

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 2184 (APPLICATION 1692)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 850 ACRE-FEET OF WATER
FROM EL DORADO IRRIGATION DISTRICT
TO STATE WATER PROJECT AND
CENTRAL VALLEY PROJECT CONTRACTOR AGENCIES**

SOURCE: North Fork Weber Creek

COUNTY: El Dorado

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 1, 2020, the El Dorado Irrigation District (EID or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under California Water Code section 1725, et seq. EID has requested to transfer up to 850 acre-feet (AF) of water to the participating State Water Project (SWP) Contractor Agencies south of the Delta, hereinafter collectively referred to as SWP Contractor Agencies, and Central Valley Project (CVP) Contractor Agencies south of the Delta, hereafter collectively referred to as CVP Contractor Agencies. Per correspondence with EID, it was confirmed that the Buyers will specifically be the CVP Contractor Agency Westlands Water District, and the SWP Contractor Agencies Dudley Ridge Water District, County of Kings, Tulare Lake Basin Water Storage District, Alameda County Water District, Kern County Water Agency, Palmdale Water District, and Santa Clarita Valley Water Agency. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from date of approval.

1.1 Description of the Transfer

The transfer water would be made available by re-operating Weber Reservoir to release water that would have remained in storage in 2020. The transfer water would be released from Weber Reservoir into Weber Creek, thence the South Fork American

River, thence Folsom Reservoir and the Lower American River for delivery to the SWP and CVP Contractor Agencies. To compensate for the reduced supply in Weber Reservoir, a refill agreement will be completed between EID, the California Department of Water Resources (DWR), and the U.S. Bureau of Reclamation (Reclamation).

The Weber Reservoir water transfer would be up to 850 AF during June through November, and storage release rates would generally be consistent with historical flow patterns and operations. The maximum flow from Weber Reservoir over the proposed transfer period (June to November) over the past ten years was 15 cfs with an average monthly flow of about 2.8 cfs during that time period.

1.2 Reservoir Reoperation

Refill of the reservoir storage space vacated by the transfer results in an increase in diversions by the Petitioner during the refill period. All transfers involving the release of reservoir storage must show that the reservoir storage released for the transfer is not refilled during the transfer period and is only refilled during periods when other downstream right holders will not be injured by the increased diversions. This transfer is subject to a condition requiring a reservoir refill agreement between Petitioner, DWR, and Reclamation.

2.0 BACKGROUND

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

1. Fish and Wildlife Preservation and Enhancement and Fire Protection uses at Weber Reservoir within SW¼ of Section 35, T1S, R3E, MDB&M, and Fish and Wildlife Preservation and Enhancement and Recreation uses within North Fork Weber Creek, Weber Creek and South Fork American River from Weber Reservoir Dam to Folsom Reservoir.
2. Municipal, Industrial, Irrigation, and Fire Protection uses within the boundaries of EID comprising 30,702 acres as shown on map dated April 8, 1927 filed with the State Water Board and El Dorado Hills area as shown on map dated January 26, 2006, filed with the State Water Board.

The SWP and CVP Contractor Agencies would use the transfer water predominantly for irrigation in their service areas so no change in purpose of use is proposed.

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

A portion of the SWP and CVP service areas are proposed to be added to EID's License 2184.

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

1. Harvey O. Banks Pumping Plant (Banks Pumping Plant) located at California Coordinate System, Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet being within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M. This proposed point of rediversion is identified on maps filed with the Division under Application 5630, and shown in Attachment B submitted with the petition.
2. CW "Bill" Jones Pumping Plant (Jones Pumping Plant) located at California Coordinate System, Zone 3, NAD 83, North 2,121,505 feet and East 6,255,368 feet being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M. This proposed point of rediversion is identified on CVP Authorized Place of Use Map 214-202-84 filed with the Division and shown in Attachment B submitted with the petition.
3. San Luis Reservoir located at California Coordinate System, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet being within the SE $\frac{1}{4}$ of projected Section 7, T10S, R9E, MDB&M. The proposed point of temporary storage and rediversion is identified on maps filed with the Division under Application 5630 and Map 214-202-84 for the use of San Luis Reservoir, and shown in Attachment B submitted with the petition.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On April 6, 2020, 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 April 6, 2020, the Petitioner noticed the project via publication in the Mountain Democrat newspaper and mailed the notice via first class mail to interested parties. Comments were timely received from California Department of Fish and Wildlife (CDFW), Reclamation, DWR, and Mr. Richard Morat.

