

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 11109 (APPLICATION 4228)
OF EAST BAY MUNICIPAL UTILITY DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER AND
INSTREAM FLOW DEDICATION OF 658 ACRE-FEET OF WATER**

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On November 5, 2021, East Bay Municipal Utility District (EBMUD) filed a petition for temporary change involving the transfer of water and instream flow dedication under water right License 11109 (Application 4228) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to Water Code section 1725 et seq. and section 1707. With the petition, EBMUD proposes to transfer up to 658 acre-feet (af) of water made available from using recycled water in EBMUD's service areas in place of water diverted under License 11109. The water will be transferred to North San Joaquin Water Conservation District (NSJWCD), where it will be used to irrigate crops in lieu of pumping groundwater. EBMUD also requested the transferred water be dedicated for fish and wildlife enhancement purposes in the Mokelumne River between where the transfer water will be released from Camanche Dam downstream to the NSJWCD South Pump Station, pursuant to Water Code section 1707. EBMUD filed the petition for transfer to facilitate a third year of the Demonstration Recharge Extraction and Aquifer Management (DREAM) Project. In 2018 and 2019, the State Water Board approved similar petitions for temporary change filed by EBMUD for the DREAM Project.

1.1 Description of the Transfer

EBMUD's proposed transfer of water will continue to facilitate the DREAM Project, which is a joint effort of EBMUD and the San Joaquin County Flood Control and Water Conservation District Water Investigation Zone No. 2, in coordination with NSJWCD and the Eastern Water Alliance, a regional Joint Powers Authority of which NSJWCD is a member agency. Specifically, the DREAM project is a short-term pilot conjunctive

use/groundwater banking project that is proposed to in total provide up to 1,000 af of surface water for irrigation in the NSJWCD service area that will be used in-lieu of pumping groundwater for irrigation. This will create an in-lieu groundwater recharge of up to 1,000 af and will in turn provide a one-time extraction of up to 500 af of groundwater in the future for export to the EBMUD service area. The amount of groundwater that may be exported to EBMUD will be limited to half of the total quantity of surface water transferred to NSJWCD. Overall, the DREAM Project is proposed to demonstrate a groundwater banking project where more water will be added to the groundwater basin as compared to the amount of water taken out of the basin. The current proposed transfer differs from the 2018 and 2019 transfers in that EBMUD is proposing to transfer water that would have been diverted under License 11109 but for the use of recycled water use within the EBMUD service area.

1.2 Previous Transfers for DREAM Project

In order to facilitate operation of the DREAM Project, EBMUD originally filed a temporary change petition to transfer previously stored water under water right Permit 10478 (Application 13156) in January 2018 requesting to add NSJWCD's South Pump Station diversion facility on the Mokelumne River as point of rediversion, add irrigation as a purpose of use, and add the NSJWCD service area to the place of use of Permit 10478. EBMUD also requested to dedicate the transferred water for instream uses pursuant to Water Code section 1707 by adding fish and wildlife enhancement as a purpose of use along the stretch of the Mokelumne River between the upstream point where the transfer water will be released at Camanche Dam and the downstream point of rediversion at NSJWCD's South Pump Station. EBMUD ultimately transferred 104 af of water pursuant to the State Water Board's March 2018 approval of the petition.

In January 2019, EBMUD filed a similar temporary change petition to transfer previously stored water under Permit 10478 to facilitate continued operation of the DREAM Project and eventually transferred 238 af of water pursuant to the State Water Board's May 2019 approval of the petition. Overall, EBMUD has transferred a combined total of 342 af of water in 2018 and 2019, therefore 658 af of the proposed total 1,000 af of water may still be transferred in accordance with the DREAM Project.

