

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

DIVISION OF WATER RIGHTS

IN THE MATTER OF LICENSE 2184 (APPLICATION 1692)

**PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 700 ACRE-FEET OF WATER
FROM EL DORADO IRRIGATION DISTRICT TO WESTLANDS WATER DISTRICT**

SOURCES: North Fork Weber Creek tributary to Weber Creek thence the South Fork American River

COUNTIES: El Dorado, Amador, Kings, Merced and Fresno

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On June 29, 2015, the El Dorado Irrigation District (EID) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under California Water Code Section 1725, et seq. EID requested to transfer up to 700 acre-feet (af) of water to Westlands Water District (WWD). The transfer period begins on the date of State Water Board transfer approval. Temporary changes involving the transfer of water may be in effect for one year from the date of approval.

1.1 Description of the Transfer

Due to extraordinarily dry hydrologic conditions WWD has a zero percent south-of-Delta contracted Central Valley Project (CVP) allocation in 2015. The transfer will help WWD provide a critical water supply to its agricultural customers during the 2015 growing season.

The transfer water would be made available by re-operating Weber Reservoir to release water that would have remained in storage in 2015. The transfer water would be released from Weber Reservoir into Weber Creek, thence the South Fork American River, thence Folsom Reservoir and the Lower American River for delivery to WWD. To compensate for the reduced supply in Weber Reservoir, a refill agreement will be completed between EID and the U.S. Bureau of Reclamation (Reclamation).

The targeted 700 af water transfer from Weber Reservoir was modeled with the concept of providing transfer release flow rates less than the observed maximum monthly flow (10.5 cubic feet per second (cfs) in September 2011) that has occurred during the proposed transfer period over the past five years (since 2010) in Weber Creek. Modeling results indicate that approximately 700 af can be released from Weber Reservoir beginning on August 1 and ending on or about September 23 while maintaining releases at rates less than 10.5 cfs. Therefore, the maximum release rate during the transfer period would be approximately 10.0 cfs.

2.0 BACKGROUND

The capacity of Weber Reservoir is 1,125 af. License 2184 authorizes diversion to storage of up to 1,000 af per year from October 15 of each year to May 15 of the succeeding year. The license requires an annual minimum storage of 200 af on September 1, and minimum releases not less than 1 cfs to protect and enhance wildlife, and recreation in Weber Creek downstream of Weber Reservoir when reservoir storage is available. Weber Reservoir Dam is the existing point of diversion and Folsom Reservoir Pump Station is the existing point of rediversion under License 2184. Since Folsom Reservoir Pump is an existing point of rediversion under License 2184, the use of Folsom Reservoir to temporarily store and subsequently release

transfer water will be covered under a Warren Act Agreement between WWD and Reclamation. The existing purpose of use and place of use under License 2184 includes:

1. Fish and Wildlife Preservation and Enhancement and Fire Protection uses at Weber Reservoir within SW ¼ of Section 35, T1S, R3E, MDB&M, and Fish and Wildlife Preservation and Enhancement and Recreation uses within North Fork Weber Creek, Weber Creek and South Fork American River from Weber Reservoir Dam to Folsom Reservoir.
2. Municipal, Industrial, Irrigation and Fire Protection uses within the boundaries of EID comprising 30,702 acres as shown on map dated April 8, 1927 filed with the State Water Board and El Dorado Hills area as shown on map dated January 26, 2006, filed with the State Water Board.

WWD would use the transfer water predominantly for irrigation in its service area so no change in purpose of use is proposed.

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

The service area of WWD is proposed to be added to EID's License 2184.

EID's petition requests the temporary addition of the following points of rediversion to License 2184:

1. Bill Jones Pumping Plant located at California Coordinate System of 1983, Zone 3, N 2,114,287 feet and E 6,248,011 feet being within the SW ¼ of Section 31, T1S, R4E, MDB&M. This proposed point of rediversion is identified on maps filed with the Division under Application 9368, and shown in Attachment B submitted with the petition.
2. San Luis Reservoir located at California Coordinate System of 1983, Zone 3, N 1,849,928 feet and E 6,411,373 feet being within the SE ¼ of Section 7, T10S, R9E, MDB&M. This proposed point of temporary storage and rediversion is identified on maps filed with the Division under Reclamation's Permit 12860 (Application 15764) for the use of San Luis Reservoir, and shown in Attachment B submitted with the petition.

