

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT PERMIT 10478 (APPLICATION 13156)
OF EAST BAY MUNICIPAL UTILITY DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER AND INSTREAM
FLOW DEDICATION OF 1,000 ACRE-FEET OF WATER**

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On January 16, 2018, the East Bay Municipal Utility District (EBMUD) filed a petition for temporary change involving the transfer of water and instream flow dedication under water right Permit 10478 (Application 13156) with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), pursuant to Water Code section 1725 et seq. and section 1707. With the petition, EBMUD proposes to transfer up to 1,000 acre-feet (af) of previously stored water to the North San Joaquin Water Conservation District (NSJWCD) for irrigation use within the NSJWCD's service area. EBMUD also proposes to dedicate the transferred water for fish and wildlife enhancement in the stretch of the Mokelumne River from Camanche Dam downstream to NSJWCD's South Pump Station. The temporary change and transfer will be in effect one year from the date of this Order pursuant to Water Code section 1725.

1.1 Description of the Transfer

EBMUD's proposed transfer of water will facilitate the Demonstration Recharge Extraction and Aquifer Management (DREAM) Project, which is a joint effort of EBMUD and the San Joaquin County Flood Control and Water Conservation District Water Investigation Zone No. 2, in coordination with NSJWCD and the Eastern Water Alliance, a regional Joint Powers Authority of which NSJWCD is a member agency. Specifically, the DREAM project is a short-term pilot conjunctive use/groundwater banking project that will provide up to 1,000 af of surface water for irrigation in the NSJWCD service area that will be used in-lieu of pumping groundwater for irrigation. This will create an in-lieu groundwater recharge of up to 1,000 af and will in turn provide a one-time extraction of up to 500 af of groundwater in the future for export to the EBMUD service area. The amount of groundwater that may be exported to EBMUD will be limited to half of the total quantity of surface water transferred to NSJWCD. Overall, the DREAM Project is proposed to demonstrate a groundwater banking project where more water will be added to the groundwater basin as compared to the amount of water taken out of the basin.

In order to facilitate the transfer, EBMUD filed a temporary change petition to add NSJWCD's South Pump Station diversion facility on the Mokelumne River as point of rediversion, add irrigation as a purpose of use, and add the NSJWCD service area to the place of use of EBMUD's Permit 10478. EBMUD has also requested to dedicate the transferred water for instream uses pursuant to Water Code section 1707 by adding fish and wildlife enhancement as a purpose of use along the stretch of the Mokelumne River between the upstream point where the transfer water will be released at Camanche

Dam and the downstream point of redirection at NSJWCD's South Pump Station. EBMUD proposes to release water for transfer primarily during the irrigation season of approximately March through October.

2.0 BACKGROUND

2.1 Summary of Water Right Permit 10478

EBMUD holds water right Permit 10478, with a priority date of June 16, 1949, for direct diversion and collection to storage of water from the Mokelumne River at both Pardee and Camanche Reservoirs. Permit 10478 authorizes direct diversion of up to 194 cubic feet per second, and diversion to storage of up to 353,000 af per year. The season of diversion is from December 1 of each year to July 1 of the succeeding year. The total amount of water that can be placed to beneficial use is limited to 140,000 af per year. The water can be used for: 1) municipal and industrial uses within EBMUD's service area; 2) fish and wildlife preservation and enhancement at Pardee and Camanche Reservoirs and the Mokelumne River Fish Hatchery; and 3) recreation at Pardee and Camanche Reservoirs.

2.2 Proposed Temporary Changes

With the petition, EBMUD proposes the following temporary changes to Permit 10478.

2.2.1 Additional point of redirection

In order to provide water to NSJWCD, EBMUD proposes to temporarily add NSJWCD's South Pump Station on the Mokelumne River as a point of redirection. The location of NSJWCD's South Pump Station is as follows:

North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M, as shown on the map dated January 11, 2018, accompanying the petition.

