

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMITS 1267 AND 2492 (APPLICATIONS 1651 AND 2778)
PETITIONS FOR TEMPORARY CHANGE INVOLVING THE TRANSFER
OF UP TO 10,000 ACRE-FEET OF WATER
FROM SOUTH FEATHER WATER & POWER AGENCY
TO SEVERAL STATE WATER CONTRACT AGENCIES**

SOURCES: Lost Creek and South Fork Feather River

COUNTIES: Butte and Plumas

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On August 19, 2015, South Feather Water & Power Agency (SFWPA or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), two petitions for temporary change under Water Code Section 1725, et seq. SFWPA has requested to transfer up to a total of 10,000 acre-feet (af) of water (up to 5,000 af under water right Permit 1267 (Application 1651) and up to 5,000 af under water right Permit 2492 (Application 2778)) to participating State Water Contractor (SWC) Agencies. 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

SFWPA proposes to transfer up to 10,000 af of water under Permits 1267 and 2492 to several participating members of the SWC Agencies (see section 2.2). To facilitate the transfer, SFWPA proposes to release 5,000 af of water currently stored in Little Grass Valley Reservoir under Permit 1267 on the South Fork Feather River and 5,000 af of water currently stored in Sly Creek Reservoir under Permit 2492 on Lost Creek to Ponderosa Reservoir where water would be spilled directly into Lake Oroville from September through late October of 2015. The water would remain in storage in Lake Oroville for use by the SWC agencies within the State Water Project (SWP) service area for up to one year from the date of approval of this transfer. Water would be delivered to SWP service areas via releases from Lake Oroville to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta for re-diversion at the SWP's Harvey O. Banks Pumping Plant and/or the Barker Slough Pumping Plant. In the absence of this transfer, the subject 10,000 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir.

2.0 BACKGROUND

2.1 Substance of SFWPA's Permits

Permit 1267, which has a priority date of February 2, 1920, authorizes the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River from October 1 of each year to July 1 of the succeeding year. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) from April 1 to July 1 of each year. The point of diversion to storage for Permit 1267 is located at the Little Grass Valley Dam. Points of re-diversion

include the South Fork Diversion Dam, Sly Creek Storage Dam, Lost Creek Storage Dam, Forbestown Diversion Dam, and Ponderosa Dam. The water is used for domestic, municipal, industrial, and irrigation purposes within the authorized place of use, and for recreational purposes within Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Storage Dam, and Ponderosa Reservoir.

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

2.2 State Water Contractors (SWC)

SWC is a non-profit association of 27 public agencies from Northern, Central, and Southern California that purchase water under contract from the SWP. Collectively, the SWC deliver water to more than 26 million residents throughout the State and more than 750,000 acres of agricultural lands. The SWC agencies involved in this water transfer are the Dudley Ridge Water District, the Kern County Water Agency, the Metropolitan Water District of Southern California, the County of Kings, and the Oak Flat Water District.

2.3 Proposed Temporary Changes

The proposed changes to Permits 1267 and 2492 would temporarily: (1) add Oroville Dam, Harvey O. Banks Pumping Plant, and Barker Slough Pumping Plant as points of re-diversion; and (2) add the service area of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with the State Water Board pursuant to Application 5630) as an additional place of use.

2.4 Agency Coordination and Refill Agreement

SFWPA has indicated that reservoir storage releases will be made in accordance with the Draft Technical Information for Preparing Water Transfer Proposals, dated November 2014 (Draft Technical Information) and the May 25, 2015 Addendum both published by the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation). The Draft Technical Information has chiefly been developed to address the concerns of DWR and Reclamation relative to the potential impacts that water transfers may have on other legal downstream users of water.

SFWPA has consulted with DWR regarding the proposed transfer and the parties have agreed to refill criteria that will ensure that the transfer of water and the refill of storage space will not injure any legal downstream users of water.

2.5 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014 (January 2014 Proclamation), Governor Edmund G. Brown Jr. proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions, and on April 25, 2014, he issued an Executive Order (April 2014 Proclamation) to strengthen the State's ability to manage water and habitat effectively in drought conditions. The April 2014 Proclamation found that the continuous severe drought conditions presented urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity, if drought conditions continued into 2015

The January 2014 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 the State Water Board and DWR 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. The 30-day comment period provided in section 1726(f) of the Water Code, relevant to temporary water transfers, is also suspended for actions taken pursuant to Directive 2, but the State Water Board will provide for a 15-day comment period.

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 Proclamation and April Proclamation 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.

