

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

**DIVISION OF WATER RIGHTS**

---

**IN THE MATTER OF PERMIT 15375 (APPLICATION 21945)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 2,000 ACRE-FEET OF WATER FROM  
FORESTHILL PUBLIC UTILITY DISTRICT  
TO STATE WATER CONTRACTOR AGENCIES**

---

SOURCE: North Shirttail Canyon Creek  
COUNTY: Placer

---

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On July 5, 2018, Foresthill Public Utility District (FPUD or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under Water Code section 1725, et seq. Under the transfer, up to 2,000 acre-feet (AF) of water would be provided to Kern County Water Agency and Dudley Ridge Water District (herein collectively referred to as SWC Agencies). The temporary transfer period begins on the date of approval of the State Water Board and is effective through September 30, 2018.

**1.1 Description of Transfer**

The transfer has been identified as a reservoir storage transfer. FPUD proposes to transfer 2,000 AF of water under Permit 15375 (Application 21945) to SWC Agencies to provide additional water for domestic, municipal, industrial, recreational, and irrigation uses. To facilitate this transfer, FPUD is requesting the following temporary changes to its Permit 15375: (1) the addition of the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) as a point of diversion; (2) the addition of San Luis Reservoir as a point of redirection; and (3) the addition of a portion of the service area of the SWP as an additional place of use.

FPUD proposes to release stored surface water from Sugar Pine Reservoir into North Shirttail Canyon Creek, then to the North Fork American River, and subsequently into Folsom Reservoir by September 25, 2018. The water would be released from Folsom Reservoir into Lake Natoma, impounded by Nimbus Dam, released into the Lower American River, and subsequently would flow into the Sacramento River and the Delta and be exported at Banks Pumping Plant into the California Aqueduct and delivered to the SWC Agencies through existing turnouts.

**1.2 Reservoir Reoperation**

The transfer consists of water currently stored in Sugar Pine Reservoir. Refill criteria developed in conjunction with the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) are required to ensure that the future refill of the reservoir space made available in Sugar Pine Reservoir from this transfer does not adversely impact the SWP or the Central Valley Project (CVP). The refill criteria provide for an accounting of refill of Sugar Pine Reservoir resulting from the proposed

transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta<sup>1</sup> is subject to repayment to DWR and Reclamation, according to a schedule agreed to by FPUD, DWR, and Reclamation.

## **2.0 BACKGROUND**

### **2.1 Substance of FPUD's Permit**

Permit 15375 (Application 21945) authorizes the direct diversion of up to 18 cubic feet per second (cfs) of water from about November 1 of each year to about July 1 of the succeeding year and 15,400 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year. The permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. The source of water is the North Shirttail Canyon Creek, tributary to the North Fork American River.

The existing point of diversion to storage at Sugar Pine Reservoir is located by California Coordinate System of 1983 (CCS83), Zone 2, North 2,175,686 feet and East 6,901,861 feet, being within NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 24, T15N, R10E, MDB&M. The existing point of rediversion to a regulating reservoir is located by CCS83, Zone 2, North 2,142,247 feet and East 6,904,032 feet, being within SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 24, T14N, R10E, MDB&M.

The existing place of use is in Sections 3, 4, 5 and 6 of T14N, R10E; Sections 13, 24, 25, 26, 27, 33, 34, 35, and 36 of T15N, R10E; and Sections 17, 18, 19, and 20 of T15N, R11E, MDB&M, as shown on a map filed with the State Water Board under Application 21945.

The authorized purposes of use are irrigation, municipal, industrial, domestic, recreational, and fishery maintenance and enhancement.

### **2.2 Proposed Temporary Changes**

In order to facilitate the transfer, the following will be added to Permit 15375 (Application 21945):

1) Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, located within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 20, T1S, R4E, MDB&M; and 2) San Luis Reservoir as a point of rediversion, located within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 15, T10S, R8E, MDB&M. A portion of the SWP service area would be temporarily added to the place of use of Permit 15375 to facilitate the temporary water transfer to the participating SWC Agencies. This portion of the service area of the SWP is shown on Maps 1878-1, 1878-2, and 1878-3 on file with the Division under Application 5630.

