email correspondence dated 6/12/2018 that a 7 percent streamflow depletion factor would be applied to the transfer.

3.2 Comments of CDFW

By letter dated May 21, 2018, CDFW commented on the proposed transfer. CDFW expressed its concerns over the potential direct and cumulative adverse impacts from changes in the quantity, timing, and duration of water transfers on the sensitive anadromous and/or resident fisheries within the Bear River. CDFW is concerned that increased flows due to the transfer could attract fall-run salmon to the Bear River in September and that low flows after the transfer would not be able to support salmon after they have entered the system. The timing of water transfer flows should be coordinated with CDFW to minimize fishery concerns.

CDFW also expressed its concerns associated with proposed and future transfers that have the potential to impact Groundwater Dependent Ecosystems (GDEs). The letter states that water transfers made available by groundwater substitution have the potential to affect groundwater hydrology due to increased groundwater use and reduced groundwater recharge.

State Water Board and District Response:

The District will coordinate the release pattern for the proposed temporary transfer with CDFW to ensure that there will be no impacts to fish. Initial coordination will include the District providing the proposed release schedule to CDFW for review and approval, prior to release for the 2018 water transfer.

The operations of the Banks Pumping Plant are governed by Biological Opinions issued by the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for the long-term operations of the Central Valley Project (CVP) and the SWP (referred to as OCAP BOs). The BOs were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM II modeling of SWP and CVP operations. The modeling included up to 600,000 af of water transfers during the period of July 1 through September 30 period. The total amount of additional pumping due to all water transfer (including the subject transfer) in 2018 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant and San Luis Reservoir associated with the subject transfer between July 1, 2018 and September 30, 2018, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1, 2018 through September 30, 2018.

Groundwater substitution transfers are subject to compliance with the requirements of the groundwater management requirements in the Draft Technical Information, applicable existing Groundwater Management Plans (GMPs), and the SGMA, which is currently in the development and implementation phase. SGMA requires GSAs to consider the interests of all beneficial uses and users of groundwater, including GDEs, during the development and implementation of GSPs pursuant to Water Code section 10723.2. As GSPs are currently in development in most groundwater basins and due for completion within the next few years, the State Water Board expects potential water transfers to coordinate with applicable GSAs to ensure water transfer activities are considered in the development of relevant GSPs. The State Water Board agrees that early coordination with GSAs will help determine whether water transfer activities in a basin may have potential impacts on GDEs and GSPs should consider these impacts in the development of sustainability goals, minimum thresholds, and measurable objectives for comprehensive sustainable management criteria. State Water Board is monitoring the progress of development of GSPs and may further condition future groundwater substitution transfers accordingly.

As identified in Attachment No. 1 to the Petition, the District is within the North American Subbasin (NASB) and is participating in a GSA. The District is actively coordinating with the other GSAs within the NASB to initiate preparation of a GSP. The GSP, which is required to be complete by January 1, 2022, will address sustainability indicators required by the SGMA, which includes those listed in CDFW's comment letter, relative to both general groundwater conditions and groundwater conditions associated with water transfers.

3.3 Comments of Mr. Richard Morat

By letter dated April 22, 2018, Richard Morat commented on the proposed transfer. Mr. Morat indicated that the transfer is unclear and contradictory as to water use in the District if the petition is approved. The petition states that absent the transfer the water would be either delivered or kept in reservoir storage. Mr. Morat requested terms and conditions that better protect public trust resources and that the transfer will not result in an unreasonable effect on fish and wildlife or other instream beneficial uses.

State Water Board and District Response:

The transfer petition was clarified in the District's June 8, 2018 response to comments letter and subsequent communication that the Reservoir would be operated in the same manner and would be at the same storage level at the end of the season with or without the transfer. Therefore, water is being made available for this transfer via reservoir release with water being made available by groundwater substitution and is conditioned accordingly.

As Mr. Morat also indicated, the State Water Board is responsible for considering public trust resources, and while it does not anticipate any adverse public trust impacts to result from this transfer, the State Water Board is aware of long standing challenges with regard to management of flows and maintaining habitat conditions suitable for protection of fish and wildlife in the Delta and its tributaries. Current outflow and water quality requirements are established by State Water Board Water Right Decision 1641 (D-1641) and applicable Biological Opinions, which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer. Additionally, the State Water Board is in the process of reviewing and revising the Bay-Delta Water Quality Control Plan, including a Phase II effort that will include determination of flows protective of fish and wildlife in the Feather River and Sacramento-San Joaquin River Delta estuary. The proposed Phase II changes to the Bay-Delta Plan include: new inflow requirements for the Sacramento River, its tributaries, and eastside tributaries to the Delta (the Mokelumne, Calaveras and Cosumnes Rivers); new and modified Delta outflow requirements; new requirements for cold water habitat; new and modified interior Delta flow requirements; recommendations for complementary ecosystem protection actions that others should take; and adaptive management, monitoring, evaluation, special study, and reporting provisions.

The proposed temporary transfer by the District is for water that would have otherwise been stored or delivered to the District's service area. By approving the transfer, additional water will flow down the Bear River thence the Feather River, thence the Sacramento River.

