

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 1718 (APPLICATION 575)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 5,748 ACRE-FEET OF WATER
FROM RIVER GARDEN FARMS COMPANY
TO THE ZONE 7 WATER AGENCY**

SOURCE: Sacramento River

COUNTY: Yolo

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 1, 2018, River Garden Farms Company (RGF or Petitioner) filed with the State Water Resources Control Board (State Water Board) a Petition for Temporary Change under Water Code section 1725, et seq. RGF's petition requests the transfer of up to 5,748 acre-feet (af) of water for use within the Zone 7 Water Agency's service area. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer

RGF proposes to transfer up to 5,748 af of water under License 1718 (Application 575) to the Zone 7 Water Agency. To facilitate this transfer, RGF will pump additional groundwater and reduce its direct diversion (referred to as groundwater substitution) from the Sacramento River by up to 32 cubic feet per second (cfs). The petition states that the groundwater wells proposed for additional pumping meet criteria established by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) for these types of transfers. At times when pumping capacity is available in the Delta, up to a maximum of 32 cfs of flow in the Sacramento River would be available for diversion at the Harvey O. Banks (Banks) Pumping Plant. Water would be used within the Zone 7 Water Agency's service area in Alameda County.

1.2 Groundwater Substitution

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of the Petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater pumping. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped by the Petitioner to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the

interconnection of surface water and groundwater (streamflow depletion). Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to injure other legal users of water if it occurs when the Delta is in balanced conditions¹ or there is limited streamflow in the channel from which the water is being transferred.

Proposals for transfers of water through Central Valley Project (CVP) and/or State Water Project (SWP) facilities that involve groundwater substitution are developed to be consistent with the Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), dated December 2015 prepared by DWR and Reclamation. Depending on well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use. The DWR and Reclamation well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

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

RGF has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, the groundwater substitution component of this transfer is conditioned to allow use of only those wells found acceptable by DWR and Reclamation, and the wells must be in compliance with DWR's and Reclamation's well construction, location, and monitoring criteria as well as the application of the streamflow depletion factor. DWR's and Reclamation's streamflow depletion factor of 13 percent will be applied to RGF's groundwater substitution transfer. Therefore, to account for streamflow depletion related to groundwater pumping, RGF will only transfer 87 percent of the total quantity pumped in exchange for the surface water available for transfer.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfer. RGF adopted a Groundwater Management Plan (GMP) in 2005 pursuant to Water Code section 10750 et seq. RGF has developed groundwater monitoring, reporting, and mitigation plans to ensure the proposed transfer does not result in any unreasonable and adverse impacts to the groundwater basin or third parties. RGF has notified Yolo County representatives to discuss the proposed temporary transfer, consistent with Yolo County Ordinance No. 1195. RGF, through the entity covering RGF and known as Reclamation District 787, is participating in the new Yolo Subbasin Groundwater Sustainability Agency (GSA). RGF does not believe the proposed transfer will result in an overdraft of the underlying groundwater basin. Moving forward, groundwater substitution transfers are also required to comply with current groundwater management law under the water code provisions pursuant to the 2014 Sustainable Groundwater Management Act (SGMA). RGF and Reclamation District 787 formed a GSA in 2017 and are in the process of preparing a GSP that will comply with SGMA and include consideration of impacts from groundwater substitution pumping within the GSA boundary.

¹ The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers

Depletion of surface stream flows due to groundwater pumping, including groundwater substitution transfers, has been a long-standing issue of concern in California. Part of the concern involves whether the streamflow depletion factors being used pursuant to groundwater substitution transfers are stringent enough to protect against long-term negative impacts to surface water flows.

Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation have estimated impacts on streamflow due to groundwater pumping by using analytical and numerical groundwater models. DWR and Reclamation utilized results from modeling efforts conducted for Reclamation's Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report dated March 2015 to establish its estimated minimum 13 percent average streamflow depletion factor for single year transfers requiring the use of SWP or CVP facilities.

DWR and Reclamation have indicated that to address continued concerns related to streamflow depletion, they have initiated development of a new modeling tool to more accurately estimate an appropriate streamflow depletion factor for individual transfer proposals. In addition, DWR and Reclamation have developed a Sacramento Valley Stream Flow Depletion Factor Management Group, composed of key stakeholders in the Sacramento Valley and the areas south and west of the Delta, to provide management and technical guidance to the groundwater modeling improvements being undertaken by DWR, Reclamation, and the State Water Contractors. DWR and Reclamation anticipate on-going refinement of groundwater substitution transfer modeling will allow them to more accurately evaluate potential long and short term surface water depletion impacts from individual transfers and be able to condition future transfers as necessary to protect against those impacts.