## **3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE**

On July 16, 2018, a 30-day public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on July 12, 2018 and July 19, 2018, FPUD noticed the project via publication in the Auburn Journal newspaper and mailed the notice via first class mail to interested parties. The comment deadline was August 15, 2018. Timely comments were received from Reclamation, California Department of Fish and Wildlife (CDFW), and the American River Ranger District of the U.S. Forest Service (USFS).

### **3.1 Comments of Reclamation**

---

<sup>1</sup> The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from the 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.

By letter dated August 13, 2018, Reclamation commented on FPUD's proposed water transfer. Reclamation states the timing of the Petitioner's August and September release will adversely impact Folsom Reservoir cold water pool operations required under the National Marine Fisheries Service (NMFS) 2009 Biological Opinion. Reclamation adds that the warm water released from Sugar Pine Reservoir will enter into the upper reaches of Folsom Reservoir, while Reclamation will have to release water for the transfer from the hypolimnion of Folsom Reservoir, thereby impacting the volume of cold water pool. Reclamation also states that modeling shows there may be an effect on hydropower due to an increase in the volume of water needed for a power bypass for fall fishery flows above that which would have been needed absent the transfer.

### **State Water Board Response:**

By letter dated August 24, 2018, FPUD responded that they had contracted with a consulting firm to establish baseline conditions and to collect and analyze data related to temperature. Based on an analysis of flow and temperature data below Sugar Pine Dam and in North Shirttail Canyon Creek above the confluence of the North Fork American River, the higher volume releases from Sugar Pine Reservoir could result in a marginal cooling of North Fork American River flows, potentially improving Folsom inflow temperatures. FPUD stated that at worst, the temperature improvement may attenuate and be immeasurable by the time it fully mixes with the North Fork American River and passes through Lake Clementine. FPUD's consultant compared release temperature from Folsom Dam to North Fork American River inflow temperatures and found they are approximately the same on average as the Folsom outflow temperatures, indicating that the transfer should not impact temperature operations at Folsom.

FPUD's consultant also looked at the effect of the proposed 40 cfs flow rate of the transfer and compared that to data from releases made at Folsom Reservoir. They concluded that the magnitude of the proposed transfer would make up less than 1 percent of the total flow throughout much of the transfer, and on average the transfer rate would be less than 2 percent of the total release rates over the one-week period the analysis was conducted.

In response to Reclamation's comment about fall power bypass for fisheries, FPUD stated that the transfer is a pass-through, so no water will be stored in Folsom Reservoir that could trigger a Fall bypass. All transfer water is scheduled to be moved through the system by end of September.

In an email dated August 31, 2018, State Water Board staff estimated that approximately 872.8 AF of the original 2,000-acre-foot transfer request could be accommodated, taking into account the proposed ramping schedule and the limited transfer time window remaining. FPUD's consultant determined that amount could be as high as 932 AF, assuming the transfer were to start on September 8, 2018 and taking into account DWR's evaluation that use of the entire duration of the transfer window, through September 30, would provide enough time to move the water through the Delta.

After review of FPUD's response to comment and the additional information provided, in an email dated September 4, 2018, Reclamation concluded they would be able to accommodate the water transfer through Folsom Reservoir given the reduced amount of the transfer as long as FPUD agreed to enter into a Power Letter of Agreement in case there are foregone power and related costs due to the transfer. Therefore, this requirement is included as a condition to this Order.

### **3.2 Comments of CDFW**

By letter dated August 10, 2018, CDFW provided comments on FPUD's proposed water transfer, citing concerns about the potential impacts to foothill yellow-legged frog (FYLF), a California Endangered Species Act candidate species, which reside in North Shirttail Creek. CDFW states FYLF breeding occurs in the spring after winter runoff has subsided and air and water temperatures increase. Tadpole rearing sites require some level of protection from unpredictable scouring flows and egg masses are often

attached to cobble, boulder and, bedrock substrates that may be swept downstream as flows have increased for the transfer of water. To mitigate for these potential impacts, CDFW requested that any proposed flow schedule be developed in consultation with CDFW to ensure ramping rates are fully protective of FYLF.

