

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 9063 (APPLICATION 10529)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 4,540 ACRE-FEET OF WATER
FROM SUTTER EXTENSION WATER DISTRICT
TO STATE WATER CONTRACTOR AGENCIES**

SOURCE: Feather River

COUNTY: Sutter

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 1, 2018, Sutter Extension Water District (SEWD or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under Water Code Section 1725, et seq. SEWD has requested to transfer up to 17,433 acre-feet (AF) of water to participating State Water Contractor (SWC) Agencies. The SWC Agencies that will use the water include: Dudley Ridge Water District, Kern County Water Agency, Metropolitan Water District of Southern California, Palmdale Water District, Santa Clara Valley Water District, San Bernardino Valley Municipal Water District, and County of Kings. Temporary changes approved pursuant to Water Code section 1725 may be effective until September 30, 2018.

1.1 Description of the Transfer

SEWD proposed to transfer up to 17,433 AF of water under water right License 9063 (Application 10529) to SWC Agencies via groundwater substitution and crop idling programs. Of the 17,433 AF transfer total, up to 4,540 AF (prior to subtracting a streamflow depletion loss) would be made available by groundwater substitution and up to 12,893 AF would be made available by crop idling. Based on an email dated May 1, 2018, the petitioner elected to amend their petition to remove the crop idling component of the transfer. The transfer would now include up to 4,540 AF (prior to subtracting a streamflow depletion loss) by groundwater substitution only. To facilitate this transfer, SEWD requests the following changes to License 9063: (1) the temporary addition of the Department of Water Resources (DWR) State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) as a point of diversion; (2) the temporary addition of the San Luis Reservoir as a point of redirection; (3) the temporary addition of a portion of the service area of the SWP as an additional place of use; and (4) the temporary addition of municipal, industrial, and domestic uses as purposes of use.

SEWD's transfer petition also proposes that "the flow in the Feather River downstream of SEWD's present points of diversion will increase by up to 4,540 AF over what would have occurred absent the proposed transfer. These increases will occur during the period that surface water is made available by SEWD or if possible, during the following months thereafter through release by DWR for conveyance to the participating SWC Agencies." SEWD later clarified that it intends to enter into an agreement with DWR pursuant to its Agreement on Diversion of Water from the Feather River with Richvale Irrigation District, Biggs-West Gridley Water District, and Butte Water District (collectively referred to as the Joint Water Districts) and DWR, dated May 27, 1969 to allow the quantities made available for transfer to be temporarily retained in Oroville Reservoir, when the Banks Pumping Plant facility is not available, in lieu of releases by DWR that would have occurred in absence of the proposed transfer. The quantities retained in Oroville during this period

(anticipated to include the months of May and June, 2018) will be subsequently released by DWR under DWR's water rights during July through September.

SEWD will make surface water available for transfer via groundwater substitution. Groundwater substitution involves the use of groundwater pumped from within SEWD boundaries to irrigate crops within SEWD in exchange for a like amount of surface water (minus a streamflow depletion loss) that will remain instream for diversion at the proposed additional point of diversion and point of rediversion. Absent the proposed temporary transfer, SEWD would divert the entire quantity of surface water proposed for transfer from the Feather River pursuant to its water right for irrigation use within SEWD boundaries.

1.2 Groundwater Substitution

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 Department of Water Resources (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. The DWR and Reclamation well 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.

DWR and Reclamation are currently applying a minimum 13 percent streamflow depletion factor to each groundwater substitution transfer project meeting the criteria contained in the Draft Technical Information unless available information analyzed by DWR and Reclamation supports the need for the development of a site-specific streamflow depletion factor. Transfer proponents may also submit site-specific technical analysis supporting a modified proposed streamflow depletion factor for review and consideration by DWR and Reclamation.