3.1 Comments of CDFW

By letter dated April 17, 2020, CDFW commented on the proposed transfer. CDFW expressed concern over the potential direct and cumulative adverse impacts from changes in the quantity, timing, and duration of water transfers on the sensitive anadromous and/or resident fisheries within the Lower American River (LAR).

CDFW recommends close coordination with Reclamation and regulatory agencies in scheduling the releases of transfer water from Folsom to maximize cold-water pool gains associated with a water transfer. They also recommend optimizing releases to provide stable flows across summer and fall months at a targeted release rate that minimizes warming in Lake Natoma.

State Water Board Response:

CDFW's concerns expressed in its comments were previously addressed by EID in the Initial Study/Negative Declaration (IS/ND) for the 2020 EID Temporary Water Transfer, dated March 2020. In the IS/ND, page 3-19, EID indicated that given the volume of the proposed transfer, the transfer should not have a substantial influence on conditions in Folsom Reservoir or the LAR. Average annual inflow into Folsom Reservoir is about 2.7 million AF. The total transfer amount of the proposed project is up to 8,000 AF¹, which represents approximately 0.3% of annual inflow and 0.82% of maximum capacity of Folsom Reservoir. As also stated in the IS/ND, page 3-19, prepared by EID and noticed to CDFW, "Transfer water is not anticipated to influence the temperature of the water entering Folsom Reservoir given the small volume of water being transferred as compared to total South Fork American River inflow." EID also indicated that the water transfer would not be expected to have a direct impact on the cold-water pool within the reservoir, regardless of when water is transferred into Folsom Reservoir.

Consistent with CDFW's recommendation, EID will coordinate with Reclamation and regulatory agencies on the release timing of transfer water out of Folsom Reservoir and Lake Natoma. Releases would be made consistent with all applicable regulations for flow and temperature within the LAR to protect instream resources.

¹ The temporary transfer considered by the Division is limited to the proposed transfer of up to 850 AF from Weber Reservoir. However, for purposes of the IS/ND, EID addressed the total potential transfer volume, of up to 8,000 AF, which includes pre-1914 water rights that are not subject to a temporary change petition.

3.2 Comments of Reclamation

By letter dated April 13, 2020, Reclamation commented on EID's proposed water transfer. To protect Reclamation's water rights and operations for the American River, Reclamation requested that the transfer be conditioned as follows:

- Petitioner proposes to use Jones Pumping Plant and San Luis Reservoir as Points of Rediversion for water delivered to CVP Contractors south of Delta. One or more contracts between Reclamation and EID pursuant to 43 U.S.C. section 523 (commonly known as the Warren Act) are needed for Reclamation to convey the water being transferred by EID.
- The transfer is contingent upon refill agreement being signed and adopted between Reclamation and Petitioner. Any Order approving the transfer shall include a term requiring the transfer be conducted consistent with that refill agreement.
- Petitioner needs to coordinate with Reclamation on the Folsom operations schedule as part of on-going real-time operations for the Central Valley Project. No water can be transferred unless Reclamation concurs that the transfer will not result in increased risks of negative impacts to the cold-water pool at Folsom Reservoir resulting from incoming transfer water.
- The proposed water transfer shall be carried out in compliance with all existing regulatory constraints in the Delta and shall cause no harm to other legal water users or impact on water quality.

State Water Board Response:

As stated in Attachment A of the petition, EID makes discretionary releases from Weber Reservoir to provide non-federal supplies for its own use through a Warren Act Contract at Folsom Reservoir. For the transfer, EID would re-operate Weber Reservoir and draw it down under a schedule coordinated with the Buyers, Reclamation, and DWR, and deliver this water to the Buyers.

