

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF LICENSE 3527 (APPLICATION 11274)  
OF EASTSIDE MUTUAL WATER COMPANY  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF 1,100 ACRE-FEET OF WATER**

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SOURCE: Sacramento River

COUNTY: Colusa

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

**1.1 Description of the Transfer**

On May 6, 2013, Eastside Mutual Water Company (EMWC 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.

EMWC proposes to transfer up to 1,100 acre-feet (af) of water, which would be made available by groundwater substitution, to the San Luis and Delta-Mendota Water Authority (Authority) as an additional water supply for the purpose of irrigation. In order to facilitate the transfer, EMWC has requested the following temporary changes to License 3527 (Application 11274): 1) add the Central Valley Project's (CVP) Jones Pumping Plant and the State Water Project's (SWP) Harvey O. Banks Pumping Plant (herein referred to collectively as Delta Pumps) as points of diversion; and 2) add the service area of the CVP as an additional place of use under License 3527.

EMWC states that in the absence of the proposed temporary change, the 1,100 af of water would be diverted from the Sacramento River pursuant to License 3527 and in accordance with EMWC's Sacramento River Settlement Contract with the United States Bureau of Reclamation (Reclamation).

Temporary changes under Water Code section 1725 may be effective for a period of up to one year from the date of approval.

**1.2 Groundwater Substitution**

EMWC proposes to transfer surface water available under License 3527 to the Authority by groundwater substitution. Groundwater substitution involves the use of groundwater pumped to produce crops within EMWC's place of use for the equivalent amount of water that would be diverted, less assumed losses, at the proposed points of diversion. The petition states that the transfer would be consistent with the Draft Technical Information for Preparing Water Transfer Proposals, dated February 2013, published by Department of Water Resources (DWR) and Reclamation. Only wells approved by DWR and Reclamation will be used for the proposed water transfer. Petitioner has developed groundwater monitoring, reporting, and mitigation plans to ensure the proposed transfer does not result in adverse impacts to the groundwater basin or third parties.

EMWC has determined that its proposed transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin pursuant to subdivision (b) of Water Code section 1745.10. This determination is based, in part, on groundwater elevation data for DWR's Monitoring Well No. 16N01W20F001M, which is located approximately 1.9 miles south of the boundaries of EMWC. The monitoring well information shows that during the period from 1929 through 2011, groundwater elevations have fluctuated seasonally each year. The petition indicates that although these seasonal fluctuations have increased in magnitude during the past 20 years, groundwater elevations have recovered approximately annually at or near historical seasonal high elevations, and thus, groundwater elevation trends have remained relatively stable during the 83-year period. A multi-continuous groundwater well (DWR Well Nos. 17N01W27A001M to 003M) was installed approximately 3.5 miles northeast of EMWC in 2011 to further assist in documenting groundwater elevations. The monitoring results obtained from DWR for this groundwater well also indicate that groundwater elevations have fluctuated seasonally within the past two years.

EMWC indicates that generally, the company diverts Sacramento River surface water, thereby allowing recharge of the groundwater basin. EMWC has proposed to increase groundwater production in 2013 to make surface water available for transfer. EMWC will comply with its monitoring and mitigation plan to respond, evaluate, and mitigate any claims of impacts that are reasonably likely to have been caused by groundwater substitution.

DWR and Reclamation well criteria used to evaluate groundwater substitution transfers are intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. DWR and Reclamation have estimated streamflow impacts resulting from EMWC's pumping to replace transferred water to be 12%. EMWC will only transfer 88% of the total quantity pumped in exchange for the surface water released to account for those impacts. The conditions identified in section 3.3 require compliance with DWR and Reclamation requirements for well construction, location and monitoring, as well as the application of the streamflow depletion factor, which are intended to ensure that the groundwater substitution transfer will not unreasonably affect surface streamflow.

## **2.0 BACKGROUND**

### **2.1 Substance of EMWC's License**

License 3527 authorizes the direct diversion of 15 cubic feet per second (cfs) of water from the Sacramento River between April 15 to about October 15 of each year for irrigation purposes. The authorized point of diversion for License 3527 is located on the Sacramento River. The authorized place of use includes 630 acres, as shown on a map contained in the Division's files for License 3527.

### **2.2 Proposed Temporary Changes**

The proposed transfer would temporarily add the Delta Pumps as points of diversion under License 3527. The service area of the CVP (as shown on Map 214-208-12581 on file with the Division under Application 5626) would be temporarily added to the place of use under License 3527.