SEWD 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 only those wells found acceptable by DWR and Reclamation, and the wells must be in compliance with DWR's and Reclamation's well construction, location, and monitoring criteria as well as the application of the streamflow depletion factor. DWR's and Reclamation's streamflow depletion factor of 13 percent will be applied to SEWD's groundwater substitution transfer. Therefore, to account for streamflow depletion related to groundwater pumping, SEWD will only transfer 87 percent of the total quantity 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 SEWD are within Sutter County, which completed and adopted a Groundwater Management Plan (GMP) in March 2012 pursuant to Water Code section 10753. The March

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.

2012 GMP relies on data from an extensive network of DWR and water purveyors' production and monitoring wells. The GMP identifies that DWR does not currently consider any of the groundwater sub-basins underlying Sutter County to be in an overdraft state. 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). SEWD formed a Groundwater Sustainability Agency (GSA) in 2017 and is in the process of preparing a GMP that will comply with SGMA and include consideration of impacts from groundwater substitution pumping within the GSA boundary.

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 utilized results from modeling efforts conducted for Reclamation's Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report dated March 2015 to establish its estimated minimum 13 percent average streamflow depletion factor for single year transfers requiring the use of SWP or CVP facilities.

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 SEWD's License 9063

License 9063 authorizes the direct diversion of up to 234 cubic feet per second (cfs) from the Feather River tributary to the Sacramento River between about April 1 to about October 31 of each year for irrigation purposes. The authorized points of diversion for License 9063 are located on the Feather River by California Coordinate System, Zone 2, NAD 83, North 2,216,237 feet and East 6,664,558 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 9, T16N, R3E, MDB&M, and North 2,290,487 feet and East 6,658,058 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 32, T19N, R3E, MDB&M. The authorized place of use consists of 23,240 acres within the boundaries of SEWD including portions of Townships 13, 14, 15, and 16N, and Ranges 2 and 3E, MDB&M, as shown on a map filed with the State Water Board.

2.2 Proposed Temporary Changes

In order to facilitate the transfer, the following will be added to License 9063: 1) Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, located within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 20, T1S, R4E, MDB&M as a point of diversion; 2) San Luis Reservoir as a point of redirection, located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 15, T10S, R8E, MDB&M; 3) a portion of the service area of the SWP (as shown on Map 1878 – 2, 3, and 4 on file with the Division under Application 5630); and 4) municipal, industrial, and domestic purposes of use.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

On March 12, 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 electronic notification system. The March 12, 2018 notice included a crop idling transfer component, which has since been removed from the proposed temporary change petition. In addition, on March 12, 2018, the Petitioner noticed the project via publication in the Appeal-Democrat newspaper and on March 8, 2018 mailed the notice via first class mail to interested parties. The comment deadline was April 11, 2018. Comments were timely received from Reclamation, California Department of Fish and Wildlife (CDFW), the Defenders of Wildlife, and Mr. Richard Morat.

3.1 Comments of Reclamation

3.1.1 Request to Condition Transfer

By letter dated April 10, 2018, Reclamation commented on the proposed transfer. In order to protect its water rights, Reclamation requested that the transfer be conditioned as follows:

- Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
- The amount of transferable water credited to SEWD's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
- Before commencing the groundwater substitution operation, SEWD shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
- The amount of water transferred pursuant to this Order shall not exceed the stream flow depletion factor of 13% as set forth in the Draft Technical Information.
- Only idled fields approved by DWR for suitability and acceptability may be used for crop idling.
- The amount of transferable water credited to SEWD's crop idling water transfer operation is subject to determination of Reclamation and DWR.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

State Water Board Response:

In order to avoid potential injury to Reclamation's and DWR's water rights, the transfer is conditioned that SEWD's groundwater substitution proposal is subject to the evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the Draft Technical Information. The requested conditions specific to crop idling are no longer applicable to this transfer petition, and therefore are not included as conditions in the order.