2.2.2 Additional places of use and purposes of use

EBMUD has proposed to temporarily add both 1) a portion of the service area of NSJWCD to its place of use for irrigation use; and 2) to dedicate flows pursuant to Water Code section 1707 by adding the stretch of the Mokelumne River from Camanche Dam to NSJWCD's South Pump Station as a place of use for fish and wildlife enhancement and preservation use. The temporary additions to the place of use and purpose of use of Permit 10478 are described as follows:

1. Irrigation use within 350 acres of established irrigated crop land within NSJWCD's place of use boundary of approximately 2,183 acres located generally within Sections 20, 21, 22, 27, 28, 29, 32, and 33, within T3N, R7E, MDB&M, as shown on the map dated January 11, 2018, accompanying the petition.
2. Fish and wildlife preservation and enhancement use within the reach of the Mokelumne River between the following locations as shown on the January 11, 2018, map accompanying the petition: 1) upstream location, Camanche Dam - North 2,268,941 feet and East 6,411,485 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Projected Section 6, T4N, R9E, MDB&M; and 2) downstream location, NSJWCD's South Pump Station - North 2,243,275 feet and East 6,364,793 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T4N, R7E, MDB&M.

3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code section 1725, "a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would involve only the amount of water that would have been consumptively used or stored by

the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” (Wat. Code, § 1725.)

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

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

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

(Wat. Code, § 1727, subd. (b).)

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

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

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

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

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

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

EBMUD filed the petition for temporary change and transfer under Water Code sections 1707 and 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA (Pub. Resources Code, § 21000 et seq.). Nevertheless, San Joaquin County approved and adopted an Initial Study/Mitigated Negative Declaration (IS/MND) for the DREAM project on August 23, 2016. The IS/MND covered the DREAM one-time short-term pilot conjunctive use project involving the 1,000 af of water that is the subject of the proposed transfer, NSJWCD South System

surface water distribution facility improvements, and conveyance of the transferred water from EBMUD to NSJWCD for in-lieu groundwater recharge purposes. Mitigation measures were associated with potential environmental impacts to biological resources due to construction activities related to the NSJWCD South System facility improvements. NSJWCD is designated as the responsible agency for maintaining compliance with the MND's Mitigation Monitoring and Reporting Program. The State Water Board will file a Notice of Exemption within five days of approval of this Order.

5.0 PUBLIC NOTICE OF THE PETITION

On January 26, 2018, EBMUD provided public notice of the petition for temporary change to downstream water right holders by first class mail. On the same date, the State Water Board provided notice via the Board's electronic notification service to the Water Rights Transfers electronic subscription mailing list. Public notice of the petition was also published in the following newspapers: the Oakland Tribune, the Contra Costa Times, the Amador Ledger Dispatch, and the Lodi News-Sentinel.

6.0 COMMENTS ON THE PETITION

Comments on the petitions were received from: 1) Mr. Richard Morat; 2) the Department of Water Resources (DWR); and 3) the U.S. Bureau of Reclamation (Reclamation). A summary of the comments and EBMUD's and the State Water Board's responses follows.

6.1 Richard Morat

Comments:

By letter dated February 5, 2018, Mr. Morat filed a comment letter regarding EBMUD's proposed transfer. Following is a summary of his comments:

1. Mr. Morat indicated that he believes the project has merit, but that EBMUD should only be able to transfer water in a normal or above-normal water year.
2. Mr. Morat indicated that EBMUD's required minimum flows to the Mokelumne River and the estuary were intended to be infrequent minimums not satisfactory to long term maintenance of the fishery in good condition.
3. Mr. Morat requested that if the transfer is approved and a dry water year develops, a refill agreement should be a condition of the permit and EBMUD should not be allowed to refill the transferred water until the watershed, riverine, and estuarine conditions restore to good conditions as described in Fish and Game code section 5937¹.

EBMUD Response:

EBMUD responded to Mr. Morat's comments by letter dated March 16, 2016. A summary of EBMUD's responses is below:

1. EBMUD indicated that the transfer will only occur when EBMUD has surplus water available under Permit 10478, and that based on above-normal runoff on the Mokelumne River for 2017, and current EBMUD carryover storage conditions and water supply needs, there may be surplus

¹ Fish and Game Code section 5937 provides in pertinent part:

The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

water available for transfer to the DREAM project. However, EBMUD further indicated that if 2018 turns out to be a dry year, it is expected that there will be no surplus water available for transfer.

2. EBMUD's releases from Camanche Reservoir are made pursuant to the requirements of the Joint Settlement Agreement (JSA) and senior water rights; therefore, flow requirements protective of downstream fisheries will continue to be met and will not be modified based on the proposed transfer. EBMUD indicated that since implementation of the JSA, the average return of salmon to the Mokelumne River has more than doubled and that steelhead trout returns in 2016 and 2017 were at record levels.
3. EBMUD has entered into a refill agreement with DWR and Reclamation.