In order to avoid injury to Reclamation's water rights, the transfer is conditioned that EID is subject to a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Weber Reservoir created by the transfer will not reduce the amount of water that Reclamation, or other water users could otherwise divert under their water rights. The transfer is conditioned to ensure compliance with existing regulatory requirements in the Sacramento-San Joaquin Delta per State Water Board Revised Water Right Decision 1641 (D-1641). The transfer is also conditioned that EID will coordinate with Reclamation on the Folsom operations schedule as part of ongoing

real-time operations for the CVP to ensure that the transfer will not result in increased risks of negative impacts to the cold-water pool in Folsom Reservoir.

3.3 Comments of DWR

By letter dated May 4, 2020, DWR commented on the proposed transfer. To protect DWR's water rights and operations for the American River, DWR requested that the transfer be conditioned as follows:

- DWR requests that the proposed water transfer be performed in compliance with the existing regulatory requirements in the Delta.
- DWR requests that any Order approving EID's temporary change contain a term requiring a signed and executed refill agreement with DWR. The refill agreement shall include conditions, criteria, and procedures to account and mitigate for injuries to SWP operations from future EID refill following the release of the transfer water. Refill should not occur if the Sacramento-San Joaquin Delta is in balanced or restricted conditions.
- To improve coordination and ensure DWR has the latest information, DWR requests that EID provide a copy of all the reports pursuant to State Water Resources Control Board Order. To minimize and mitigate for refill impacts, promptly, DWR also requests EID to provide us with monthly refill accounting reports after the transfer is complete.

State Water Board Response:

In order to avoid injury to DWR's water rights, the transfer is conditioned that EID is subject to a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Weber Reservoir created by the transfer will not reduce the amount of water that DWR, or other water users could otherwise divert under their water rights. The transfer is also conditioned to ensure compliance with existing regulatory requirements in the Sacramento-San Joaquin Delta per D-1641.

3.4 Comments of Mr. Richard Morat

By letter dated April 22, 2020, 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. Mr. Morat also commented that the transfer should be conditioned for only essential uses in 2020, and that transfer of water that otherwise would have remained in storage be conditioned "such that conservation storage replenishment of the transferred amount be timed and amounts allowed to be

conserved scoped to the affected river's and the estuary's capacity to reasonably forego those flows."

State Water Board Response:

The State Water Board is responsible for considering 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 D-1641 and applicable Biological Opinions (BOs), which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer.

The State Water Board is supportive of transfers to provide water where it is needed. It is anticipated that SWP and CVP Contractor Agencies involved in this transfer will only receive 20 percent of their SWP and CVP allocations this year. The temporary change petition seeks to add points of diversion and places of use through November 2020.

The proposed temporary transfer by EID is for water that would have otherwise been diverted and stored pursuant to their license. By approving the transfer, additional water will flow down the American River to the Sacramento River and the Delta. Furthermore, requirement of a refill agreement is included as a term in this Order. In light of the above, it is not anticipated that this transfer will result in unreasonable effect on fish and wildlife, other instream beneficial uses, or other public trust resources.

4.0 POTENTIAL CURTAILMENT

During any Notice of Water Unavailability (curtailment) period in 2020 that includes EID's license, EID will be required to cease all collection to storage per its license. A condition is therefore included in this Order that 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 License 2184, only water collected to storage prior to issuance of the notification may be transferred.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

EID filed a petition for temporary transfer of water pursuant to California Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for the 850 AF temporary transfer by storage release from Weber Reservoir under License 2184. As discussed,

the temporary transfer under Water Code section 1725 from Weber Reservoir is exempt from CEQA. There is an additional transfer proposed under EID's pre-1914 water rights in the amount of up to 8,000 AF. The State Water Board does not have transfer approval authority over pre-1914 water rights. EID submitted a Notice of Public Hearing for the temporary transfer of up to 8,000 AF with a comment period on the IS/ND from March 16, 2020 to April 15, 2020. EID held a public hearing to consider the IS/ND on April 27, 2020. EID filed a Notice of Determination for the 8,000 AF temporary transfer project on April 27, 2020.

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

6.0 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 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, 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).