3.1.2 Comment Requesting Clarification Regarding Transfer During Potential Water Shortages

In the comment letter, Reclamation also questioned SEWD's statement that the proposed transfer could continue even in the event the State Water Board issues a Notice of Unavailability of Water 2018 for the Feather and Sacramento Rivers. Reclamation indicated that only transfers of previously stored water under DWR's water rights could occur under a curtailment that includes SEWD's License 9063.

Reclamation requested explanation of how a proposed continuation of a transfer that had been described as a groundwater substitution and crop idling transfer could then occur by means of DWR storage releases, or then how the transfer's stated purpose of providing State Water Contractor Agencies additional water out of their originally existing DWR available supply, could be realized.

SEWD Response:

SEWD responded by letter dated May 4, 2018 to Reclamation's comments. Following is a summary of SEWD's response:

SEWD diverts and uses surface water from the Feather River pursuant to the Agreement on Diversion of Water from the Feather River with Richvale Irrigation District, Biggs-West Gridley Water District, and Butte Water District (collectively referred to as the Joint Water Districts) and DWR, dated May 27, 1969 (Agreement). The temporary transfer will increase the flow in the Feather River, downstream of SEWD's present points of diversion, over what would have occurred absent the transfer. The rate and timing of these increases are based on surface water made available by SEWD and the associated operations by DWR. SEWD's reduced diversions as a result of the proposed transfer will provide additional flows during the period when groundwater substitution is occurring and when DWR is available to deliver the transfer water to the participating SWC Agencies. DWR may either concurrently release the quantity made available by SEWD's groundwater substitution program for delivery to the SWC Agencies, or temporarily retain a portion of that quantity in Oroville Reservoir for later delivery to the SWC Agencies. Under these operations, the surface water made available by SEWD under its License 9063 and the Agreement may be released and delivered by DWR's water rights to the SWC Agencies, including during periods of curtailment by the Division.

The rate and timing of releases by DWR, including to temporarily retain [water in Oroville Reservoir] and divert transfer water at Banks Pumping Plant, are subject to compliance with numerous regulatory requirements. The releases by DWR, of surface water made available by SEWD, for conveyance to the participating SWC Agencies will occur during July through September due to regulatory requirements. DWR must also execute a storage and conveyance agreement with SEWD and the participating SWC Agencies. The agreement will include mitigation and monitoring plans to address potential concerns raised by DWR or others relative to the proposed transfer. These approval, monitoring, and review processes are consistent with the *Draft Technical Information for Preparing Water Transfer Proposals* dated December 2015 (Draft Technical Information), prepared by DWR and Reclamation. As identified in the Draft Technical Information, "[t]he approval criterion to which the information in this document chiefly pertains is the avoidance of injury to other legal users of water, through the determination of whether the water proposed for transfer is transferable." Accordingly, SEWD's proposed 2018 Water Transfer will be expressly conditioned on executing a storage and conveyance agreement with DWR.

State Water Board Response:

SEWD requested in its petition the ability to temporarily allow DWR to store water in Oroville, and further clarified in its response to Reclamation's comments that SEWD's water that would have been applied to crops may be temporarily retained in Oroville during the months of May and June, subsequently released later in the approved transfer period, and delivered pursuant to DWR's water rights when capacity is available at the Banks Pumping Plant. The State Water Board's understanding is that DWR operates the Oroville facilities in such a way as to meet all needs of other water right holders and comply with applicable environmental flow and water quality standards on the Feather River. The groundwater substitution transfer will also result in the same irrigation return flows as if surface water were applied to the land during May and June, less any streamflow depletion considerations. Therefore, it is reasonable to conclude that the proposed transfer during May and June amounts to a temporary exchange of water with DWR and SEWD and will not injure other water right holders or unreasonably affect fish and wildlife as long as all requirements are being met.