2.0 BACKGROUND

2.1 Substance of RGF's License

License 1718 (Application 575) authorizes the direct diversion of up to 32 cfs of water from the Sacramento River between March 1 and October 31 of each year for irrigation purposes. Two authorized points of diversion for License 1718 are located at the Townsite Plant located by California Coordinate System of 1983, Zone 2, North 2,055,188 feet and East 6,640,258 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 14, T11N, R2E, MDB&M, and the El Dorado Bend Plant located by California Coordinate System of 1983, Zone 2, North 2,073,788 feet and East 6,622,458 feet, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 30, T12N, R2E, MDB&M. The authorized place of use consists of 3,508.25 acres within the boundaries of T12N, R2E, and T11N, R2E, MDB&M, as shown on maps filed with the State Water Board.

2.2 Proposed Temporary Changes

The proposed transfer would temporarily add the Banks Pumping Plant as a point of diversion under License 1718. The Zone 7 Water Agency's service area, which is within the service area of the SWP (as shown on Map 1878-1 on file with Application 5630) would be temporarily added to the place of use of License 1718. Municipal, industrial, and domestic would be temporarily added as purposes of use under License 1718.

3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE

On March 12, 2018, the Division posted public notice of the Change Petition on the Division's website and sent notice through the State Water Board's LYRIS e-mail notification system. In addition, on March 12, 2018, RGF noticed the Change Petition via publication in the Sacramento Bee newspaper and via first class mail to interested parties. The comment deadline was April 11, 2018. Comments were timely received from Reclamation, CDFW, and Mr. Richard Morat.

3.1 Comments of Reclamation

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

- Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
- The amount of transfer water credited to RGF'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.
- The amount of water transferred pursuant to the Order shall not exceed the streamflow depletion factor of 13% as set forth in the Draft Technical Information.
- 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 and DWR's water rights, the transfer is conditioned that RGF's groundwater substitution proposal is subject to the evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the Draft Technical Information.

3.2 Comments of CDFW

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

State Water Board Response:

Groundwater substitution transfers are subject to compliance with the requirements of the groundwater management requirements in the Draft Technical Information, applicable existing GMPs, and SGMA, which is currently in the development and implementation phase. SGMA requires GSAs to consider the interests of all beneficial uses and users of groundwater, including Groundwater Dependent Ecosystems, during the development and implementation of Groundwater Sustainability Plans (GSPs) pursuant to Water Code section 10723.2. As GSPs are currently in development in most groundwater basins and

due for completion within the next few years, the State Water Board expects potential water transferors to coordinate with applicable GSAs to ensure water transfer activities are considered in the development of relevant GSPs. The State Water Board agrees that early coordination with GSAs will help determine whether water transfer activities in a basin may have potential impacts on Groundwater Dependent Ecosystems and GSPs should consider these impacts in the development of sustainability goals, minimum thresholds, and measurable objectives for comprehensive sustainable management criteria. State Water Board is monitoring the progress of development of GSPs and may further condition future groundwater substitution transfers accordingly.

RGF indicated in its petition that their newly formed GSA will include lands that generally conform with RGF's existing boundaries, as well as the locations of the groundwater wells proposed for participation in the 2018 Water Transfer. Therefore, RGF will be required to consider in its GSP any possible effects of future transfers to Groundwater Dependent Ecosystems.

3.3 Comments of Mr. Richard Morat

By letter dated April 6, 2018, Richard Morat commented on the proposed transfer. Mr. Morat requested terms and conditions that better protect public trust resources and that the transfer will not result in an unreasonable effect on fish and wildlife or other instream beneficial uses.

State Water Board Response:

As Mr. Morat indicated, the State Water Board is responsible to consider public trust resources, and while it does not anticipate any adverse public trust impacts to result from this transfer, the State Water Board is aware of long standing challenges with regard to management of flows and maintaining habitat conditions that are suitable for protection of fish and wildlife in the Delta and its tributaries. Current outflow and water quality requirements are established by State Water Board Water Right Decision D-1641 and applicable Biological Opinions, which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer. Additionally, the State Water Board is in the process of reviewing and revising the Bay-Delta Water Quality Control Plan, including a Phase II effort that will include determination of flows protective of fish and wildlife in the Feather River and Sacramento-San Joaquin River Delta estuary. The proposed Phase II changes to the Bay-Delta Plan include: new inflow requirements for the Sacramento River, its tributaries, and eastside tributaries to the Delta (the Mokelumne, Calaveras and Cosumnes Rivers); new and modified Delta outflow requirements; new requirements for cold water habitat; new and modified interior Delta flow requirements; recommendations for complementary ecosystem protection actions that others should take; and adaptive management, monitoring, evaluation, special study, and reporting provisions.

