

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

**DIVISION OF WATER RIGHTS**

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In the Matter of Specified License and Permits of

**THE STATE WATER PROJECT AND  
THE CENTRAL VALLEY PROJECT**

**ORDER APPROVING A PETITION FOR TEMPORARY CHANGE IN THE PLACE OF  
USE OF LICENSE AND PERMITS OF THE CALIFORNIA DEPARTMENT OF WATER  
RESOURCES AND UNITED STATES BUREAU OF RECLAMATION**

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SOURCE: Sacramento – San Joaquin Delta

COUNTIES: Fresno, Kern, Kings, Los Angeles, Merced, Orange, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, and Ventura

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 INTRODUCTION**

On July 27, 2021, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) (hereinafter jointly referred to as Petitioners) 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 (Petition). With the Petition, DWR requests a one-year modification of Permit 16479 and Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 to temporarily change the authorized place of use of: (1) the DWR permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones); and (2) the Reclamation license and permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks). The Petitioners use the term “downstream” to identify that portion of the SWP and CVP that is served by water diverted from Jones and Banks. These areas are served via a system of canals and holding reservoirs that is within the Petitioners’ control. These areas are not within the downstream water supply as defined in Water Code section 1725.

On July 15, 2020, the State Water Board issued an order approving petitions filed by the same Petitioners to exchange up to 400,675 acre-feet (af) of water, referred to as the 2020 CPOU Order. The 2020 CPOU Order was in effect from July 15, 2020 to July 15, 2021 and allowed the Petitioners to request additional exchanges that met certain criteria specified in the order. On July 8, 2021, the State Water Board approved an additional exchange of up to 50,000 af per the 2020 CPOU Order, where the exchange involved transferring DWR water stored in San Luis Reservoir to Reclamation ownership in San Luis Reservoir to meet to meet San Joaquin River Exchange Contractors (Exchange Contractors) and CVP demand.

On July 14, the State Water Board issued an order filed by the same Petitioners to exchange up to 431,780 af of water amongst various SWP and CVP contractors, referred to as the 2021 CPOU Order. The 2021 CPOU Order is in effect from July 16, 2021 to July 15, 2022. On August 5, 2021, the State Water Board approved an additional exchange pursuant to the 2021 CPOU Order authorizing transfer of up to 50,000 af of CVP water stored at Millerton Lake to Metropolitan Water District (MWD). In exchange, SWP water (a portion of MWD's Table A allocation) stored in San Luis Reservoir was transferred to Reclamation for use in the CVP place of use to satisfy Exchange Contractors demand.

The petitions subject to this order request an additional exchange of up to 200,000 af beyond the total exchange volume approved by the 2021 CPOU Order. The exchange quantity requested by the Petition is up to 200,000 af consisting of 1) up to 150,000 af to be transferred from DWR to Reclamation at San Luis Reservoir and then returned by Reclamation to DWR at San Luis Reservoir once CVP operations allow delivery of CVP water to storage at San Luis Reservoir, and up to 50,000 af to be transferred from Reclamation to DWR to return water transferred from DWR to Reclamation under the July 8, 2021 supplemental approval per the 2020 CPOU Order. With issuance of this order, referred to as the 2021 San Luis Order, the total exchange amount authorized from the date of this Order through July 15, 2022 will be 631,780 af.

## **2.0 SUBSTANCE OF TEMPORARY CHANGE PETITION**

### **2.1 Existing Place of Use of Petitioners Water Rights**

The service area of the SWP is shown on maps 1878-1, 1878-2, 1878-3, and 1878-4 (on file under Application 5629) and the service area of the CVP is shown on map 214-208-12581 (on file under Application 5626).

### **2.2 Place of Use under the Proposed Temporary Change Petition**

In order to consolidate the SWP and CVP authorized places of use, the Petitioners have requested:

1. The temporary addition of the CVP service area downstream of Jones to the place of use under DWR's Permit 16479; and
2. The temporary addition of the SWP service area downstream of Banks to Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364. These temporary additions would be for the purpose of completing the exchanges described below and would be effective for one year following the date the Petition is approved. The areas to be added to the SWP and CVP are shown on the 2021 Drought CPOU Reclamation and DWR Petition map, dated June 30, 2021, submitted with the Petition.

### **2.3 Proposed Exchange**

The changes requested will temporarily consolidate the SWP's and CVP's (hereinafter jointly referred to as the Projects) respective authorized places of use for the license and permits that are the subject of the Petition. Petitioners indicate that the changes will more effectively and efficiently utilize the operational flexibility of the combined Projects to supply water south of Banks and Jones (collectively, the Delta Pumps). The Petitioners state that the requested changes will facilitate the delivery of available Project supplies that already have been exported south of the Sacramento-San Joaquin Delta (Delta) and will maximize the beneficial use of available supplies. The Petitioners indicate approval of the petition will not increase the quantity or alter the timing of diversions from the Delta or San Joaquin River.