2.6 State Water Board Water Unavailability Actions

On May 1, 2015, the Executive Director for the State Water Board issued a Water Unavailability Notice (Notice) for all post-1914 water rights in the Sacramento River Watershed. SFWPA indicated that all proposed transfer water was diverted to storage in its reservoirs prior to the May 1, 2015 Notice. Releases of water collected to storage prior to issuance of the Notice are available for use or transfer after Notice.

3.0 PUBLIC NOTICE AND COMMENTS OF THE PROPOSED TEMPORARY CHANGE

On August 28, 2015, 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 email notification system. In addition, on August 28, 2015, the Petitioner noticed the project via publication in the Oroville Mercury Register newspaper and mailed the notice via first class mail to interested parties. Comment letters were received from Reclamation, Mr. Ronald Fink and Ms. Linda Fink, Ms. Suzette Welch, Ms. Patsy Shultz, Mr. David Griswald, Mr. Thomas Holt, and Ms. Michele Riggs. The comments and the State Water Board's responses are summarized below.

3.1 Comments by Reclamation

On September 4, 2015, Reclamation submitted comments on the proposed transfer requesting that the Order approving the transfer be conditioned to include:

1. SFWPA agree to the refill criteria as specified in the refill agreement with DWR and the transfer is subject to that agreement; and

2. The transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

State Water Board Response to Reclamation

The State Water Board Order includes a term requiring a refill agreement with DWR and that transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

3.2 Comments by Ronald Fink and Linda Fink

By letter dated September 8, 2015, Mr. Fink and Ms. Fink provided comments. The Finks' property receives raw water service from SFWPA via the Forbestown Ditch. They were concerned that the proposed water transfer might result in a reduction of their water deliveries.

State Water Board Response to Ronald Fink and Linda Fink

SFWPA has advised the State Water Board that raw water deliveries from the Forbestown Ditch will be unaffected by the proposed transfer and will continue, as in past years, through approximately October 15, 2015. Forbestown Ditch deliveries will resume, as customary, in the late spring of the following year.

3.3 All other Comments

The remaining comments had similar themes and/or concerns. The comments will be addressed in a collective manner. The comments are summarized below followed by the State Water Board's collective responses.

Summary of Comments Received

Suzette Welch's comments were provided via email on August 31, 2015. Ms. Welch commented that there is no surplus of water in northern California to be transferred. She indicated that in the event we do not have rain this winter, any water moved out of the region would also be lost for potential aquifer recharge within the local area. Ms. Welch further indicated that the proposed transfer of water out of the region it originates should be considered illegal taking of water as the water is not owned by SFWPA.

Patsy Schultz's comments were provided via email on September 2, 2015. Ms. Shultz commented that it is a fallacy that the water must be sold to perform required maintenance. She also stated that before transfers are approved, more study is needed regarding surface water storage in northern California and the potential for negative impacts to local groundwater aquifers due to water being transferred out of the areas of origin.

On September 14, 2015, Butte Environmental Council (BEC) provided comments in opposition to SFWPA's proposed transfer asserting it was in contravention of BEC's policy statement regarding water resources within Butte County. BEC further objected to the 15-day public comment period offered by the State Water Board; expressed concern over surface water curtailments and resulting greater groundwater pumping; and stated the proposed transfer is inconsistent with the public welfare and public trust.

On September 1, 2015, David Griswald's comments were received via email, and on September 9, 2015 separate comments were received from Thomas Holt, and Michele Riggs. The three comments were substantively identical. The comments expressed opposition to the proposed transfer based on unspecified negative environmental impacts, financial impacts; and water supply risks to SFWPA, and risks to the local economy.

State Water Board Response to Comments

Public Welfare and Shortened Comment Period

The Legislature has provided for an expedited process under Water Code 1725 et seq., which requires the State Water Board to quickly evaluate and act on petitions for temporary water transfers. The State Water Board evaluates transfer petitions in regards to the findings required by Water Code § 1727. Findings include that 1) The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change; 2) The proposed temporary change will not injure any legal user of water; and 3) The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses. This Order includes findings necessary to approve the transfer.

As described in Section 2.5, Governor Brown has issued Proclamations and Executive Orders directing the State Water Board and other state agencies to immediately and expeditiously process requests to move water to areas of need, including requests for temporary water transfers. State law recognizes temporary water transfers as beneficial use of water that is to be encouraged, particularly to alleviate water shortages, and will not result in a diminution or forfeiture of water right pursuant to Water Code sections 109, 475, and 1244. The public notice period for transfers is 30 days. However, Governor Brown, in his April 25, 2014 Proclamation of Continued State of Emergency due to drought, shortened the 30 day public comment period provided in section 1726(f) of the Water Code to 15 days.