The CDFW letter states that, as part of the petition for transfer, FPUD should be required to consult with CDFW in development of its proposed plan to monitor flow, water quality, and biological resources within North Shitrtail Creek before, during, and after the water transfer. The monitoring plan will: 1) establish permanent stream cross section transects to record water variables at each flow stage, 2) monitor points with biological relevance to FYLF, 3) install water temperature data loggers, and 4) establish visual encounter survey areas at two locations. The monitoring plan also includes an impact avoidance protocol.

### **State Water Board Response:**

By letter dated August 22, 2018, FPUD responded that it submitted a study plan that would evaluate the potential effects of the proposed transfer on fish and wildlife resources. The study plan gathers necessary FYLF life history and habitat information prior to, during, and after the proposed water transfer.

FPUD hired a consulting firm (ECORP) to conduct a baseline FYLF survey and water flow analysis. The baseline FYLF surveys indicate that breeding had been successful this year and almost all metamorphosis had been completed at the time of the survey. FPUD believes the proposed ramping schedule, monitoring plan, and gathering of temperature and flow data will facilitate identification of potential impacts to sensitive FYLF life stages. The study plan includes a protocol to adjust flows in the event of stress to the FYLF. FPUD states it is late in the reproductive year for FYLF, and tadpoles and the latter are likely to be fully metamorphosed by the time of transfer.

By email dated August 28, 2018, FPUD indicated they had been coordinating with CDFW to address their follow-up comments stated in an August 27, 2018 email. Specifically, CDFW requested 10 cfs ramping rates, monitoring to occur during intervals of scheduled ramping, and any additional monitoring necessary to prevent take of FYLF. CDFW provided more detailed ramping criteria on an August 31, 2018 telephone conversation with State Water Board, stating the 10 cfs ramping increments should provide a minimum of 48 hours between steps. FPUD agreed to the terms in a September 4, 2018 email and provided a ramping schedule consistent with that proposed by CDFW.

### **3.3 Comments of USFS**

By letter dated August 1, 2018, the USFS made comments on FPUD's proposed water transfer. The USFS letter brings attention to the following habitat resources that may be affected by the water transfer, including the rainbow trout fishery in North Shitrtail Creek, western pond turtle, and a known population of FYLF, a Forest Service Sensitive Species. The proposed transfer will require an amendment to the annual USFS operating plan since Sugar Pine Dam and Reservoir are located on National Forest lands, and an amendment to the operating plan that incorporated a study plan to help better understand the effect of the water transfer on these resources. USFS did approve the request for amendment to their operating plan, with the following mitigation measures incorporated:

- Post a public notice a minimum of one week prior to the transfer commencement at the Sugar Pine Boat Launch and Manzanita Day Use sites. Coordinate with the American River Ranger District staff for posting locations and website notifications; and
- Share Study Plan data and results with the American River Ranger District.

### **State Water Board Response:**

By letter dated August 22, 2018, FPUD responded that it agreed to the two conditions stated above and will incorporate them into the water transfer documentation.

#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for the 2,000 AF temporary transfer by storage release from Sugar Pine Reservoir under Permit 15375.

#### **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 reduction in 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 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored**

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

underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.”

In the absence of the proposed transfer, FPUD indicated the transfer water would have remained stored in Sugar Pine Reservoir.

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 or stored in the absence of the proposed temporary change.

## **6.2 No Injury to Other Legal Users of the Water**

Before approving a temporary change due to a transfer or exchange of water 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 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. (Wat. Code, § 1727, subd. (b)(1).)

The water proposed for transfer pursuant to this temporary change consists of water previously stored in Sugar Pine Reservoir pursuant to Permit 15375. In the absence of the proposed transfer, the water would remain in storage for future use by FPUD and would not be available to other water users. Further, the release of the water from storage at Sugar Pine Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream.