7.0 REQUIRED FINDINGS OF FACT

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

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

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

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

7.2 No Injury to Other Legal Users of the Water

Before approving a temporary change to allow a transfer or exchange of water, the State Water Board must find that the transfer would not injure any legal user of the

water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).)

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

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

EID will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Weber Reservoir created by the transfer will not reduce the amount of water that DWR, 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.

7.3 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).)

In accordance with California Code of Regulations Section 794 (c), EID provided the North Central Region of the CDFW and the applicable Regional Water Quality Control Board (Regional Board) with a copy of the petition. CDFW provided comments regarding concerns of increase in instream flows and water temperatures during July through September that could negatively impact rearing steelhead, which is discussed in Section 3.1 of this Order. The Regional Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

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 BOs issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the federal Endangered Species Act and relevant court orders.

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.

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.

9.0 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 transfer of up to 850 AF of water under License 2184 is approved.

All existing terms and conditions of License 2184 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing June 1, 2020 through November 30, 2020.
2. The points of diversion under EID's License 2184 are temporarily amended to add points of rediversion:

Harvey O. Banks Pumping Plant (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 NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E,
MDB&M.

CW "Bill" Jones Pumping Plant (Jones Pumping Plant) located as follows;
California Coordinate System, Zone 3, NAD 83, North 2,121,505 feet, East
6,255,368 feet, being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29,
T1S, R4E, MDB&M.

San Luis Reservoir located as follows:
California Coordinate System, Zone 3, NAD 83,
North 2,114,287 feet and East 6,248,011 feet
being within the SE $\frac{1}{4}$ of projected Section 7, T10S, R9E, MDB&M.

3. The authorized place of use under License 2184 is temporarily expanded to include the service areas of Dudley Ridge Water District, County of Kings, Tulare Lake Basin Water Storage District, Alameda County Water District, Kern County Water Agency, Palmdale Water District, and Santa Clarita Valley Water Agency, which are within a portion of the service area of the SWP (as shown on Maps 1878 – 1, 2, and 3 filed with the Division under Application 5630) and shown in Attachment B of the petition. The authorized place of use under License 2184 is also temporarily expanded to include the service area of Westlands Water District, which is within a portion of the service area of the CVP (as shown on Map 214-202-84) filed with the Division and shown in Attachment B of the petition.

4. Diversion of water at 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 of 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 as prerequisites for the use of the Banks Pumping Plant by DWR and the Jones Pumping Plant by Reclamation. Rediversion of water at the Banks Pumping Plant and the Jones Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable BOs, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

Rediversion of water at the Banks Pumping Plant and the Jones 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.

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 into by the Petitioner.
6. No water can be transferred under this Order unless Reclamation concurs that the transfer will not result in increased risks of negative impacts to the cold-water pool at Folsom resulting from incoming transfer water. Such approval may be given on a weekly basis or other time-step acceptable to Reclamation and the Petitioner. Petitioner shall provide documentation to the Deputy Director for Water Rights of any Reclamation approvals issued after the date of issuance of this Order. Petitioner shall coordinate with Reclamation on the Folsom operations schedule as part of ongoing real-time operations for the CVP.
7. Water may not be transferred from the Banks Pumping Plant, Jones Pumping Plant, or San Luis Reservoir until EID has implemented a Refill Agreement between DWR, Reclamation, and EID to address potential refill concerns in Weber Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation and EID 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. EID 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. 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 License 2184, only water collected to storage prior to issuance of the notification may be transferred.
9. EID 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 Weber Reservoir as a result of this transfer (reported on a daily basis);
 - b. The daily average rate of water diverted and daily volume of water diverted at the points of diversion at the Banks Pumping Plant, Jones Pumping Plant, and San Luis Reservoir pursuant to this Order; and
 - c. Recognizing that reservoir refill will occur after the transfer ends; monthly reporting of reservoir refill is not required during the transfer period. However, EID shall provide annual reporting by 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 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 EID in time for inclusion in a monthly or annual report, EID shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

10. 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.

11. 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 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 licensee shall obtain authorization for an incidental take prior to commencing transfer of water. Licensee shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
12. 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: JUN 01 2020