Economic Impacts

The State Water Board evaluates transfer petitions in regards to the necessary findings in Water Code § 1727. This review does not include oversight or analysis of SFWPA's expenditures, income or finances. Regardless of the intended repairs proposed by the revenue of the transfer, SFWPA is a willing seller in the transfer market. This transfer involves conveyance through a DWR facility and thus pursuant to Water Code § 1810(d), DWR is required to analyze and ensure the proposed transfer, among other things, will not unreasonably affect the overall economy or the environment of the county from which the water is being transferred.

Public trust Impacts

In order to approve a transfer petition, the State Water Board must find that the proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses. The commenters did not provide evidence of specific effect to any fish, wildlife or other instream beneficial uses. As described in greater detail in section 5.3, the State Water Board finds no unreasonable effects on fish, wildlife, or other instream beneficial uses. The proposed temporary transfer would not result in fluctuation in the reservoirs and streamflow levels that are outside of historic range, and the potential for adverse effects on aquatic/riparian habitat, fish and wildlife would be minimal to negligible. SFWPA has participated in past temporary transfers involving similar quantities, most recently in 2008, and no party has identified or claimed unreasonable effects on fish, wildlife, or other instream beneficial uses.

Water Unavailability Notices

Concern was expressed regarding surface water curtailments and resulting greater groundwater pumping. This transfer does not involve groundwater substitution. This transfer involves water legally stored in reservoirs during a time of surplus, prior to the issuance of the notice of water unavailability.

Water Supply Concerns

In order to approve a transfer petition, the State Water Board must find that the proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change. As discussed in Section 5.1, the water proposed for transfer is already stored in the reservoir prior to curtailment of these rights and is therefore available for transfer.

The State Water Board recognizes the concerns of outside parties that entities within their watershed maintain a reliable source of water during drought conditions. SFWPA has advised the State Water Board that its combined low-point storage levels of Little Grass Valley and Sly Creek Reservoirs with

the proposed transfer would be approximately 50,000 acre-feet. These storage levels are within historic range and would provide more than adequate carryover storage for consumptive uses within SFWPA's service area in 2016 and beyond as described in SFWPA's Urban Water Management Plan.

Aquifer Recharge

Concern was raised that any water moved out of the region would also be lost for potential aquifer recharge within the local area. The water subject to transfer would have been maintained in storage in the absence of the transfer. This transfer is not a groundwater substitution transfer and therefore does not result in increased groundwater pumping. The reservoirs themselves store water and likely have seepage associated with that storage. However, the stored water is not the same water in time as the water flowing in the stream. Any parties who take benefit from this seepage, where the water would not otherwise recharge the aquifer, are not legally entitled to require that the seepage continue and the no injury rule therefore does not bar changes that reduce the amount of seepage.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The petitioner filed the petition for temporary transfer of water pursuant to Water Code section 1725, et seq. 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 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 pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to 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." The water proposed for transfer was stored by SFWPA under Permits 1267 and 2492. In its petitions, SFWPA states that, in the absence of the transfer, the water proposed for transfer would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir for future use by SFWPA.

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 stored in the absence of the proposed temporary change.

5.2 No Injury to Other Legal Users of 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 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 Little Grass Valley Reservoir and Sly Creek Reservoir pursuant to Permits 1267 and 2492. In the absence of the proposed transfer, the water would remain in storage for future use by SFWPA and would not be available to other water users. Since the water would otherwise have remained in storage, there will be no changes in return flows as a result of the transfer.

SFWPA will enter into a Reservoir Refill Agreement with DWR, ensuring that future refill of any storage space in Lake Oroville created by the transfer will not reduce the amount of water that DWR, or other water users could otherwise divert under their water rights. Further, the transferred water may only be credited during balanced conditions in the Sacramento-San Joaquin River Delta. Therefore, no injury to other legal users of water would occur due to the transfer.

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 user of 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).) SFWPA has indicated that while the primary purpose of SFWPA's transfer is to provide temporary water supplies for municipal, industrial, and agricultural uses within the SWP service area, as a secondary benefit the transfer would involve up to 10,000 af of supplemental flows in the South Fork of the Feather River for delivery at Lake Oroville.