In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water.

FPUD will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Sugar Pine 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 Water Code section 1727, subdivision (b)(1) that the proposed temporary change would not injure any legal users of the water.

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

Before approving a temporary change in order to facilitate a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided the 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 protections for FYLF, 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 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 (BOs) 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 will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## 7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

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

## 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.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change for the transfer of up to 2,000 acre-feet (AF) of water under Permit 15375 is approved.

All existing conditions of Permit 15375 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order through September 30, 2018.
2. The following points of diversion are temporarily added to Permit 15375:
  - Banks Pumping Plant via the Clifton Court Forebay located as follows:  
CCS83, Zone 3, North 2,126,440 feet and East 6,256,425 feet,  
being within NW¼ of SE¼ of projected Section 20, T1S, R4E, MDB&M, and
  - San Luis Reservoir located as follows:  
CCS83, Zone 3, North 1,845,103 feet and East 6,393,569 feet  
being within the SW¼ of SE¼ of projected Section 15, T10S, R8E, MDB&M.
3. The place of use under Permit 15375 is temporarily expanded to include the service areas of Dudley Ridge Water District, and Kern County Water Agency, which are within a portion of the service area of the State Water Project (SWP) (as shown on Map 1878-1, 2, and 3 filed with the Division under Application 5630).

4. Diversion of water at Banks Pumping Plant is subject to compliance by the SWP project operator with the objectives set forth in Tables 1, 2, and 3 of pages 181 to 187 of State Water Board's Revised Decision 1641 (D-1641), or any future State Water Resources Control Board (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 as prerequisites for the use of the Banks Pumping Plant by Department of Water Resources (DWR). Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operator with all applicable Biological Opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

Diversion of water at Banks Pumping Plant pursuant to this Order 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.

5. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
6. Monitoring shall occur during intervals of scheduled ramping-up and ramping-down for protection of Foothill yellow-legged frogs (FYLF), as well as any additional monitoring necessary to prevent take of FYLF per FPUD's monitoring plan agreed to by CDFW. Results of the monitoring plan shall be submitted to CDFW.
7. Water may not be transferred through Banks Pumping Plant and San Luis Reservoir until Foresthill Public Utilities District (FPUD) has implemented a Refill Agreement between DWR, U.S. Bureau of Reclamation (Reclamation), and FPUD to address potential refill concerns in Sugar Pine Reservoir. A Power Letter of Agreement will be included as part of the Refill Agreement. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and FPUD shall be submitted to the Division within 15 days of the date of execution of the agreement. The terms of the Refill Agreement shall be binding until such time as all the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill Agreement. FPUD may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.
8. FPUD shall use ramping rates in 10 cfs increments to be held for at least 48 hours between steps, up to a maximum transfer rate of 40 cfs. FPUD agreed in a September 4, 2018 email to adhere to the ramping rates as proposed by CDFW. A proposed transfer schedule consistent with CDFW's terms was submitted in a September 4, 2018 email.
9. If at any time prior to, or during the period of transfer, the State Water Board issues notification that water is unavailable for collection to storage pursuant to Permit 15375, only water collected to storage prior to issuance of the notification may be transferred.
10. FPUD shall provide 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 Folsom 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 point of diversion at Banks Pumping Plant and San Luis Reservoir pursuant to this Order;



- c. The daily amounts of water delivered to SWC Agencies pursuant to this Order; and
- d. Recognizing that reservoir refill will occur after the transfer ends, monthly reporting of reservoir refill is not required during the transfer period. However, FPUD shall provide annual reporting by July 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 DWR and Reclamation and has not been provided to FPUD in time for inclusion in a monthly or annual report, FPUD shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

11. Because the change authorized by this order is temporary in nature, the amount of water moved under this water transfer will not be considered during licensing of Permit 15375.
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 (ESA) (Fish and Game Code sections 2050 to 2097) or the federal ESA (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take prior to commencing transfer of water. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
14. The State Water Board reserves 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:

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: SEP 07 2018