2.2 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order) issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and the Department of Water Resources (DWR) to expedite processing of water transfers (in accordance with the California Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor reiterates direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), Section 13247 of the California Water Code is suspended. California Water Code Section 13247 requires that state offices, departments, and boards, in carrying out

activities which may affect water quality, shall comply with water quality control plans approved or adopted by the State Water Board, unless otherwise directed or authorized by statute in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

On December 22, 2014, Governor Brown issued Executive Order B-28-14 which extended the waiver of Water Code Section 13247 in paragraph 9 of the January 2014 Proclamation, and paragraph 19 of the April 2014 Proclamation, through May 31, 2016.

On April 1, 2015, the Governor issued Executive Order B-29-15 to save water, increase enforcement of water laws, streamline government response to the drought, and invest in new water. It references that the orders and provisions of the January and April 2014 Proclamations are still in effect, unless otherwise modified. The provisions of the January and April 2014 Proclamations relating to streamlining approval of water transfers are still in effect.

2.3 State Water Board Water Unavailability Actions

On May 1, 2015, the Executive Director for the State Water Board issued a Water Unavailability Notice (Notice) for all post-1914 water rights in the Sacramento River Watershed. EID's License 2184 was subject to this Notice. The 700 af of proposed transfer water from Weber Reservoir was diverted and placed into storage prior to this Notice. Releases of water collected to storage prior to issuance of the Notice are available for use or transfer after the Notice.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On July 9, 2015, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS e-mail notification system. In addition, on July 9, 2015 EID mailed the notice via first class mail to interested parties and on July 10, 2015 noticed the project via publication in the Mountain Democrat newspaper. Comment letters were received from Mr. Stephen Marianos and Amador County Board of Supervisors.

Mr. Stephen Marianos' Comments

Mr. Marianos' comments concerned the effect of the transfer on flow in Weber Creek. He indicated that at the present time Weber Reservoir is near capacity and discharging 1.21 cfs into Weber Creek and asked what would happen to the flow in Weber Creek next year after the reservoir has been drawn down for the transfer. He also asked if there was an existing agreement with California Department of Fish and Wildlife (CDFW) and the State Water Board to maintain a minimum flow down Weber Creek.

State Water Board Response to Comments

The water right license held by Mr. Marianos which is junior to EID's License 2184, has a point of diversion in Weber Creek to divert from March through June for irrigation use. The transfer involves stored water and thus will not injury Mr. Marianos water right.

The October 2002 *Weber Reservoir Flow Regime and Restoration Plan* developed in coordination with CDFW and the State Water Board requires EID to:

- (a) Maintain a minimum of 200 acre-feet of available water in storage at Weber Reservoir as of September 1 of each year to allow EID to maintain a minimum release of 1 cfs during the months of September, October and November;
- (b) Maintain a year-round minimum release schedule from Weber Reservoir to protect and enhance fish, wildlife and recreation conditions in Weber Creek downstream of Weber Reservoir;
- (c) Maintain a "ramping rate" for changes in releases from Weber Reservoir for the purpose of protecting fish and wildlife resources from adverse impacts caused by sudden changes in Weber Creek hydrology; and
- (d) Develop and maintain a "Weber Reservoir Operations Manual" to direct operations of Weber Reservoir.

The conditions per the October 2002 *Weber Reservoir Flow Regime and Restoration Plan* mentioned above were incorporated into State Water Board Order WR 2007-0035-DWR. EID has stated it will meet all relevant release requirements in 2016.

EID's License 2184 has a place of use of Weber Creek from Weber Reservoir Dam to Folsom Reservoir for the purposes of Fish and Wildlife Enhancement and Recreation. Within these specified reaches, released flows from Weber Reservoir into Weber Creek for the purpose of fisheries enhancement and recreation are protected from diversion by other water right holders.

Amador County Board of Supervisors (County) Comments

The County contends that the proposed transfer constitutes a violation of Water Code Section 1706. A letter was also attached to the comment letter in response to the Initial Study and Proposed Negative Declaration that related to the Silver Lake portion of the proposed project and was submitted to the State Water Board for informational purposes.