### **2.3 Governor's 2013 Executive Order to Streamline Approvals for Water Transfers**

On May 20, 2013, Governor Edmund G. Brown Jr. issued Executive Order B-21-13 to streamline approvals for water transfers to address the dry conditions and water delivery limitations in 2013 to protect California's agriculture. The Governor's Order directs the State Water Board and DWR to expedite the review and processing of temporary transfers for 2013 (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.

### **3.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TRANSFER**

On May 8, 2013, public notice of the petition for temporary change was provided as follows: (1) via first class mail to interested parties; (2) by posting on the Division's internet site; and (3) via the State Water Board's LYRIS email notification system. On May 11, 2013, notice of the petition was published in the Colusa County Sun-Herald newspaper.

The State Water Board received timely comments regarding the proposed temporary changes from the following commenters: (1) joint comments by California Water Impact Network (C-WIN), California Sportfishing Protection Alliance (CSPA), and AquAlliance; (2) Richard Morat; (3) DWR; (4) Reclamation; and (5) Jane Osborne, Ann Byrd, and Furlan Joint Venture (Joint Commenters). The State Water Board received late comments from Department of Fish and Wildlife (DFW). The comments received and the State Water Board's responses to comments are briefly summarized below.

#### **3.1 Joint Comments by C-WIN, CSPA, and AquAlliance (Environmental Commenters)**

On June 3, 2013, the environmental commenters indicated their concerns regarding the transfer proposal. The concerns extend beyond the scope of the current transfer, and encompass all pending 2013 water transfers being processed by the State Water Board. To expedite transfer processing, the concerns are not repeated herein; however, the State Water Board response letter, dated June 27, 2013, is incorporated by reference. The response letter details the issues raised by the environmental commenters. EMWC also provided a June 14, 2013 response to the comments as discussed below.

##### State Water Board Response:

The State Water Board response letter identifies a need to evaluate the following issues in the present order: (a) whether there is a change in return flow associated solely with the transfer, and (b) whether the transfer would only involve the amount of water that would have been consumptively used or stored by the licensee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011.

In addition, the response letter indicates that use of the Delta Pumps for transfer purposes should be conditioned on compliance by DWR and Reclamation with Decision 1641, all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

The objection is addressed upon a finding that: (a) no change in return flows is occurring, and (b) the transfer only involves water that would have been consumptively used or stored. Approval of the petition is also contingent on inclusion of condition 6 of this order. The required evaluations are found in section 5.0 of this Order.

##### EMWC Response:

On June 13, 2013, EMWC submitted a response to the environmental commenters. According to the response, EMWC informed Colusa County of its proposed transfer. On May 29, 2013, EMWC was notified by Colusa County Groundwater Commission (Commission) that its proposed transfer satisfied all applicable requirements of Colusa County, provided that EMWC delivers the following: (1) acknowledgement that the water transfer is for agricultural use; (2) submittal of sampling data taken to support groundwater basin recharge to the Colusa County Department of Agriculture by March 1, 2014; and (3) identification of a contact person for third parties that may be affected by

groundwater pumping. EMWC has provided the information and is waiting for approval from the Commission. In addition, EMWC's response included information regarding DWR monitoring wells (see section 1.2).

### **3.2 Comments by Richard Morat**

On May 8, 2013, Richard Morat commented on the proposed transfer. The Morat comments were similar to, but not as extensive as, the environmental commenters concerns.

#### State Water Board Response:

The State Water Board response letter, dated June 27, 2013, refers Mr. Morat to the more extensive responses provided to the environmental commenters. The information identified in section 3.1 also addresses the Morat comment letter.

### **3.3 Comments by Reclamation**

By letter dated June 5, 2013, Reclamation commented on the Petitioner's water transfer proposal. Reclamation expressed concern regarding protection of its water rights and operation of the Jones Pumping Plant and requested that the Division include the following conditions in any order issued pursuant to the petition 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 Petitioner's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
- Before commencing the groundwater substitution operation, Petitioner shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

#### State Water Board Response:

In order to avoid injury to Reclamation's water rights, the transfer is conditioned based on the criteria listed above.

### **3.4 Comments by DWR**

On June 7, 2013, DWR objected to the proposed transfer based on potential injury to its water rights. DWR indicated that staff were reviewing the water transfer proposal to determine if it has the necessary information to expeditiously make its required findings. DWR indicated that the concerns would be satisfied with the inclusion of a term in any order approving the transfer requiring that the well criteria and technical information, including streamflow depletion factor and the monitoring and mitigation plans, are acceptable to DWR.

#### State Water Board Response:

In order to avoid injury to DWR's water rights, the transfer is conditioned based on the proposed criteria listed in section 3.3 of this Order.