Petitioners indicated they have taken recent actions to manage limited water resources while meeting operational requirements and protecting environmental resources. The continued extreme drought conditions have necessitated the need to further expand exchange of stored water in San Luis Reservoir (San Luis) among the CVP and SWP places of use as part of the overall approach to meet peak demands. These peak demands include water right settlements with Exchange Contractors and wildlife refuge and municipal and industrial demands within the CVP place of use. The CVP currently has insufficient storage in San Luis to meet these demands. Reclamation will receive a transfer from DWR water stored in San Luis in order to continue deliveries to satisfy Exchange Contractor demand in lieu of delivering water to the Exchange Contractors from Millerton Lake. In accordance with the San Luis Supplemental Agreement, dated January 12, 1972, Reclamation and DWR may exchange water and power.

As described in the Petition, CVP demand is primarily driven by irrigation and the SWP demand is a mix of municipal, irrigation, and industrial, and DWR has the flexibility to provide up to 150,000 af of water from the San Luis Reservoir to the CVP this summer and fall. Reclamation will return a like amount of water to San Luis for DWR to use within the SWP place of use at a later time based on mutually agreeable terms.

The temporary changes would become effective immediately, and would remain in effect for one year from the date of approval. The total exchange quantity consists of

the exchanges detailed below. The SWP and CVP license and permits subject to the proposed changes are listed in the tables below.

**Table 1 SWP Water Rights Subject to Temporary Change**

<b>Application Number</b>	<b>Permit (P) Number</b>	<b>Description</b>
14443	P16479	Oroville Project

**Table 2 CVP Water Rights Subject to Temporary Change**

<b>Application Number</b>	<b>License (L) or Permit (P) Number</b>	<b>Description</b>
23	L1986	Friant Project
234	P11885	Friant Project
1465	P11886	Friant Project
5626	P12721	Shasta Project
5628	P11967	Trinity Project
5638	P11887	Friant Project
9363	P12722	Shasta Project
9364	P12723	Shasta Project
9368	P12727	Jones Pumping Plant
13370	P11315	Folsom Project
13371	P11316	Folsom Project
15374	P11968	Trinity Project
15375	P11969	Trinity Project
15764	P12860	San Luis Reservoir
16767	P11971	Trinity Project
17374	P11973	Trinity Project
17376	P12364	Whiskeytown Lake

All exchanges covered by this Petition will occur south of the Delta and the total amount of water exchanged will not exceed 200,000 af, consisting of up to 150,000 af for various San Luis Reservoir exchanges and up to 50,000 af transferred from Reclamation to DWR in return for a transfer from DWR to Reclamation under the July 8, 2021 supplemental approval per the 2020 CPOU Order.

The Petitioners indicate that the water proposed to be exchanged would be consumptively used with or without the approval of the Petition. The SWP water would have been stored in July and delivered to SWP contractors in fall and the CVP water would have been stored to meet CVP contractors 2022 demand.

### **3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

Pursuant to Water Code section 1725, Petitioners have applied for temporary changes involving an exchange of water. The State Water Board shall approve temporary changes involving the exchange of water under Water Code section 1725 et seq. if it determines that a preponderance of the evidence shows both of the following:

1. The proposed 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 changes, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
2. The proposed changes would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b).)

In addition, the proposed changes must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary changes. (*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 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 § 1727, subdivision (b)(2). 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.)

### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Petitioners filed the Petition for a temporary change under Water Code section 1725 et seq. Water Code Section 1729 exempts temporary changes involving a transfer or exchange of water from the requirements of CEQA (Pub. Resources Code, § 21000 et seq.). The State Water Board will file a Notice of Exemption.

## 5.0 PUBLIC NOTICE AND COMMENTS

The 30-day comment period per Water Code section 1726, subdivision (f) was reduced to 15 days per the Governor's Proclamation of a State of Emergency in the Klamath River, Sacramento–San Joaquin Delta, and Tulare Lake Watershed Counties due to drought (Drought Proclamation) dated May 10, 2021. This Drought Proclamation will help expedite processing of water transfers.

On July 28, 2021, a 15-day public notice of the Petition for temporary change was provided as follows: (1) by posting on the Division's website; and (2) via the State Water Board's electronic subscription mailing list. Comments were due by August 12, 2021. A comment letter was received from South Delta Water Agency (SDWA) on July 29, 2021.

### 5.1 Comments by SDWA

SDWA expressed concerns about the Projects meeting the water quality objectives per their permits in the western and interior Delta, and water quality requirements per Water Rights Decision 1641 (D-1641), and providing an environmental analysis including a comparison of proposed to current conditions. SDWA stated that "(c)ompliance with D-1641 would require that water stored in San Luis Reservoir be released back into the San Joaquin River in order to (provide) the needed Delta outflow and for meeting other western Delta water quality objectives" and also questioned whether New Melones, Shasta, Oroville, and Folsom reservoirs would have more storage if San Luis Reservoir water were used to meet Delta outflow requirements.

