

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF PERMIT 20749 (APPLICATION 20245) OF CONTRA COSTA WATER DISTRICT  
AND PERMITS 12721, 11967, 12722, 12723, 11315, 11316, 11968, 11969 AND 11971  
(APPLICATIONS 5626, 5628, 9363, 9364, 13370, 13371, 15374, 15375  
AND 16767) OF THE U.S. BUREAU OF RECLAMATION**

**PETITIONS FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 4,000 ACRE-FEET OF WATER  
FROM THE CONTRA COSTA WATER DISTRICT AND THE U. S. BUREAU OF RECLAMATION  
TO BYRON BETHANY IRRIGATION DISTRICT**

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SOURCES: Old River, Victoria Canal, American River, Sacramento River, and Trinity River

COUNTIES: Contra Costa, Alameda, Sacramento, San Joaquin, and Trinity

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**BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:**

**1.0 SUBSTANCE OF PETITION**

On July 16, 2014, the Contra Costa Water District (CCWD) and the U.S. Bureau of Reclamation (Reclamation), collectively Petitioners, filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) petitions for temporary change under California Water Code Section 1725, et seq. CCWD and Reclamation requested to transfer up to 4,000 acre-feet (af) of water to Byron Bethany Irrigation District (BBID). The requested transfer period is July 15, 2014 to October 31, 2014. As noted in the order section, the transfer period begins on the date of State Water Board transfer approval.

**1.1 Description of the Transfer**

BBID and CCWD have entered into an agreement to undertake a one-time demonstration project to evaluate the feasibility of a longer-term partnership for the improvement of regional water supply reliability. This transfer is part of that demonstration project. Due to extraordinarily dry hydrologic conditions BBID has a shortfall in its water supplies this summer. This transfer will help BBID meet its water supply needs.

During the period of this transfer, CCWD will be diverting water at its Old River and/or Middle River intakes for delivery to its customers. CCWD's Rock Slough intake will be shut down for maintenance and the salinity at Mallard Slough intake is projected to be too high for municipal and industrial use.

CCWD is a Central Valley Project (CVP) contractor. State Water Board Decision 1629 (D-1629) provides that CCWD can divert water to storage under its CVP contract.

For this transfer, CCWD proposes to forego diversion of its CVP contract water at its Old River and/or Middle River intakes and instead divert 4,000 af of water previously stored in Los Vaqueros Reservoir that BBID obtained through agreement. The foregone diversion of CVP contract water at Old River and/or Middle River intakes would remain in the south Delta for diversion at the BBID point of diversion on the intake channel to the Banks Pumping Plant (Banks Intake Channel). The BBID point of diversion on the Banks Intake Channel will be added as a point of diversion/rediversion to Reclamation's permits so that CVP water can be diverted to BBID. To compensate for the reduction in CVP supply in Los Vaqueros Reservoir, a refill agreement will be completed between CCWD, Reclamation, and the Department of Water Resources (DWR).

The transfer will be subject to provisions of CCWD Permit 20749 and Reclamation Permits 12721, 11967, 12722, 12723, 11315, 11316, 11968, 11969 and 11971 (Permits 12721 et al.) set forth in D-1629 and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

## **2.0 BACKGROUND**

The Reclamation water rights involved in the transfer are extensive. Only the relevant portions of the rights associated with the Los Vaqueros Project are discussed herein. The total combined quantity of water diverted and/or rediverted from Old River and Victoria Canal under Permit 20749 and Permits 12721 et al. shall not exceed 180,675 af per annum, and also shall not exceed in any one-year period commencing on March 1 the sum of (i) 177,000 af and (ii) 4,000 af to replace evaporation losses and (iii) the difference between the quantity of water in storage in Los Vaqueros Reservoir at the end of the period and the quantity of water in storage in Los Vaqueros Reservoir at the beginning of the period from Old River and Victoria Canal combined. If the quantity of water in storage at the end of the period is less than the storage at the beginning of the period, the change in storage shall be subtracted from the 177,000 af. The maximum rate of diversion from Victoria Canal shall not exceed 250 cubic feet per second (cfs), and the maximum combined rate of diversion from Old River and Victoria Canal shall not exceed 320 cfs. Until further order of the State Water Board, the combined maximum annual diversion shall not exceed 222,000 af per annum from Old River, Rock Slough, and Victoria Canal.