State Water Board Response to Comments

Water Code Section 1706 applies to water rights obtained outside the realm of the Water Commission Act. License 2184 was obtained pursuant to the Water Commission Act, and therefore, Water Code Section 1706 is inapplicable. Water Code Section 1706 provides that certain water right holders may change the point of diversion, place of use, or purpose of use as a matter of right, so long as doing so does not injure others ("no injury rule"). This petition for transfer was filed under Water Code Section 1725 which also has a "no injury rule". The State Water Board has determined that the proposed transfer would not injure others. See Sections 5.2 and 5.3 of this Order for further discussion.

The County's comment letter in response to the Initial Study and Proposed Negative Declaration only pertains to the Silver Lake portion of the proposed transfer and is not applicable to this petition for transfer by release of water from Weber Reservoir.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

EID filed a petition for temporary transfer of water pursuant to California Water Code Section 1725, et seq. California Water Code Section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for the 700 af temporary transfer by storage release from Weber Reservoir under License 2184. As discussed, the temporary transfer under Water Code Section 1725 from Weber Reservoir is exempt from CEQA. There is an additional transfer proposed under EID's pre-1914 water right in the amount of 2,400 af. The State Water Board does not have transfer approval authority over pre-1914 water rights. EID submitted a Notice of Public Hearing for the temporary transfer of up to 3,100 af with a comment period on the Initial Statement/Negative Declaration (IS/ND) from June 22, 2015 to July 22, 2015. EID held a public hearing to consider the IS/ND on July 27, 2015. EID filed a Notice of Determination for the 3,100 af temporary transfer project on July 27, 2015.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The independent evaluation of impacts to public trust resources was conducted concurrent with the California Water Code Section 1727 evaluation.

5.0 REQUIRED FINDINGS OF FACT

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

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

In the absence of the proposed transfer, EID would have stored the transfer water in Weber Reservoir.

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

5.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the California Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).)

The water proposed for transfer pursuant to this temporary change consists of water previously stored in Weber Reservoir pursuant to License 2184. In the absence of the proposed transfer, the water would remain in storage for future use by EID and would not be available to other water users. Further, the release from storage at Weber Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of the water downstream of Weber Reservoir.

In general, the transfer of water that would otherwise be consumptively used or stored will not result in injury to other legal users of the water. In the absence of the proposed transfer, EID would have stored the transfer water in Weber Reservoir.

EID will enter into a reservoir refill agreement with Reclamation ensuring that future refill of any storage space in Weber Reservoir created by the transfer will not reduce the amount of water that Reclamation, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of the water would occur due to the transfer.

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

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

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

In accordance with California Code of Regulations Section 794 (c), EID provided the North Central Region of CDFW and the applicable Regional Water Quality Control Board (Regional Board) with a copy of the petition. CDFW and the Regional Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

The fish of Weber Reservoir predominantly consists of rainbow trout and several non-native centrarchid (bass and sunfish) species. Other native fish species that may potentially be present in Weber Reservoir include Sacramento sucker, California roach, and prickly sculpin. Non-native fish species may include brown trout, largemouth bass, smallmouth bass, spotted bass, bluegill, green sunfish, and common carp.

EID states that no special-status fish or amphibian species are present in Weber Reservoir or Weber Creek. California red-legged frog (CRLF) were historically (but not currently) sighted in lower Weber Creek. However, the only current population of CRLF in the upper Weber Creek watershed is located in a 63-acre area known as Spivey Pond, owned by the American River Conservancy. Bullfrogs and non-native predatory fish are abundant in Weber Reservoir, precluding the possibility of the presence of CRLF in the reservoir.

Rainbow trout, a spring spawner, is the only native trout species in Weber Creek, with non-native brown trout, a fall spawner, potentially present. Other fish species that may occur in Weber Creek are as described for Weber Reservoir, however, Sacramento sucker, California roach, and prickly sculpin are likely the more abundant species, along with rainbow trout. The benthic macroinvertebrate (BMI) community in Weber Creek is somewhat less diverse and abundant than compared to other west slope native fish species. Though most BMI species are present as various instates (life history stages) throughout the year, BMI production is highest in spring.