Mr. Morat's response to EBMUD:

Mr. Morat responded to EBMUD's response via email dated March 16, 2018. Mr. Morat indicated that his original concerns regarding the transfer remained essentially unchanged. Mr. Morat claimed the following:

1. EBMUD's definition of surplus water was not specified relative to a specific beneficial use.
2. Mr. Morat indicated that EBMUD's required flow releases pursuant to the JSA may not be a good thing if the JSA flows are "meaningless/unprotective standards." He appears to believe that further environmental analysis comparing hydrological data to the impacts of the project is necessary and that the JSA standards are not adequately protective of fisheries. He also agreed that the Mokelumne River is currently having good returns of anadromous fish, but he indicated that the river also receives strong fish hatchery support which is not indicative of the quality of estuarine habitat for native fish and wild native salmonids.
3. Mr. Morat indicated that the refill agreement with DWR and Reclamation does not represent a refill agreement that addresses beneficial uses other than those that are beneficial to water right holders.

State Water Board Response:

Following is the State Water Board response to Mr. Morat's comments.

1. Runoff from the Mokelumne River for water year 2017 was determined to be above normal, and EBMUD proposes to transfer water this year if both 2018 is projected to be a normal or above normal water year and if there is surplus stored water available. When EBMUD determines whether surplus stored water is available, they must factor in necessary JSA releases that are protective of fishery flows as well as releases for downstream senior rights. EBMUD determines water year types based on criteria included in the JSA which are also included in Permit 10478.
2. The State Water Board has previously found the JSA flows to be protective of downstream fisheries in the Mokelumne River and Sacramento-San Joaquin Bay Delta. In 1996, EBMUD entered into the JSA with U.S. Fish and Wildlife Service and the Department of Fish and Game to establish Federal Energy Regulatory Commission license conditions for the lower Mokelumne River Hydroelectric Project that would protect fish and wildlife resources in the Mokelumne River system. Subsequently, the State Water Board found in Water Right Decision 1641 (D-1641) that EBMUD's responsibility to help meet the 1995 Bay-Delta Plan flow dependent objectives were consistent with the provisions of the JSA.
3. In D-1641, along with the State Water Board approving the schedule of flows pursuant to the JSA as the limit of the responsibility of EBMUD to meet the objectives 1995 Bay-Delta Plan, the Board also found Reclamation responsible for meeting requirements under the federal Endangered

Species Act for flows, export limits, and salinity in the Bay-Delta, jointly with DWR. Therefore, DWR and Reclamation executed a refill agreement with EBMUD to ensure protection of both State Water Project (SWP) and Central Valley Project (CVP) water rights and DWR and Reclamation's operations relative to meeting their responsibilities for fishery and environmental flows in the Bay-Delta.

6.2 DWR and Reclamation

Comment:

On February 26, 2018, both DWR and Reclamation submitted comment letters regarding EBMUD's proposed transfer. The comments were substantially the same; therefore, the State Water Board will address them together. DWR and Reclamation are concerned that EBMUD's refill of the stored water subject to the transfer occur in a manner which will not adversely affect the water rights or operations of DWR's SWP and Reclamation's CVP, specifically when the SWP and/or CVP is being operated to meet water quality objectives in the Sacramento-San Joaquin Bay-Delta. Both DWR and Reclamation have requested that the State Water Board condition approval of the proposed transfer with a refill agreement acceptable to DWR and Reclamation.

State Water Board Response:

A refill agreement between EBMUD, DWR, and Reclamation was approved dated March 8, 2018. The Order approving the proposed transfer will include a term requiring compliance with the refill agreement.

7.0 STATE WATER BOARD FINDINGS

7.1 Availability of Water for Transfer

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

In the change petition, EBMUD states that the water that is the subject of the petition is previously stored water or water that would have otherwise been held in storage at Camanche Reservoir absent the proposed transfer. As of March 21, 2018, there is currently 308,983 af of water stored in Camanche Reservoir which is 74 percent of its capacity of 417,120 af. EBMUD indicates that it will continue the same surface water deliveries to its existing customers with or without the proposed temporary water transfer. EBMUD also indicated that absent the proposed temporary transfer, EBMUD would retain the entire quantity proposed for transfer in storage pursuant to Permit 10478, and the water demands within the proposed place of use within NSJWCD would be met by pumping groundwater.

The IS/MND for the DREAM project indicated that EBMUD estimates a ten percent conveyance loss in the Mokelumne River for water released from Camanche Reservoir for transfer. Therefore, this Order will limit the water released from transfer to 1,000 af and limit the amount of water that can then be rediverted at NSJWCD's South Pump Station for irrigation use to 90 percent of the water released for transfer, with a maximum of 900 af available for rediversion.