The proposed temporary transfer by RGF is for water that would have otherwise been diverted pursuant to its license. By approving the transfer, additional water will flow down the Sacramento River and the Delta. In light of the above explanation, it is not anticipated that this transfer will result in an unreasonable effect on fish and wildlife, or other instream beneficial uses.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for this project.

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code section 1725, “a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would involve only the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” (Wat. Code, § 1725.)

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).

6.0 REQUIRED FINDINGS OF FACT

6.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer consists of up to 5,748 af (less a streamflow depletion loss) of surface water made available through increased groundwater pumping.

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

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

6.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water 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).) DWR and Reclamation have reviewed the proposed transfer and determined that, with inclusion of the 13 percent streamflow depletion factor, as well as their oversight of the groundwater substitution operations described in Section 1.2 of the Order, the SWP and CVP will not be injured from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 1.2 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these plans.

In general, the transfer of water that would otherwise be stored or consumptively used will not result in injury to other legal users of water. In the absence of the transfer, RGF would not pump groundwater and would instead divert surface water to meet its irrigation demands.

Section 1745.10 subdivision (a) requires that groundwater substitution transfers be (a) consistent with a groundwater management plan adopted pursuant to state law for the affected area or (b) approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

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 groundwater use that is part of a groundwater substitution transfer to be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

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

Before approving a temporary change in order to facilitate a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided California Department of Fish Wildlife (CDFW) and the Central Valley Regional Water Quality Control Board (Regional Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding proper basin management to avoid potential future impacts to Groundwater Dependent Ecosystems resulting from groundwater substitution transfers, which is

discussed in Section 3.2 of this order. The Regional Board did not provide any comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

In general, North of Delta transfers result in an incremental increase in instream flows between the Petitioner's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures. The transfer will be subject to Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the federal Endangered Species Act.

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

7.0 STATE WATER RESOURCES CONTROL 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 of Water Rights redelegation of authority dated October 19, 2017.

8.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary changes in the place of use, purpose of use, and point of diversion under License 1718 for the transfer of up to 5,748 af of water is approved.

All existing terms and conditions of License 1718 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing from July 1, 2018 up to September 30, 2018.
2. The transfer under License 1718 is limited to a total of 5,000 af (up to 5,748 af prior to subtracting streamflow depletion loss by groundwater substitution).
3. Municipal, industrial, and domestic are temporarily added as purposes of use under License 1718.
4. RGF shall comply with all provisions contained in the groundwater substitution conveyance agreement pursuant to the Draft Technical Information between DWR, Reclamation, and RGF as a condition of transferring water pursuant to this Order.
5. The portion of the transfer to be made available by groundwater substitution is 5,748 af. RGF shall reduce its diversion rate at the original points of diversion authorized under License 1718 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 87 percent of the rate of additional groundwater pumping.
6. The authorized place of use under License 1718 is temporarily expanded to include the Zone 7 Water Agency's service area, which is a portion of the service area of the SWP (as shown on Map 1878-1 on file with Application 5630).
7. The following point of diversion is temporarily added to Licensee 1718:

Banks Pumping Plant via the Clifton Court Forebay located as follows: California Coordinate System, Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within the NW¼ of SE¼ of Projected Section 20, T1S, R4E, MDB&M.
8. Diversion of water at the Banks Pumping Plant is subject to compliance by the operators with the objectives currently required of DWR set forth in Tables 1, 2, and 3 on pages 181-187 of Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at that point of diversion, including compliance with the various plans required under D-1641. Diversion of water is also subject to compliance by DWR with all applicable Biological Opinions and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations.

Diversion of water at the Banks Pumping Plant is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.

9. During the period of the 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.
10. If at any time prior to, or during the period of the transfer, the State Water Board issues notification that water is unavailable for diversion pursuant to License 1718, the transfer shall immediately cease. No transfer credit shall accrue for groundwater substitution during a period of water unavailability.
11. Within 90 days of completion of the transfer, RGF shall provide the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. General locations where the transferred water was used;
 - b. The daily average rate water is made available pursuant to this Order;
 - c. The daily average diversion rate water for water diverted pursuant to License 1718 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 RGF in excess of that which would have been pumped in the absence of this transfer; and
 - f. Groundwater elevations within the vicinity of RGF prior to the proposed transfer.

RGF shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2018, a map defining the groundwater elevations within the vicinity of RGF, until such time as these elevations correspond to pre-transfer levels.

12. 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.

13. 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 permittee shall obtain authorization for an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
14. 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: MAY 07 2018