### **3.5 Joint Comments by Jane Osborne, Ann Byrd, and Furlan Joint Venture (Joint Commenters)**

On June 4, 2013, the Joint Commenters indicated their concerns on the proposed water transfer. The joint commenters were concerned whether the transfers would take place every year.

#### State Water Board Response:

Temporary changes under Water Code section 1725 may be effective for a period of up to one year from the date of approval. In order to transfer water in successive years, the petitioner would have to file another petition and the Division would have to approve that petition.

### **3.6 Comments of DFW**

By letter dated June 27, 2013 DFW provided comments. DFW's comments were received after the 30-day deadline.

#### State Water Board Response:

The State Water Board is not required to evaluate or take into consideration comments that were not timely filed. Moreover, DFW has not presented any information to demonstrate that this particular transfer will have an unreasonable impact on fish and wildlife. Instead, the DFW comments express concern that there will be a cumulative impact of this and other transfers. That issue is addressed in the Division's June 27, 2013 response to the environmental commenters.

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

The Petitioner filed the petitions 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 the transfer.

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 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 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 consists 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 and determined that 12% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 88% 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 be consumptively used 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).)

EMWC may not transfer water through the Delta Pumps prior to obtaining approval from DWR and Reclamation for its groundwater substitution operation. Compliance with well construction, location, and monitoring requirements, in addition to application of the streamflow depletion factor, is intended to ensure that the groundwater substitution transfer will not unreasonably affect the surface stream. DWR and Reclamation have reviewed the proposed transfer and determined that, with inclusion of the 12% depletion factor described in section 1.2 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. Under this operating scenario, the transfer will not result in increased diversion of stream flow or reduction in return flows. Since there will be no increase in diversion of stream flow, there will be no injury to other legal users of water.

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 requirement of Water Code section 1745.10 subdivision (a). That section requires that the groundwater substitution transfer 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, Petitioner has determined that groundwater use for the transfer would not create or contribute to conditions of long-term overdraft in the affected groundwater basin under part (b).

## **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 petition states that the flow downstream of the Petitioner's current point of diversion may increase by up to 1,100 af during the period of the transfer. The increased flows may provide benefits to fisheries, wildlife, or other instream beneficial uses.

Diversion of water at the Delta Pumps pursuant to this Order is subject to compliance by the operators with the objectives set forth in Tables 1, 2 and 3 on pages 181 to 187 of Decision 1641 (D-1641), including compliance with the various plans required under D-1641. Diversion at these facilities pursuant to this Order is also subject to compliance by the operators with all applicable biological opinions and any court orders applicable to these operations.

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 DELEGATION OF AUTHORITY**

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

## **7.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary changes will not injure any legal user of the water.
2. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. An 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 transfer of 1,100 af of water is approved.

All existing terms and conditions of License 3527 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 maximum transfer quantity authorized under License 3527 is 1,100 af.
3. The Petitioner shall reduce its diversion rate at the original point of diversion authorized under License 3527 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 88% of the rate of additional groundwater pumping, and shall in no case exceed 15 cfs.
4. The place of use under License 3527 is temporarily expanded to include the service area of the CVP in order to facilitate the temporary water transfer to the Authority. The service area of the CVP is shown on Map 214-208-12581 on file with the Division under Application 5626.
5. The Delta Pumps are temporarily added as authorized points of diversion under License 3527.

6. Diversion of water at the Delta Pumps 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 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the pumping plants by DWR and Reclamation. Diversion of water is also subject to compliance by DWR and Reclamation with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
7. Water may not be transferred through the Delta Pumps until Petitioner has obtained the approval of Reclamation and DWR for its groundwater substitution operation. Such approval shall include the following elements:
  - a. Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
  - b. The amount of transferable water credited to Petitioner's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
  - c. Before commencing the groundwater substitution operation, Petitioner shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
  - d. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

Documentation that an acceptable groundwater substitution operation has been approved by Reclamation and DWR shall be submitted to the Division within 15 days of the date such approval is granted by those entities.

8. 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.
9. Within 90 days of the completion of the transfer, but no later than October 1, 2014, Licensee 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 3527 during the transfer period;
  - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
  - e. The daily average pumping rate of groundwater pumped by Licensee in excess of that which would have been pumped in the absence of this transfer; and
  - f. Groundwater elevations within the vicinity of EMWC prior to the proposed transfer.

Licensee shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2014, a map defining the groundwater elevations within the vicinity of EMWC, until such time as these elevations correspond to pre-transfer levels.



10. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

11. 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.
12. 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:  
JAMES W. KASSEL FOR

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: JUL 01 2013