The State Water Board conducted an independent evaluation of its records. Beneficial use under Permit 10478 ranged from zero (0) in 2015 due to significant water shortages in the EBMUD service area during

the drought², to 4,774 af in 2016 following a diversion season that allowed EBMUD to divert over 210,000 af to storage. These data indicate that the EBMUD has put the amount proposed to be transferred to recent beneficial use and could have, absent the proposed changes, provided stored water from Camanche and Pardee Reservoirs to customers within EBMUD's service area for municipal purposes or would have retained the volume of water in storage pursuant to Permit 10478. The State Water Board finds that, in accordance with Water Code section 1726, subdivision (e), the water proposed for transfer pursuant to this order would be consumptively used or stored in the absence of the proposed temporary change.

Moreover, with its petition, EBMUD does not request any changes in the quantity of water allowed to be used under Permit 10478; instead they only request changes in the place and purpose of use upon release from storage. Thus, the State Water Board finds that, in accordance with Water Code section 1707, subdivision (b)(1), the proposed change will not increase the amount of water that EBMUD is entitled to use.

7.2 No Injury To Other Legal Users Of Water

Before approving a temporary change involving the transfer of water, the State Water Board must find that a preponderance of the evidence shows that the proposed temporary change would not injure any legal user of water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) Water Code section 1707, subdivision (b)(2) also requires the State Water Board to determine that a change proposed for purposes of instream flow dedication will not unreasonably affect any legal user of water before approving the change.

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

EBMUD is allowed to divert and store water at Pardee and Camanche Reservoirs under Permit 10478. The water subject to the proposed temporary changes will be stored in Camanche Reservoir under the terms and conditions of Permit 10478 and in accordance with its water right priority. The proposed temporary changes only involve the place and purpose of use of water released from storage. This water was diverted to storage after senior rights and fishery flow requirements as set forth in D-1641 and the JSA were met. Senior rights generally cannot be injured by changes in release of stored water once that water has been lawfully diverted. Previously stored water is only available for use by EBMUD and is not available for other users downstream. There is not information in the record to indicate that any change in return flows resulting from the proposed temporary changes would injure any lawful user of water.

As discussed above in Section 6.2, to avoid potential injury to DWR's and Reclamation's water rights and to avoid impacting operations of the SWP and CVP when refilling the transferred water, EBMUD has entered into a refill agreement with DWR and Reclamation. The refill agreement will ensure that EBMUD's refill of the transferred water will not occur at a time when the DWR and Reclamation are required to release water under their water rights to meet certain flow or water quality requirements in the Sacramento and San Joaquin rivers and the Sacramento-San Joaquin Bay Delta.

Based on the information in the record and based on the public comments and EBMUD's response to comments received on the proposed temporary change, EBMUD has met its burden of establishing that the proposed change will not injure any legal user of water. (Wat. Code, § 1727, subd. (b)(1), (c).)

² EBMUD did not directly divert or divert to storage under Permit 10478 from December 2014 to July 2015 due to insufficient runoff in the watershed.

The State Water Board finds that, in accordance with Water Code section 1727, subdivision (b)(1) and Water Code section 1707, subdivision (b)(2), the proposed temporary changes would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

7.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses

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

EBMUD states that the releases of up to 2 cfs due to the transfer of water from Camanche Reservoir will result in increased flows and water quality benefits downstream in the Mokelumne River to NSJWCD's South Pumping Station. Because EBMUD does not request any changes regarding diversion to storage under their permit, there will be no impacts to bypass flows or changes to other requirements governing diversions to storage.

Also, EBMUD will also continue to comply with all requirements of the JSA regarding fishery flow requirements in the Mokelumne River during the period of transfer as well as during the refill of stored water in the amount of water transferred pursuant to the temporary changes. Further, EBMUD will refill the transferred water pursuant to a refill agreement with DWR and Reclamation. The refill agreement will ensure that the quantity of water that was transferred will be refilled to storage by EBMUD only when the diversion will not impact DWR's or Reclamation's operations in meeting water quality objectives in the Sacramento-San Joaquin Bay Delta.

California Department of Fish and Wildlife received public notice of the proposed transfer and did not comment on the project.

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

8.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2012-0029 and the Deputy Director for Water Rights redelegation of authority dated October 19, 2017.