2.0 BACKGROUND

2.1 Summary of Water Right License 11109

EBMUD holds water right License 11109, with a priority date of September 22, 1924, for direct diversion and collection to storage of water from the Mokelumne River at Pardee Dam/Reservoir. License 11109 authorizes direct diversion of up to 310 cubic feet per second (cfs), and diversion to storage of up of 209,950 af annually (afa). The season of diversion is January 1 through December 31 for direct diversion, and October 1 of each year through July 15 of the succeeding year for diversion to storage. The combined direct diversion and withdrawal from storage cannot exceed 310 cfs or

approximately 200,000,000 gallons per day. The total amount of water to be taken from direct diversion and collection to storage cannot exceed 316,250 afa. The total amount of water to be placed to beneficial use (direct diversion plus withdrawal from storage) cannot exceed 224,037 afa. The water can be used for: 1) municipal uses within EBMUD's service area and 2) recreational uses at Pardee Reservoir.

2.2 Proposed Temporary Changes

With the petition, EBMUD proposes temporary changes to License 11109 to facilitate the transfer of water originally diverted at Pardee Dam/Reservoir, for subsequent rediversion and release from Camanche Dam/Reservoir into the Mokelumne River, at a rate of up to 11 cfs. The water released from Camanche Dam/Reservoir will provide up to 658 af of water for both fish and wildlife preservation and enhancement purposes in the Mokelumne River and irrigation purposes in the NSJWCD service area. EBMUD requested that the commencement of the State Water Board's one-year transfer approval period for the current petition be conditioned on EBMUD's determination that Mokelumne River hydrology is sufficient such that water is available surplus to the following: 1) all releases required of EBMUD for the benefit of fisheries and the Bay-Delta under State Water Board Decision 1641 (D-1641)¹ and the Lower Mokelumne River Project Joint Settlement Agreement (JSA)²; 2) all releases required to satisfy EBMUD's obligations to downstream senior water right holders; and 3) water needed to meet customer demand within EBMUD's service area, including consideration of recycled water available to meet the overall demand. EBMUD indicated that meeting these conditions will not injure other diverters or continue indefinitely since the DREAM Project Agreement between NSJWCD, San Joaquin County, and EBMUD is set to expire by July 31, 2023, five years after the initial volume of transfer that was provided by EBMUD.

The specific requested temporary changes to License 11109 are described below.

2.2.1 Additional points of rediversion

In order to transfer water to NSJWCD, EBMUD proposes to temporarily add Camanche Dam/Reservoir and NSJWCD's South Pump Station on the Mokelumne River as points of rediversion for water originally diverted at Pardee Dam/Reservoir. Transfer water will be released from Pardee Dam/Reservoir, rediverted at downstream Camanche

¹ D-1641 established conditions in the Department of Water Resources' State Water Project and the U.S. Bureau of Reclamation's Central Valley Project water right permits and licenses to meet flow-dependent and operational water quality objectives designed to protect fish and wildlife and agricultural beneficial uses in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta).

² The JSA was entered into in 1998 between EBMUD, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the Federal Energy Regulatory Commission, and includes both flow and non-flow measures to protect fish and wildlife resources in the Mokelumne River system.

Dam/Reservoir and then released into the Mokelumne River where it will be rediverted again at NSJWCD's South Pump Station, which is about ten miles below Camanche Reservoir. At NSJWCD's South Pump Station water will be diverted into NSJWCD's conveyance system through several miles of pipeline and empty into Pixley Slough. The transferred water will flow in Pixley Slough for about one mile to an existing diversion dam, where it will be diverted at the 'Field 13 Diversion' and delivered to approximately 350 adjacent acres of developed vineyard and orchard that would have been irrigated with groundwater in the absence of the transfer. EBMUD indicated that there will be channel losses in the Mokelumne River of ten percent applied to the transfer water released from Camanche Dam such that only 90 percent of the total quantity of transfer water released will be available for rediversion at NSJWCD's South Pump Station.