The Reclamation CVP facilities (Shasta Project, Trinity Project and Folsom Project) divert from multiple sources. The sources located upstream of the transfer location are not listed herein, but are available in the Division's eWRIMS records. Under the Reclamation rights, water may be used for irrigation, domestic, municipal, industrial, salinity control, water quality control, fish and wildlife enhancement, stockwatering, recreation, and incidental power.

CCWD's Rock Slough intake will be shut down for construction on the unlined portion of the Contra Costa Canal, and salinity at CCWD's Mallard Slough intake is projected to be too high for municipal and industrial use. The locations of the CCWD points of diversion/rediversion are: 1) Old River Intake: NW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of projected Section 31, T1N, R4E, MDB&M; and 2) Middle River Intake at Victoria Canal: NE  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 9, T1S, R4E, MDB&M.

### **2.1 Place of Use and Point of Diversion under the Proposed Transfer**

No changes in place of use, point of diversion, or purpose of use are requested to the CCWD Permit 20749. Water stored under Permit 20749 is the source of the exchange water. The change to Permit 20749 consists of addition of reservoir refill criteria.

The present place of use of water diverted under Reclamation's permits is the entire consolidated CVP place of use shown on maps on file with the State Water Board. BBID's service area is entirely within the CVP service area (excepting the Tracy Hills area). BBID will deliver water to its service area (excepting the Tracy Hills area) via its point of diversion on the Banks Intake Channel and thence through a temporary intertie located between the Banks Intake Channel and the Delta Mendota Canal. Thus, no change in place of use is necessary.

CCWD's and Reclamation's petitions request the temporary addition of the BBID point of diversion on the Banks Intake Channel as a point of diversion/rediversion to Reclamation's permits. The proposed new point of diversion on the Banks Intake Channel, Zone 3, North 2,120,887 feet and East 6,242,257 feet is shown on Figure 2 submitted with the petitions for this transfer.

### **2.2 Governor's 2014 Proclamation of a Drought State of Emergency**

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The 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 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 California 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 reiterates 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), Section 13247 of the California Water Code is suspended. California Water Code Section 13247 requires that 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 Water 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 Reclamation jointly filed a Temporary Urgency Change Petition (TUCP), pursuant to California 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 May 27, 2014, the State Water Board issued curtailment notices for those diverting water in the Sacramento-San Joaquin watersheds with post-1914 water rights. The direct diversion and collection of water to storage under the permits held by Reclamation and CCWD were subject to curtailment notice. However, releases of water collected to storage prior to issuance of the curtailment notices, such as in the case of this transfer, are not subject to curtailment.

### **3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE**

On July 25, 2014, public notice of the petitions for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS e-mail notification system. In addition, on July 25, 2014, the Petitioners noticed the project via publication in the Contra Costa Times newspaper and mailed the notice via first class mail to interested parties. Comments were submitted by Mr. Morat.

#### **3.1 Comments of Mr. Morat**

Mr. Morat's comments address the issues of CCWD transferring water by storage release from Los Vaqueros Reservoir and refilling Los Vaqueros Reservoir at a later date, and the water quality and fishery impacts potentially caused by the transfer. Mr. Morat indicated he would not object to the petitions for transfer if the aquatic resources of the estuary were afforded some protection through a refill agreement. The comments made by Mr. Morat on this transfer are similar to those made by him on a previous storage release transfer from Los Vaqueros Reservoir. The State Water Board hereby incorporates its previous response letter, a July 7, 2014 "Comments on 2014 Temporary Transfers of Water" letter, by reference. The letter is located in the file for CCWD Application 20245.

Mr. Morat also commented that the State Water Board is relying blindly on the state and federal resource agency's biological opinions on threatened and endangered species for transfers. The State Water Board will continue to rely on the determinations of the agencies charged with the responsibility for determining appropriate protective measures under the state and federal endangered species acts.

#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Petitioners filed the petitions for temporary transfer of water pursuant to California Water Code Section 1725, et seq. California Water Code Section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will 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 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 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 California Water Code Section 1727 evaluation.

#### **5.0 REQUIRED FINDINGS OF FACT**

##### **5.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the California Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) California Water Code Section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion."

In the absence of the transfer, CCWD would have diverted its CVP contract water in an amount equivalent to the transfer for use in its service area. The 4,000 af of previously stored water would have remained in storage in Los Vaqueros Reservoir.