From Lake Oroville the transfer water would be conveyed via the Feather River, thence Sacramento River to new points of diversion and re-diversion as set forth in SFWPA's petitions and consistent with existing regulations and laws, including Delta biological opinions (BO). Increases in flows resulting from the transfer would likely enhance aquatic habitats, potential recreational opportunities during the period of transfer, as well as potentially improving and/or maintaining the cold water pool and operational flexibility in Lake Oroville given the current storage levels. In addition, the transfer would likely have the same benefits for the Feather River and Sacramento River in that enhanced flows due to the transfer would improve water quality and benefit instream beneficial uses, including those for fish and wildlife. SFWPA has committed to following all existing state and federal regulations, including any requirements of State Water Board Revised Decision 1641 (D-1641), State and Federal endangered species acts, and all state and federal regulations and permits that apply.

All water diverted at Banks Pumping Plant and Barker Slough Pumping Plant (Pumping Plants) is done in accordance with the criteria contained in D-1641 and the BOs of the National Marine Fisheries Service and U.S. Fish and Wildlife Service. 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. 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.

The transfer is subject to all existing restrictions regarding use of the Delta Pumps, including existing BOs. For any transfers outside the operations currently permitted by the applicable BOs, SFWPA must comply with the Endangered Species Act (ESA) prior to transferring water.

With the incorporation of the terms and conditions listed in the Order, there is no evidence in the record that the proposed transfer of water would have an unreasonable effect on fish, wildlife, or other instream beneficial uses. In addition to ensuring that the California Department of Fish and Wildlife (CDFW) received a copy of the petition on August 21, 2015, Division staff inquired whether CDFW had any concerns related to the temporary change. CDFW subsequently consulted with SFWPA regarding

the proposed transfer and CDFW ultimately did not submit comments or relay any concerns to the State Water Board regarding the temporary change.

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 2010-0029.

7.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by 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 or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of 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 a total of 10,000 af¹ of water under Permits 1267 and 2492 is approved.

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

1. The transfer is limited to the period commencing on the date of this Order and continuing for one year.
2. The place of use of Permits 1267 and 2492 is temporarily expanded to include the service area of the SWP (as shown on maps 1878-1, 2, 3, & 4 on file with the State Water Board pursuant to Application 5629).
3. The following are added as points of diversion under Permits 1267 and 2492:
 - a. Oroville Dam located within California Coordinate System of 1983, Zone 2, N. 2,321,968 ft. and E. 6,707,191 ft., being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 2, T19N, R4E, MDB&M.
 - b. Harvey O. Banks Pumping Plant located within California Coordinate System of 1983, Zone 3, N. 2,126,440 ft. and East 6,256,425 ft., being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M.

¹ The 10,000 af total is comprised of 5,000 af of water under Permit 1267 and 5,000 af of water under Permit 2492.

- c. Barker Slough Pumping Plant located within California Coordinate System of 1983, Zone 2, N. 1,861,989 ft. and East 6,620,558 ft., being within NE¼ of SW¼ of projected Section 18, T5N, R2E, MDB&M.
4. Water may not be transferred to the Pumping Plants until petitioner has implemented a Refill Agreement between DWR and petitioner to address potential refill concerns in SFWPA's reservoirs, Ponderosa Reservoir, and Lake Oroville, as applicable. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta. Petitioner shall submit the Refill Agreement to the Deputy Director for Water Rights within 15 days of the date of execution of the agreement.
5. The transfer period authorized above is further limited to the period allowed pursuant to any applicable BOs or ESA consultations (or informal consultations) related to transfers at the Banks Pumping Plant and Barker Slough Pumping Plant. SFWPA shall provide documentation of the diversion period allowed pursuant to the BOs or consultations prior to transfer of water. Such documentation may include an electronic link to any transfer BOs or ESA consultations, informal ESA consultations, opinions, or other documents issued by CDFW, National Marine Fisheries Service or U.S. Fish and Wildlife Service.
6. Rediversion of water at the Pumping Plants 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 BOs and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
7. During the period of transfer, petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies, including the Federal Energy Regulatory Commission. This Order shall not be construed as authorizing the violation of any agreement entered into by the petitioner.
8. Within 90 days of the completion of the transfer, but no later than October 1, 2016, petitioner 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. The daily average release rates and corresponding volumes of transferred water from Little Grass Valley Reservoir, Sly Creek Reservoir, Ponderosa Reservoir, and Lake Oroville, reported on a daily basis;
 - b. The daily average pumping rate and corresponding volume of water pumped at the Pumping Plants; and
 - c. The value of the Refill Reservation as defined in the Refill Agreement (reported on a daily basis).

Should the value of the Refill Reservation exceed zero at the time of this report, SFWPA shall submit subsequent reports by June 1 of each year until the Refill Reservation equals zero. These reports shall include the daily values of the Refill Reservation.
9. 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 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.

10. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
11. I reserve 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
JOHN O'HAGAN, FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: October 2, 2015