The proposed temporary transfer would not result in fluctuation in the reservoir and streamflow levels that are outside of historic range, and the potential for adverse effects on aquatic/riparian habitat, fish and wildlife would be minimal or negligible. Potential impacts would be limited primarily to vegetation immediately adjacent to the Weber Reservoir high water line; however, vegetation would not be substantially affected by the proposed single year water transfer because water levels typically fluctuate based on precipitation, and the transfer would occur during the summer when the reservoir is typically drawn down on an annual basis. Plant species that occur within the reservoir high water line are acclimated to historic fluctuations in water levels. Reduced reservoir elevations in Weber Reservoir would also not significantly affect movement or migrations of any fish or wildlife species. Weber Reservoir typically has little to no inflow during the August to September timeframe of the proposed transfer. Adherence to minimum pool requirements per State Water Board Order WR 2007-0035-DWR would further protect habitat for those fish species that are resident to Weber Reservoir. Therefore, the transfer would not interfere substantially with the movement of any wildlife corridors, or impede the use of native wildlife nursery sites. This impact would be less than significant.

The relatively small changes in streamflow during the proposed transfer and the low down-ramping rate would have a negligible effect on resident populations of rainbow and brown trout, hardhead minnow, and other fish species in Weber Reservoir and Weber Creek downstream of Weber Reservoir.

All water diverted at the point of redirection at the Jones Pumping Plant and San Luis Reservoir is done in accordance with the criteria contained in State Water Board Revised Water Right Decision 1641 (D-1641) and applicable Biological Opinions (BOs). Reclamation will continue to meet the objectives specified in D-1641 or any subsequent Orders in effect at the time of the export, as well as the requirements contained in the BOs. The quantity of transfer water to be conveyed through the Delta, including other currently planned transfers, is well within the quantities analyzed in the environmental documents issued for the BOs. The transfer will not result in a measurable change in quantity or quality of return flows.

In light of the above, I find in accordance with California Water Code Section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

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

7.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 700 af of water under License 2184 is approved.

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

1. The transfer is limited to the period commencing on the date of order issuance and continuing for up to one year.
2. The points of diversion under EID's License 2184 are temporarily amended to add points of rediversion:

Jones Pumping Plant at California Coordinate System of 1983, Zone 3, N 2,114,287 feet and E 6,248,011 feet, being within the SW $\frac{1}{4}$ of Section 31, T1S, R4E, MDB&M, identified on maps filed with the Division under Application 9368, and shown in Attachment B submitted with the petition for this transfer.

San Luis Reservoir located at California Coordinate System of 1983, Zone 3, N 1,849,928 feet and 6,411,373 feet, being within the SE $\frac{1}{4}$ of Section 7, T10S, R9E, MDB&M, shown on maps filed with the Division under Application 15764 and shown in Attachment B submitted with the petition for this transfer.

3. The place of use under EID's License 2184 is temporarily amended to add the service of area of WWD as shown in Attachment B submitted with the petition for this transfer.
4. Rediversion of water at the Jones Pumping Plant and San Luis Reservoir is subject to compliance by the operators with the objectives currently required of Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641, or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion. Rediversion of water is also subject to compliance by Reclamation with all applicable BOs and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations.
5. Water may not be transferred from the Jones Pumping Plant and San Luis Reservoir points of rediversion until EID has implemented a Refill Agreement with Reclamation to address potential refill concerns in Weber Reservoir. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta. The executed Refill Agreement must be acceptable to Reclamation and EID. Documentation that an acceptable Refill Agreement has been agreed to by Reclamation and EID shall be submitted to the Division within 15 days of the date of execution of the agreement.

6. The State Water Board has issued a Water Unavailability Notice to EID under License 2184. Accordingly, only water collected in storage prior to issuance of the Water Unavailability Notice may be transferred.
7. EID is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall include the following information:
 - a. The average daily release rates and corresponding volume of water released from Weber Reservoir as a result of this transfer (reported on a daily basis).
 - b. The daily average rate of water diverted and daily volume of water diverted at the points of diversion at the Jones Pumping Plant and San Luis Reservoir pursuant to this Order.
 - c. Recognizing that reservoir refill will occur after the transfer ends; monthly reporting of reservoir refill is not required during the transfer period. However, EID shall provide annual reporting by August 1 of each year on monthly reservoir refill until the reservoir refill agreement has been satisfied. This occurs when the value of the Refill Reservation, as defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation.

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

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

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

9. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the permittees shall obtain authorization for an incidental "take" permit prior to construction or operation. Permittees shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
10. I reserve authority to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN, FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: AUG 18 2015