However, during any Notice of Water Unavailability (curtailment) period in 2018 that includes SEWD's license, SEWD will be required to cease all diversions under the license, including any diversions for temporary transfer, regardless of whether the actual diversion would be facilitated by DWR at Oroville or

other State Water Project facilities. A condition is therefore included in the Order that the transfer must cease should the State Water Board issue notification that water is unavailable for Feather River diversions that would apply to SEWD's License 9063. Additionally, water may only be diverted and temporarily retained by DWR in Oroville when water is available under License 9063, thus only storage releases would be permitted during a period of water unavailability that affects DWR's water rights.

3.2 Comments of CDFW

By letter dated April 10, 2018, CDFW commented on the proposed transfer. CDFW expressed its concerns associated with proposed and future transfers that have the potential to impact Groundwater Dependent Ecosystems. The letter states that water transfers made available by groundwater substitution and/or crop idling/shifting have the potential to affect groundwater hydrology due to increased groundwater use and reduced groundwater recharge.

State Water Board Response:

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, and the Sustainable Groundwater Management Act (SGMA), which is currently in the development and implementation phase. SGMA requires Groundwater Sustainability Agencies (GSAs) to consider the interests of all beneficial uses and users of groundwater, including Groundwater Dependent Ecosystems, during the development and implementation of Groundwater Sustainability Plans (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 transferors 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 Groundwater Dependent Ecosystems 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 GSP's and may further condition future groundwater sustainability transfers accordingly. SEWD indicated in its petition that their newly formed GSA will include lands that generally conform with SEWD's existing boundaries, as well as the locations of the groundwater wells proposed for participation in the 2018 Water Transfer. Therefore, SEWD will be required to consider in its GSP any possible effects of future transfers to Groundwater Dependent Ecosystems.

3.3 Comments of the Defenders of Wildlife

By letter dated April 6, 2018, the Defenders of Wildlife (DOW) commented on the proposed transfer. The DOW commented that the crop idling component of the proposed transfer would unreasonably affect wildlife by eliminating habitat for the threatened giant garter snake.

State Water Board Response:

SEWD responded by letter dated April 23, 2018 to DOW's comments with mitigation measures that would be employed to protect the giant garter snake during a crop idling transfer. However, since the crop idling transfer component has been removed from the 2018 transfer petition, this concern is moot and not addressed further in this order.

Regardless, in any transfer the water right holder is required to comply with all ESA requirements and obtain any required incidental take permits or other approvals from state and federal wildlife agencies. A condition is included in this order that requires full compliance with ESA prior to commencing any transfer activities.

3.4 Comments of Mr. Richard Morat

By letter dated April 6, 2018, Richard Morat commented on the proposed transfer. 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 Response:

As Mr. Morat indicated, the State Water Board is responsible to consider 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 that are 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 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 Sutter Extension Water District is for water that would have otherwise been diverted pursuant to their license. By approving the transfer, additional water will flow down the Feather River, to the Sacramento River and the Delta. Furthermore, this transfer is based on a direct diversion water right, therefore scheduling of any storage releases from Oroville Dam is the responsibility of DWR as it fulfills in-delta and export commitments, consistent with D-1641. In light of the above explanation, it is not anticipated that this transfer will result in unreasonable effect on fish and wildlife, or other instream beneficial uses.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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. Nevertheless, SEWD completed an Initial Study/Mitigated Negative Declaration for the proposed transfer

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 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 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.” The water proposed for transfer consists of up to 4,540 AF (less a streamflow depletion loss) of surface water made available through increased groundwater pumping.

To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR and Reclamation have reviewed the proposed groundwater pumping proposal and determined that 13 percent of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 87 percent of the groundwater pumped.

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 have been 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 water proposed for transfer consists of surface water made available through increased groundwater pumping. DWR and USBR have reviewed the proposed transfer and determined that, with the inclusion of the 13 percent depletion factor, as well as their oversight of the groundwater substitution operations described in Section 1.2 of this Order, the SWP and CVP will not be injured from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 1.2 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. The response to Reclamation’s comments further clarifies the conditions under which a transfer may take place prior to capacity being made available at Banks pumps, or during a period of water availability. This Order requires compliance with these agreements and plans. In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water.