The locations of the proposed temporary points of rediversion are as follows:

- Camanche Dam/Reservoir: CCS83, Zone 3, North 2,268,941 feet and East 6,411,485 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T4N, R9E, MDB&M
- NSJWCD South Pump Station: CCS83, Zone 3, North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M

2.2.2 Additional places of use and purposes of use

EBMUD has proposed to temporarily add both 1) a portion of the service area of NSJWCD to its place of use for irrigation use; and 2) to dedicate flows pursuant to Water Code section 1707 by adding the stretch of the Mokelumne River from Camanche Dam to NSJWCD's South Pump Station as a place of use for fish and wildlife enhancement and preservation use. The temporary additions to the place of use and purpose of use of License 11109 are described as follows:

1. Irrigation use within 350 acres of established irrigated crop land within NSJWCD's place of use boundary of approximately 2,183 acres located generally within Sections 20, 21, 22, 27, 28, 29, 32, and 33, within T3N, R7E, MDB&M, as shown on the map dated September 15, 2021, accompanying the petition.
2. Fish and wildlife preservation and enhancement use within the reach of the Mokelumne River between the following locations as shown on the September 15, 2021, map accompanying the petition: 1) upstream location, Camanche Dam - North 2,268,941 feet and East 6,411,485 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T4N, R9E, MDB&M; and 2) downstream location, NSJWCD's South Pump Station - North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M.

3.0 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.)

Pursuant to Water Code section 1707, a water right holder “may petition the board for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water.” (Wat. Code § 1707, subd. (a)(1).) The petition “may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part.” (Wat. Code § 1707, subd. (a)(2).)

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).)

Moreover, before approving the EBMUD’s petitions, the State Water Board must make the following findings under Water Code section 1707:

- a. The proposed change will not increase the amount of water EBMUD is entitled to use.
- b. The proposed change will not unreasonably affect any legal user of water.
- c. The proposed change otherwise meets the requirements of division 2 (commencing with section 1000) of the Water Code.

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).

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

EBMUD filed the petition for temporary change and transfer under Water Code sections 1707 and 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.). Nevertheless, San Joaquin County approved and adopted an Initial Study/Mitigated Negative Declaration (IS/MND) for the DREAM project on August 23, 2016. The IS/MND covered the DREAM short-term pilot conjunctive use project involving a total of 1,000 af of water that is the subject of the proposed transfer, NSJWCD South System surface water distribution facility improvements, and conveyance of the transferred water from EBMUD to NSJWCD for in-lieu groundwater recharge purposes. Mitigation measures were associated with potential environmental impacts to biological resources due to construction activities related to the NSJWCD South System facility improvements. NSJWCD is designated as the responsible agency for maintaining compliance with the MND’s Mitigation Monitoring and Reporting Program. The State Water Board will file a Notice of Exemption within five days of approval of this Order.

5.0 PUBLIC NOTICE OF THE PETITION

On May 10, 2021, Governor Gavin Newsom declared a State of Emergency for the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought. The signed proclamation modifies noticing requirements and notice duration for temporary transfers of water. Consistent with the Governor’s proclamation, the Division noticed EBMUD’s petition on November 9, 2021, to the Division’s website and via the State Water Board’s electronic subscription mailing list pursuant to modified Water Code section 1726, subdivision (d).

Timely comments on the petition were received from the California Department of Fish and Wildlife (CDFW).

6.0 CDFW COMMENTS ON THE PETITION

By email dated November 10, 2021, CDFW provided comments regarding EBMUD's proposed transfer. CDFW indicated that they had previous communications with EBMUD regarding the proposed transfer including CDFW's concerns that the transfer occurs during a time period when the release of water from Camanche Reservoir would most likely provide an instream benefit in the Mokelumne River and also identified a timeframe during which there could be potential impacts to salmonids. CDFW indicated that it preferred the transfer take place from late spring through early summer when additional flows in the Mokelumne River are most likely to benefit outmigrant salmonids. CDFW also indicated that it preferred the transfer period not occur during late summer through the fall (August to November), which is the fall-run Chinook migration season, when additional flows in Pixley Slough may increase false attractant flows and increase straying. CDFW also requested notification when EBMUD identifies surplus water available for transfer in order to coordinate transfer timing.