9.0 CONCLUSIONS

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

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

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary changes will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the board determines is likely to

occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water, or return flows.

3. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The proposed temporary changes will not increase the amount of water EBMUD is entitled to use.
5. The proposed temporary changes will otherwise meet the requirements of Division 2 of the Water Code.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT EBMUD's petition for temporary transfer and dedication of water for instream purposes of 1,000 acre-feet pursuant to Water Code sections 1707 and 1725 et seq. are approved for a period of one year, which will commence on the date of final approval, as defined below.

All existing terms and conditions of Permit 10478 will remain in effect, except as temporarily amended by the following provisions:

1. The temporary changes are limited to a one-year period commencing on the date of approval of this Order.
2. The following point of redirection at NSJWCD's South Pump shall be added to Permit 10478, located as follows:

North 2,243,275 feet and East 6,364,793 feet, being within NW¼ of SW¼ of Section 35, T4N, R7E, MDB&M, as shown on the map dated January 11, 2018, accompanying the petition.
3. The place of use and purpose of use under Permit 10478 will temporarily include irrigation use within 350 acres of established irrigated crop land within NSJWCD's place of use boundary of approximately 2,183 acres located generally within Sections 20, 21, 22, 27, 28, 29, 32, and 33, T3N, R7E, MDB&M, as shown on the map dated January 11, 2018, accompanying the petition.
4. The place of use and purpose of use under Permit 10478 will temporarily include fish and wildlife preservation and enhancement along the reach on the Mokelumne River between Camanche Reservoir to the NSJWCD South Pumping Station, within the following boundaries: 1) Upstream Limit - Camanche Dam located North 2,268,941 feet and East 6,411,485 feet, being within SE¼ of SE¼ of Projected Section 6, T4N, R9E, MDB&M; and 2) Downstream Limit - NSJWCD's South Pump Station located North 2,243,275 feet and East 6,364,793 feet, being within NW¼ of SW¼ of Section 35, T4N, R7E, MDB&M, as shown on the January 11, 2018, map accompanying the petition.
5. Water transferred pursuant to this Order shall be limited to a maximum of 1,000 af to be released from storage from Camanche Reservoir. Transferred water that can be redirected at the NSJWCD South Pumping Station for irrigation purposes is limited to 90 percent of the total quantity of water released from storage for the transfer, up to a maximum of 900 af. Water shall not be provided to NSJWCD by direct diversion.
6. Refill of stored water transferred under this Order shall occur pursuant to the Refill Agreement dated March 8, 2018, signed by EBMUD, DWR, and Reclamation. The refill criteria shall govern the conditions under which refill of the water released pursuant to this Order occurs, including the transfer conditions under which refill impacts may accrue and how EBMUD shall rectify any impacts. At the conclusion of refilling water in Camanche Reservoir for the water released pursuant to this Order, if a refill impact has occurred, EBMUD shall release the amount of water identified in the refill criteria to

DWR and Reclamation in a manner and on a schedule agreed to between EBMUD, DWR, and Reclamation. Any release required pursuant to this paragraph shall be conducted in a manner that does not injure any legal user of water and does not unreasonably affect fish, wildlife, or other instream beneficial uses.

7. Within 90 days of completion of the transfer period, EBMUD shall provide a report to the Deputy Director for Water Rights describing the transfer authorized by this Order. The report shall include the following information:
 - a. The daily, monthly, and total volumes of water transferred for instream flow dedication from Camanche Reservoir pursuant to this Order.
 - b. The quantity of transferred water used for irrigation and identification of specific place(s) of use and crops irrigated with the transferred water within NSJWCD's service area as described in Condition 3 of this Order.
 - c. Documentation that the water transferred did not result in an increase in water diverted to storage in Camanche Reservoir from the Mokelumne River pursuant to EBMUD's Permit 10478 beyond the quantities that would otherwise have been diverted absent the transfer.
 - d. Documentation of compliance with all other conditions of this order.
8. No water shall be diverted or used pursuant to this Order, and no construction related to such diversion shall commence, unless petitioner has obtained and is in compliance with all necessary permits or other approvals required by other agencies.
9. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change Order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with the law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.
10. This Order does not authorize any act that results in the taking of an endangered, threatened, or candidate species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C.A. § 1531 et seq.). If a "take" will result from any act authorized under this transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. EBMUD shall be responsible for meeting all requirements of the applicable Endangered Species Acts for the temporary change authorized under this Order.
11. 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: MAR 23 2018