#### Petitioners' Response:

The water to be exchanged is already diverted to storage in the San Luis Reservoir by the Projects and cannot be legally diverted by other users. The proposed exchange will allow the CVP to provide water to the Exchange Contractors and to meet the health and safety needs south of the Delta. Such an exchange will also help preserve cold water pool resources in Shasta Lake.

It is intimated that SDWA wants Reclamation to institute the recirculation program mentioned on page 153 of D-1641. Reclamation's *Delta-Mendota Canal Recirculation Feasibility Study Plan Formulation Report* found that recirculation of water from the Delta-Mendota Canal down the San Joaquin River was not feasible. There is no new information to change this finding.

The petition for the proposed exchange was filed under Water Code section 1725 et seq. and is exempt from the California Environmental Quality Act (CEQA) per Water Code section 1729. Therefore, the comment regarding an environmental analysis of proposed and current conditions is not relevant to the subject petition.

#### State Water Board's Response:

Water Code section 1727, subdivision (e), states that the State Water Board shall not

deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. The proposed exchange does not involve additional pumping from the Delta. The transfer water is already stored in San Luis Reservoir. Thus, there should be no need to draw additional storage water at New Melones, Shasta, Oroville, or Folsom Reservoirs to meet Delta outflow as a result of this transfer.

The Order is conditioned such that: (1) no additional pumping from the Delta is allowed; and (2) the Petitioners must comply with D-1641 and all applicable Water Right Orders, Biological Opinions, Incidental Take Permits, and court orders.

## **6.0 REQUIRED FINDINGS OF FACT**

The following discussion and findings are applicable to the following exchanges proposed in the Petition: (a) 150,000 af to various SWP and CVP contractors per San Luis Reservoir exchanges; and (b) 50,000 af of CVP water to SWP in return for a transfer of SWP water to CVP under the July 8, 2021 supplemental approval per the 2020 CPOU Order.

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

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

According to the Petition, and as conditioned, the temporary changes proposed will not result in the diversion of additional water from the Delta or the delivery of more water to any individual water supplier or user than has been delivered historically. The exchanges proposed in the Petition involve water that is part of the SWP or CVP contractors allocated supplies, and would be consumptively used or stored in the absence of the exchanges.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e), that the water proposed for exchange under DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 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 temporary change 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).)

As conditioned, the changes approved in this Order will not result in any measurable changes to streamflow, water quality, timing of diversion or use, or return flows. The water to be exchanged is diverted out of the watershed from which it originates in conformance with the provisions of the respective water right license or permit(s) governing those diversions. There are no other legal users downstream of the points of diversion that would be affected by the exchanges.

The quantity and timing of diversions from the Delta will not change, however the delivery rates from San Luis Reservoir may differ. The scheduling of the deliveries will be coordinated between Petitioners so as not to adversely impact any SWP or CVP contractor deliveries.

The exchanges are not expected to result in a measurable change in the quantity or quality of return flows. As conditioned, there will be no increase in either SWP or CVP diversions or allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP supplies that already have been exported from the Delta. Exchanges similar to those proposed occurred in 2015. No measurable effects on other legal users of water were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1), that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 will not injure any legal user 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 or exchange 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, Title 23, section 794 (c), Petitioners provided California Department of Fish and Wildlife (CDFW) and the Central Valley Water Board with a copy of the Petition. CDFW and the Central Valley Water Board did not respond with any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

As conditioned, there will be no change in the amount of SWP or CVP water diverted at Banks or Jones. Therefore, no associated change in flow or water quality conditions in the Delta should result from the changes proposed in the Petition. All water exported at Banks and Jones is required to be pumped consistent with the applicable regulatory restrictions and court orders governing SWP and CVP operations.

The exchanges will not result in a measurable change in quantity or quality of return flows. There will be no increase in either SWP or CVP allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP allocated supplies that already have been exported south of the Delta; however, this will not significantly affect streamflow.

Exchanges similar to those proposed above were implemented in 2015 by the Petitioners. No measurable effects on fish, wildlife or other instream beneficial uses were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 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 and the Deputy Director for Water Rights redelegation of authority dated October 19, 2017.

## 8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I find as follows regarding DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364, for each of the following exchanges proposed in the Petition:

(a) 150,000 af to various SWP and CVP contractors per San Luis Reservoir exchanges; and (b) 50,000 af transferred from CVP to SWP to return water transferred under the July 8, 2021 supplemental approval per the 2020 CPOU Order.