EBMUD agreed to transfer the water in the late spring through early summer if hydrology and operational conditions allow in 2022. EBMUD further indicated that if operational constraints arise that delay the transfer into the early fall, EBMUD and NSJWCD will coordinate with CDFW to monitor flows released into Pixley Slough to ensure the transferred water release is diverted for the DREAM project as described in the petition and does not increase false attractant flows and increase straying of salmonids from the San Joaquin River.

This Order contains a condition requiring EBMUD to coordinate transfer releases with CDFW as described in CDFW's comments. This Order also requires EBMUD notify both the State Water Board and CDFW when it determines that surplus water is available for transfer.

7.0 STATE WATER BOARD FINDINGS

7.1 Availability of Water for Transfer

Before approving a temporary change involving the transfer of water, the State Water Board must determine that the proposed 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. (Wat. Code, §§ 1725, 1726, subd. (e).) Section 1725 defines "consumptively used" to mean the amount of water that has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion. In addition, before approving a change under section 1707, the State Water Board must find that the proposed change will not increase the amount of water the person is entitled to use. (*Id.*, § 1707, subd. (b)(1).)

EBMUD stated the water that is the subject of the petition will be made available as a result of recycled water used within the EBMUD service area. EBMUD's use of recycled water reduces EBMUD's consumptive use of its Mokelumne River water supplies diverted under License 11109 compared with the quantity of consumptive use which would occur without recycled water use.

The transfer of water saved pursuant to the use of recycled water is authorized by Water Code section 1010, subdivision (b):

Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

EBMUD stated that it reduces its Mokelumne River diversions under License 11109 by using recycled water in its service area, and in recent years has provided from 9,700 to 12,100 af per year of recycled water to supply its customers. EBMUD stated that its customers currently receiving recycled water can also be served potable water appropriated from the Mokelumne River under License 11109, and in the absence of its water recycling projects, EBMUD would divert additional water from the Mokelumne River to meet customer demand. EBMUD meters its recycled water production and deliveries to substantiate its recycled water use data and therefore the amounts of water made available for the transfer.

The State Water Board reviewed annual Reports of Licensee filed by EBMUD from 2016 through 2020. The following table provides EBMUD's reported diversions and beneficial use under License 11109. EBMUD also reported recycled water used in its service area each year.

Reporting Year	Direct Diversion (af)	Collected to Storage (af)	Total Diversion (af)	Surface Water Beneficially Used (af)	Recycled Water Used in EBMUD Service Area (af)
2020	146,627	39,290	185,917	181,217	12,192
2019	147,755	47,250	195,005	176,934	9,786
2018	129,932	37,750	167,682	157,434	9,811
2017	112,819	69,070	181,889	139,685	11,744
2016	121,554	104,570	226,124	146,115	11,741

The data above shows that EBMUD has recently provided recycled water to its customers in quantities greater than the amount of water proposed to be transferred pursuant to this petition for temporary change. Pursuant to Water Code section 1010,

subdivision (a), the reduction of use of water under a water right as the result of the use of recycled water is deemed equivalent to a reasonable beneficial use of water under the right to the extent and in the amount of recycled water being used. The State Water Board finds that, in accordance with Water Code section 1726, subdivision (e), and section 1010, subdivision (b), the water proposed for transfer pursuant to this order is available because EBMUD's consumptive use of water under License 11109 has been and will be reduced as a result of use of recycled water within the EBMUD service area.

Moreover, with its petition, EBMUD does not request any changes in the quantity of water allowed to be used under License 11109, instead EBMUD proposes to transfer water that has been saved as a result of providing recycled water within its service area. Thus, the State Water Board finds that, in accordance with Water Code section 1707, subdivision (b)(1), the proposed change will not increase the amount of water that EBMUD is entitled to use.