The District will provide the release schedule to CDFW for review and comment, prior to releases for the 2018 Water Transfer. The releases will occur within the period from July 1, 2018 through September 30, 2018; however, the precise dates are unknown at this time. The actual releases will coincide with the District's coordinated efforts with CDFW and DWR, including during periods consistent with other regulatory requirements for the redirection of transfer water in the Delta. In light of the above explanation, it is not anticipated that this transfer will result in an unreasonable effect on fish and wildlife, or other instream beneficial uses.

Also see response to Reclamation's comments above regarding compliance with the Draft Technical Information and consistency with terms and conditions of the District's previous transfers per conveyance agreements approved by DWR.

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.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code section 1725, "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 involve only 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, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses." (Wat. Code, § 1725.)

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 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).

6.0 REQUIRED FINDINGS OF FACT

6.1 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 15,000 af of water stored at the Reservoir 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 2018. 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.

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

6.2 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 May 17, 2018. DWR responded stating that the proposed transfer would be treated similar to the District’s previous transfer in 2015. Water proposed for the transfer consists of surface water released from the Reservoir 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 percent of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 93 percent of the surface water released from the Reservoir.

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

This Order also includes terms and conditions to ensure that other legal users of water are not injured by the potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and San Luis Reservoir as points of rediversion to License 11118.

The District adopted the South Sutter Water District Groundwater Management Plan (Plan) in 1995 and was subsequently updated in 2009. The Plan has been effective in implementing conjunctive use of surface water and groundwater within the District.

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 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.

6.3 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)). The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding concerns regarding creation of false fall attraction flows and increased water temperatures during the month of September that could negatively impact fall run Chinook Salmon rearing, and that proper basin management to avoid potential future impacts to GDEs resulting from groundwater substitution transfers, which is discussed in Section 3.2 of this order. The Regional 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 does not result in false fish attraction flows to streams not suited for fish rearing. To ensure the transfer will not impact fishery resources, the District is required to work with CDFW to identify a protective water transfer release schedule. The transfer will also be subject to Biological Opinions issued by the USFWS and the NMFS under the federal Endangered Species Act.

The Order limits the transfer period from July 1, 2018 through September 30, 2018 to ensure conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant and San Luis Reservoir pursuant to this Order is subject to compliance by the 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 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 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.

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.

7.0 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.

8.0 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 15,000 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 July 1, 2018 and continuing through September 30, 2018.
2. Refill criteria shall be developed for the 2018 water transfer, subject to approval by DWR and Reclamation, unless a written exemption from this requirement is provided by Reclamation. The refill criteria shall govern the conditions under which refill of the water released pursuant to this Order occurs, including the conditions under which refill impacts may accrue and how the District shall rectify any impacts. At the conclusion of refilling water in the Reservoir for the water released pursuant to this Order that would have remained in storage, if a refill impact has occurred, the District shall release the amount of water identified in the refill criteria to DWR and Reclamation in a manner and on a schedule agreed to between the District, DWR, and Reclamation. Any release required pursuant to this paragraph shall be conducted in a manner that does not injure any legal user of water and does not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. Petitioner shall comply with all groundwater substitution provisions contained in the conveyance agreement pursuant to the Draft Technical Information, between DWR, Reclamation, and the District as a condition of transferring water pursuant to this Order.
4. The amount of water transferred pursuant to this Order shall not exceed 93 percent of the rate of additional reservoir release for the transfer.

5. The District shall submit a plan for the timing of transfer water releases and obtain approval from CDFW prior to commencing the transfer. The approved plan shall be submitted to the Deputy Director for Water Rights within five (5) days of approval by CDFW.
6. The place of use under License 11118 is temporarily amended to include a portion of the SWP service area (as shown on Maps 1878-1, 2, 3, and 4 on file with Application 5630). Water transferred pursuant to this Order shall only be delivered to Dudley Ridge Water District, Kern County Water Agency, Metropolitan Water District of Southern California, and Palmdale Water District.
7. 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 – North 2,126,440 feet and East 6,256,425 feet, California Coordinate System, Zone 3, NAD 83, being within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 20, T1S, R4E, MDB&M.
 - b. San Luis Reservoir – North 1,845,103 feet, East 6,393,569 feet, California Coordinate System, Zone 3, NAD 83, being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 15, T10S, R8E, MDB&M.
8. Municipal and industrial are temporarily added as purposes of use.
9. Rediversion of water at Banks 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. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable BOs and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

Rediversion of water at the Banks Pumping Plant and San Luis Reservoir 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.
10. During the period of the transfer, the District shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the District.
11. Within 90 days of completion of the transfer, the District shall provide the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available for transfer pursuant to this Order;
 - c. An accounting by average release rate and total volume of any storage releases and deliveries;
 - d. The daily average streamflow measured at the nearest representative gaging station on the Bear River;
 - e. The daily average pumping rate of groundwater pumped by the District or its customers, in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of the District prior to the proposed transfer.

The District shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2018, a map defining the groundwater elevations within the vicinity of the District until such time as these elevations correspond to pre-transfer levels.

12. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
13. 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.

14. 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.
15. 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

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUN 25 2018