I conclude that, based on the available evidence:

1. The proposed exchange 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 in the place of use, under DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 for exchange of up to 200,000 af of water is approved.

All existing terms and conditions of DWR's and Reclamation's subject license and permits remain in effect, except as temporarily amended by the following provisions:

1. The exchanges of water are limited to the period beginning on the date of the order approval and ending July 15, 2022.
2. The place of use under DWR's Permit 16479 is temporarily expanded to include portions of the CVP service area shown on the map titled *2021 CPOU Reclamation and DWR Petition, dated June 30, 2021*.
3. The place of use under Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 is temporarily expanded to include portions of the SWP service area as shown on the map titled *2021 CPOU Reclamation and DWR Petition, dated June 30, 2021*.

4. This approval is limited to the exchanges described in this Order. The exchanges identified in this Order are limited as follows:
  - a. the exchanges shall not result in any increase in the amount of water diverted from the Delta or in an increase in Project contract allocations;
  - b. the water to be exchanged shall be part of available Project allocations, water currently stored in San Luis Reservoir;
  - c. the water to be exchanged must be water that would have been consumptively used or stored in the absence of the transfer;
  - d. the total quantity of water delivered to SWP or CVP contractors as a result of the change shall not exceed historic average deliveries;
  - e. the transfer or exchange shall not result in the net loss of San Joaquin River or Sacramento River flow or Delta outflow; and
  - f. the transfer or exchange shall not result in an increase in saline drainage to the San Joaquin River or the Delta.
5. Diversion of water at the Delta Pumps is conditioned upon compliance by the operators with the objectives currently required of Petitioners set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641 or as modified through approval of temporary change petitions applicable to the water rights involved in this petition. Diversion of water is also conditioned upon compliance by Petitioners with all applicable water right license and permit requirements, federal and California Endangered Species Act requirements (ESA), including applicable Biological Opinions (BOs), Incidental Take Permits (ITPs), court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
6. Diversion of water at the Delta Pumps is also conditioned upon compliance with applicable State Water Board Orders establishing temporary or interim operating conditions during the transfer period, unless the State Water Board has specifically exempted conveyance of exchange water from the order.
7. The exchange period authorized in Condition 1 of this Order is further limited to the period allowed pursuant to any applicable BO, ITP, or federal or State ESA requirements related to transfers at the Delta Pumps. Petitioners shall provide documentation of the diversion period allowed pursuant to the BO, ITP, or federal or State ESA requirements prior to exchange of water. Such documentation may include an electronic link to any transfer BOs, ITPs, or other federal or State ESA consultations, informal consultations, opinions, or other documents issued by the California Department of Fish and Wildlife, National Marine Fisheries Service, or U.S. Fish and Wildlife Service.

8. Within seven days after the end of each month that the exchange is implemented, the Petitioners shall electronically submit to the Deputy Director for Water Rights a monthly report detailing the amounts transferred or exchanged in the previous month. Data used to generate the report shall be provided electronically in a comma-separated values (.csv) file format and shall be compatible with an open data portal platform related to Assembly Bill 1755. All water transferred/exchanged shall also be documented and accounted for by each purpose of use. The report shall also include documentation that the water exchanged did not result in any increase in water diverted to SWP and CVP facilities from the source waters of DWR's permit and Reclamation's license and permits beyond the quantities that would otherwise have been diverted absent the transfer
9. The following information shall be electronically submitted in one or more tables to the Deputy Director for Water Rights on a monthly basis, within seven days after the end of each month that the exchange is implemented:
  - a. The latitude, longitude, and name of each point of withdrawal from the Delta-Mendota Canal (DMC), or other point of rediversion, of water made available to Reclamation at San Luis Reservoir pursuant to this approval.
  - b. The daily volume of water withdrawn from the DMC or otherwise rediverted, including the volume of water at each subsequent point of rediversion, of water made available to Reclamation at San Luis Reservoir pursuant to this approval.
  - c. The daily volume of water deliveries from CVP facilities to storage in San Luis Reservoir and transferred to SWP storage.
  - d. Daily total amounts of storage in San Luis Reservoir held by CVP, and daily total amounts of storage in San Luis Reservoir held by SWP.
  - e. Copies of any agreements and documentation of the terms mutually agreed upon by DWR and Reclamation for the increments, volumes, and timeframes under which Reclamation shall return water to DWR.
10. 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 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 that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California ESA (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any action authorized under this Order, the Petitioners shall first obtain authorization for an incidental take permit prior to undertaking that action. Petitioners shall be responsible for meeting all applicable California ESA and federal ESA requirements for the temporary change authorized under this Order.
12. The State Water Board reserves authority to supervise the 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: AUG 25 2021

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[https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/sds\\_sjrf/sjr/sjr\\_recirculation\\_study.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/sds_sjrf/sjr/sjr_recirculation_study.shtml)