7.2 No Injury to Other Legal Users of Water

Before approving a temporary change involving the transfer of water, the State Water Board must find that a preponderance of the evidence shows that the proposed temporary change would not injure any legal user of 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).) Water Code section 1707, subdivision (b)(2) also requires the State Water Board to determine that a change proposed for purposes of instream flow dedication will not unreasonably affect any legal user of water before approving the change.

With respect to the "no injury" inquiry under both Water Code sections 1727 and 1707, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board's inquiry is the effect of the change on the rights of others. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 743, 805.)

The water subject to the proposed temporary changes will be diverted under the terms and conditions of EBMUD's License 11109 in accordance with its water right priority. The proposed temporary changes only involve the addition of points of rediversion and modifying the place and purpose of use of water diverted under License 11109. Water under License 11109 is diverted after senior rights and fishery flow requirements as set forth in D-1641 and the JSA are met. EBMUD will only transfer a quantity of water that does not exceed the quantity of recycled water used by its customers in lieu of Mokelumne River supply at the time of the transfer. This Order will limit the transfer quantity to the amount of recycled water that is delivered in the EBMUD service area, which will be confirmed by an equivalent reduction in water delivery to the EBMUD service area via the Mokelumne Aqueducts.

EBMUD stated that it will only carry out the proposed transfer if Mokelumne River hydrology is sufficient at the time of the transfer for EBMUD to make required releases for senior downstream water users and meet all existing downstream environmental flow commitments under D-1641 and the JSA. EBMUD will only transfer a quantity of water that does not exceed the quantity of recycled water used by its customers in lieu of Mokelumne River supply at the time of the transfer. The recent annual quantities of recycled water used in EBMUD's service area are more than adequate to cover 658 af of water proposed to be transferred pursuant to the petition.

Further, the IS/MND for the DREAM project indicated that EBMUD estimates a ten percent conveyance loss in the Mokelumne River for water released from Camanche Reservoir for transfer. Therefore, this Order will limit the water released from transfer to 658 af and limit the amount of water that can then be rediverted at NSJWCD's South Pump Station for irrigation use to 90 percent of the water released for transfer, with a maximum of 592 af available for rediversion and irrigation use in NSJWCD's service area.

Based on the information in the record, EBMUD has met its burden of establishing that the proposed change will not injure any legal user of water. (Wat. Code, § 1727, subd. (b)(1), (c).)

The State Water Board finds that, in accordance with Water Code section 1727, subdivision (b)(1) and Water Code section 1707, subdivision (b)(2), the proposed temporary changes would not injure any legal user of the 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 the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

7.3 No Unreasonable Effect Upon 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).)

EBMUD states that the releases of up to 11 cfs due to the transfer of water from Camanche Dam/Reservoir will result in increased flows and water quality benefits downstream in the Mokelumne River to NSJWCD's South Pumping Station.

CDFW has recommended that the transfer occur from late spring through early summer when increased flows will be most beneficial to outmigrant salmonids. CDFW also prefers that the transfer not occur from late summer through early fall in order to avoid straying caused by increased attractant flows in Pixley Slough. EBMUD agreed to work with CDFW during the transfer period to ensure that the transfer water is delivered

without negatively impacting salmonid migration in the Mokelumne River and Pixley Slough. Therefore, this Order contains a condition requiring that EBMUD consult with CDFW on the release of transferred water from Camanche Reservoir.

EBMUD will also continue to comply with all requirements of the JSA regarding fishery flow requirements in the Mokelumne River during the period of transfer.

The State Water Board finds that, as conditioned in this Order, in accordance with Water Code section 1727, subdivision (b)(2), the proposed changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.

8.0 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 November 18, 2020.

9.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the determinations required by Water Code sections 1707, 1725, et seq., and 1010 subdivision (b).