Section 1745.10 subdivision (a) requires that groundwater substitution transfers be (a) consistent with a groundwater management plan adopted pursuant to state law for the affected area or (b) approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin. As indicated in section 1.2 of this Order, Sutter County has completed and adopted a GMP, and the GMP identifies that DWR does not currently consider any of the groundwater sub-basins underlying Sutter County to be in an overdraft state.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirements of Water Code section 1745.10.

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

Before approving a temporary change in order to facilitate 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 Petitioner provided California Department of Fish Wildlife (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 proper basin management to avoid potential future impacts to Groundwater Dependent Ecosystems 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 also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures or water quality. The transfer will be subject to Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the federal Endangered Species Act.

In light of the above, I find in accordance with Water Code Section 1727, subdivision (b)(2) that the proposed transfer would 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 and the Deputy Director for Water Rights redelegation of authority dated October 19, 2017.

8.0 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 the water.

3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 4,540 AF of water under License 9063 is approved.

All existing terms and conditions of License 9063 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 through September 30, 2018.
2. The transfer under License 9063 is limited to a total of up to 4,540 AF prior to subtracting streamflow depletion loss by groundwater substitution.
3. Municipal, industrial, and domestic uses are temporarily added as purposes of use under License 9063.
4. Petitioner shall comply with all provisions contained in the groundwater substitution agreements pursuant to the Draft Technical Information, between DWR, Reclamation, and SEWD as a condition of transferring water pursuant to this Order.
5. The amount of water to be made available by groundwater substitution is 4,540 AF. The Petitioner shall reduce its diversion rate at the original points of diversion authorized under License 9063 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 87 percent of the rate of additional groundwater pumping.
6. The authorized place of use under License 9063 is temporarily expanded to include a portion of the service area of the SWP (as shown on Map 1878 – 2, 3, and 4 on file with the Division under Application 5630).
7. The following points of diversion are temporarily added to License 9063:

Banks Pumping Plant via the Clifton Court Forebay located as follows: California Coordinate System, Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within the NW¼ of SE¼ of Projected Section 20, T1S, R4E, MDB&M.
8. The following point of redirection is temporarily added to License 9063:

San Luis Reservoir located as follows: California Coordinate System, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet, being within the SW¼ of SE¼ of Projected Section 15, T10S, R8E, MDB&M.
9. Diversion of water at Banks Pumping Plant 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 Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at that point of diversion, including compliance with the various plans required under D-1641. Diversion of water is also subject to compliance by DWR

with all applicable Biological Opinions and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations.

Diversion of water at Banks Pumping Plant 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 transfer, Petitioner 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 Petitioner.
11. If at any time prior to, or during the period of the transfer, the State Water Board issues notification that water is unavailable for diversion pursuant to License 9063, the transfer shall immediately cease. No transfer credit shall accrue for crop idling or groundwater substitution during a period of water unavailability.
12. Within 90 days of the completion of the transfer, SEWD shall provide to 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. The daily average diversion rate for water diverted pursuant to License 9063 during the transfer period;
 - d. An accounting by average diversion rate and total volume of any water temporarily retained by DWR in Oroville and delivered pursuant to DWR's water rights.
 - e. The average daily streamflow measured at the nearest representative gaging station on the Feather River;
 - f. The daily average pumping rate of groundwater pumped by SEWD in excess of that which would have been pumped in the absence of this transfer;
 - g. Groundwater elevations within the vicinity of the SEWD wells utilized for the transfer prior to the proposed transfer; and

SEWD 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 SEWD, until such time as these elevations correspond to pre-transfer levels.

13. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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 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 and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take permit prior to construction or operation. The Petitioner 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

Date: MAY 09 2018