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

##### **5.2 No Injury to Other Legal Users of the Water**

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the California Water Code, 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 water proposed for transfer pursuant to this temporary change consists of water previously stored in Los Vaqueros Reservoir pursuant to Permit 20749. In the absence of the proposed transfer, the water would remain in storage for future use by CCWD and would not be available to other water users. There will be no change in return flows from CCWD's service area. Further, the releases from storage at Los Vaqueros

Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of the water downstream of Los Vaqueros Reservoir.

In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of the water. In the absence of the proposed transfer, CCWD would have diverted its CVP contract water at Old River and/or Middle River intakes for use in its service area. Net pumping in the Delta would not change as a result of this transfer.

CCWD will enter into a reservoir refill agreement with Reclamation and DWR ensuring that future refill of any storage space in Los Vaqueros Reservoir created by the transfer will not reduce the amount of water that Reclamation, DWR, or other water users could otherwise divert under their water rights.

In light of the above, I find in accordance with California Water Code Section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal users of the water.

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

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

The surface water under CVP contract that is foregone will be diverted from the Sacramento/San Joaquin Delta at the BBID point of diversion on the Banks Intake Channel. All water diverted at the point of diversion on the Banks Intake Channel is done in accordance with the criteria contained in State Water Board Water Right Decision 1641 (D-1641) and the BOs. DWR and Reclamation will continue to meet the objectives specified in D-1641 or any subsequent Orders in effect at the time of the export, as well as the requirements contained in the BOs and the SWP-CVP Order issued January 31, 2014 and subsequently amended. The quantity of transfer water to be conveyed through the Delta, including other currently planned transfers, is well within the quantities analyzed in the environmental documents issued for the BOs. The transfer will not result in a measurable change in quantity or quality of return flows.

In light of the above, I find in accordance with California 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 California Water Code Section 1727, and, therefore, I find as follows:

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petitions filed for temporary change for the transfer of up to 4,000 af of water under Permit 20749 and Permits 12721 et al. are approved.

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

1. The transfer/exchange is limited to the period commencing on the date of order issuance and ending on October 31, 2014.

2. The points of diversion/rediversion under Reclamation's Permits 12721 et al. are temporarily amended to add:

BBID point of diversion on the Banks Intake Channel – Zone 3, North 2,120,887 feet and East 6,242,257 feet, shown on Figure 2 submitted with the petitions for this transfer.

3. Rediversion of water at the BBID point of diversion on the Banks Intake Channel is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in and consistent with the April 8, 2014 CVP and SWP Drought Operations Plan and the State Water Board's SWP-CVP Order issued January 31, 2014 and subsequently amended.

The Division retains continuing authority to amend or revise this transfer condition, as necessary, based on actions taken by the State Water Board related to use of the Delta pumps for export, or other issues related to use of the Delta pumps that may affect this transfer.

4. Rediversion of water at the BBID point of diversion on the Banks Intake Channel is subject to compliance by the operators with the objectives currently required of DWR 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, as amended by the documents cited in Order item 3. 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.

5. Water may not be transferred from the BBID point of diversion on the Banks Intake Channel until CCWD has implemented a Refill Agreement between DWR, Reclamation and CCWD to address potential refill concerns in Los Vaqueros Reservoir. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta. The executed Refill Agreement must be acceptable to DWR, Reclamation and CCWD. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation and CCWD shall be submitted to the Division within 15 days of the date of execution of the agreement. Refill criteria will be temporarily added to CCWD Permit 20749.

6. The State Water Board has issued curtailment notices to CCWD under Permit 20749 and Reclamation under Permits 12721 et al. Accordingly, only water collected in storage prior to issuance of the curtailment notices may be transferred/exchanged.

7. CCWD is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall include the following information:

a. The average daily release rates and corresponding volume of water released from Los Vaqueros Reservoir as a result of this transfer (reported on a daily basis).

b. The daily average rate of water diverted and daily volume of water diverted at the point of diversion on the Banks Intake Channel pursuant to this Order.

- c. Recognizing that reservoir refill will occur after the transfer ends; monthly reporting of reservoir refill is not required during the transfer period. However, CCWD shall provide annual reporting by August 1 of each year on monthly reservoir refill until the reservoir refill agreement has been satisfied. This occurs when the value of the Refill Reservation, as defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to CCWD in time for inclusion in a monthly or annual report, CCWD shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

8. Pursuant to California 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 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 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittees shall obtain authorization for an incidental "take" permit prior to construction or operation. Permittees shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve authority to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: **AUG 27 2014**