The State Water Board concludes that, based on the available information:

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 changes will neither injure, nor unreasonably affect, any legal user of water, including 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 water, or return flows.
3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water EBMUD is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT East Bay Municipal Utility District's (EBMUD) petition for temporary transfer and dedication of water for instream purposes of 658 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. is approved for a period of one year, which will commence as described in the below conditions.

All existing terms and conditions of License 11109 will remain in effect, except as temporarily amended by the following provisions:

1. The temporary change is limited to a one-year period commencing on the date of the following: (i) EBMUD has determined surplus water is available for the temporary change, as described in Section 2.2 of this Order; and (ii) EBMUD has reported to the Deputy Director for Water Rights and the California Department of Fish and Wildlife (CDFW) of EBMUD's determination of surplus water at least 30 days prior to releases for the temporary change. The transfer period under this Order will not extend beyond July 31, 2023.
2. The following points of rediversion shall be added to License 11109:
 - a. Camanche Dam/Reservoir: CCS83, Zone 3, North 2,268,941 feet and East 6,411,485 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T4N, R9E, MDB&M
 - b. North San Joaquin Water Conservation District's (NSJWCD) South Pump Station: North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M, as shown on the map dated September 15, 2021, accompanying the petition.
3. The place of use and purpose of use under License 11109 will temporarily include irrigation use within 350 acres of established irrigated crop land within NSJWCD's place of use boundary of approximately 2,183 acres located generally within Sections 20, 21, 22, 27, 28, 29, 32, and 33, T3N, R7E, MDB&M, as shown on the map dated September 15, 2021, accompanying the petition.
4. The place of use and purpose of use under License 11109 will temporarily include fish and wildlife preservation and enhancement along the reach on the Mokelumne River between Camanche Reservoir to the NSJWCD South Pumping Station, within the following boundaries: 1) Upstream Limit - Camanche Dam located North 2,268,941 feet and East 6,411,485 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 6, T4N, R9E, MDB&M; and 2) Downstream Limit - NSJWCD's South Pump Station located North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M, as shown on the January 11, 2018, map accompanying the petition.

5. The quantity of water transferred under this Order is limited to the reduction in use of water under License 11109 as a result of recycled water use in EBMUD's service area during the approval period of this order. Should License 11109 be curtailed, no reduction in direct diversion shall be considered as water made available for the transfer.
6. Within 60 days of issuance of this Order, EBMUD shall provide an operations plan to the Deputy Director for Water Rights describing how it will comply with Condition 5 of this Order. Transfer of water under this Order is subject to approval of the operations plan by the Deputy Director for Water Rights.
7. Water transferred pursuant to this Order shall be limited to a maximum 658 af to be released from Camanche Dam/Reservoir to the Mokelumne River. Transferred water that can be rediverted at the NSJWCD South Pumping Station for irrigation purposes is limited to 90 percent of the total quantity of water released for the transfer, up to a maximum of 592 af.
8. If the transfer of water will occur during the period of August through November, EBMUD and NSJWCD shall consult with CDFW to monitor and ensure that transferred water released into Pixley Slough does not increase false attractant flows and straying of salmonids from the San Joaquin River.
9. Within 90 days of completion of the transfer period, EBMUD shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The report shall include the following information:
 - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from Camanche Dam pursuant to this Order.
 - b. The quantity of transferred water used for irrigation and identification of specific place(s) of use and crops irrigated with the transferred water within NSJWCD's service area as described in Condition 3 of this Order.
 - c. Documentation that EBMUD conducted the transfer in compliance with Condition 5, and the operations plan submitted pursuant to Condition 6, of this Order.
10. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
11. 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 use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the 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.

12. This Order does not authorize any act that results in the taking of an endangered, threatened, or candidate 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 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). 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. EBMUD shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
13. The State Water Board reserves jurisdiction to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: DEC 17 2021