

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

DIVISION OF WATER RIGHTS

WATER TRANSFER APPROVAL (TEMPORARY TRANSFER)
TRANSFER OF UP TO 2,000 ACRE-FEET OF WATER FROM
FORESTHILL PUBLIC UTILITY DISTRICT UNDER PERMIT 15375
(APPLICATION 21945)
TO SANTA CLARA VALLEY WATER DISTRICT

SOURCE OF TRANSFER WATER: SUGAR PINE RESERVOIR ON NORTH SHIRTTAIL CANYON CREEK

COUNTY TRANSFER WATER OBTAINED FROM: PLACER
COUNTY TRANSFER WATER MADE AVAILABLE TO: SANTA CLARA

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On March 12, 2015, Foresthill Public Utility District (FPUD) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under Water Code section 1725, et seq. Under the transfer, up to 2,000 acre-feet (af) of water would be provided to Santa Clara Valley Water District (SCVWD). The temporary transfer period begins on the date of State Water Board transfer approval.

1.1 Description of Transfer

To facilitate the transfer, the following changes to FPUD's license are requested: (1) temporary addition of Banks Pumping Plant (Banks) as a point of redirection; and (2) temporary addition of the SCVWD service area as an additional place of use.

The transfer has been identified as a reservoir storage transfer.

FPUD proposes to release surface water from Sugar Pine Reservoir into North Shirttail Canyon Creek, then to the North Fork American River, and subsequently into Folsom Reservoir by June 1, 2015. The water would be released from Folsom Reservoir into Lake Natoma, impounded by Nimbus Dam into the Lower American River, and subsequently would flow into the Sacramento River and the Delta and be exported at Banks into the South Bay Aqueduct and delivered to SCVWD facilities through existing turnouts.

2.0 BACKGROUND

Permit 15375 (Application 21945) authorizes the direct diversion of up to 18 cfs of water from about November 1 of each year to about July 1 of the succeeding year and 15,400 acre-feet per annum by storage to be collected from about November 1 of each year to about July 1 of the succeeding year. The permit does not authorize collection of water to storage outside of the specified season to offset

evaporation and seepage losses or for any other purpose. The source of water is the North Shirrtail Canyon Creek, tributary to the North Fork American River.

The existing point of diversion to storage at Sugar Pine Reservoir is located at N 44°30' E 2,900' from the SW corner of Section 24, being within the NE 1/4 of SW 1/4, Section 24, T15N, R10E, MDB&M. The existing point of rediversion to a regulating reservoir is located at S 61° W 3,650' from the NE corner of Section 24, being within the SE 1/4 of NW 1/4, S24, T14N, R10E, MDB&M.

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

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

The transfer has been reviewed by Division staff to ensure that the transfer quantity, purpose of use and season are within the scope of the existing right and that the source of transfer water is an authorized source under the water right.

2.1 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (Proclamation). The Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and the Department of Water Resources (DWR) were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor reiterates direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), section 13247 of the California Water Code is suspended. California Water Code section 13247 requires that state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the State Water Board, unless otherwise directed or authorized by statute in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

On April 1, 2015, the Governor issued Executive Order B-29-15 to save water, increase enforcement of water laws, streamline government response to the drought, and invest in new water. It references that the orders and provisions of the January 17, 2014 Proclamation and April 25, 2014 Proclamation are still in effect, unless otherwise modified. The provisions of the January and April 2014 Proclamations relating to streamlining approval of water transfers are still in effect.

2.2 Notice of Potential Curtailment

On January 23 and April 2, 2015, the State Water Board issued statewide public notices of potential curtailment of post-1914 water rights. The direct diversion and collection of water to storage under the permit held by FPUD could be subject to the curtailment notice. However, releases of water collected to storage prior to issuance of the curtailment notices, such as in the case of this transfer, are not subject to curtailment.

2.3 2015 Temporary Urgency Change Petition

On January 23, 2015, DWR and the U.S. Bureau of Reclamation (Reclamation) jointly filed a Temporary Urgency Change Petition (TUCP), pursuant to California Water Code section 1435 et seq., to temporarily modify the water right license and permit terms and conditions for the State Water Project (SWP) and Central Valley Project (CVP) specified in State Water Board Decision D-1641 (D-1641) requiring compliance with Delta water quality objectives in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) in response to drought conditions. The State Water Board issued an Order approving portions of the TUCP on February 3, 2015. That Order was modified on March 5 and April 6, 2015.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On March 20, 2015, a 15 day public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on March 26, 2015 FPUD noticed the project via publication in the Auburn Journal newspaper and mailed the notice via first class mail to interested parties. No comments were received.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

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.

5.0 REQUIRED FINDINGS OF FACT

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

In the absence of the transfer the water would have remained in storage in Sugar Pine Reservoir.

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

5.2 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 Sugar Pine Reservoir pursuant to Permit 15375. In the absence of the proposed transfer, the water would remain in storage for future use by FPUD and would not be available to other water users. There will be no change in return flows from FPUD's service area. Further, the releases from storage pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream of Sugar Pine Reservoir. Refill of the storage vacated for the transfer will only occur during periods when it will not affect the amount of water that would otherwise have been available to other legal users downstream of Sugar Pine Reservoir.

The transfer is subject to a reservoir refill agreement with Reclamation and DWR ensuring that future refill to replace the stored water released for transfer will not reduce the amount of water that Reclamation, DWR, or other water users could otherwise divert under their water rights during the refill period.

In general, the transfer of water that would have otherwise been stored will not result in injury to other legal users of the water. In the absence of the proposed transfer, the proposed transfer water would remain in storage in Sugar Pine Reservoir.

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.

5.3 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), FPUD provided California Department of Fish and Wildlife (CDFW) and the Central Valley Regional Water Quality Control Board (CVRWQCB) with a copy of the petition. CDFW and the CVRWQCB did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

FPUD states that the timing of the proposed transfer would likely have a positive effect on summer minimum instream flows and water quality in the upper American River. FPUD also states that delivery of transfer water to Folsom Reservoir by June 1 will augment the cold water pool in Folsom Reservoir.

All water diverted at Banks is done in accordance with the criteria contained in D-1641 and the Biological Opinions (BOs). DWR and Reclamation will continue to meet the objectives specified in D-1641 or any subsequent orders in effect at the time of the export, as well as the requirements contained in the BOs and the SWP-CVP Order issued on February 3, 2015 and revised on March 5 and April 6, 2015. The quantity of transfer water to be conveyed through the Delta, including other currently planned transfers, is well within the quantities analyzed in the environmental documents

issued for the BOs. The transfer will not result in a measurable change in quantity or quality of return flows.

The transfer is subject to all existing restrictions regarding use of the Delta Pumps, including existing BOs. For any transfers outside the operations currently permitted by the applicable BOs, FPUD must comply with the Endangered Species Act (ESA) prior to transferring water.

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.

6.0 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.

7.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 2,000 af of water under Permit 15375 is approved. All existing conditions of the water right remain in effect, except as temporarily amended by the following provisions:

1. The transfer period commences on the issuance of this Order and remains in effect for one year from the date of approval.
2. The place of use under FPUD's Permit 15375 is temporarily amended to add:
SCVWD place of use as the shown on the map submitted with the transfer petition.
3. Transfer water may be temporarily diverted at the following location:

Point of Rediversion:

Banks via the Clifton Court Forebay – being within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected section 20, T1S, R4E, MDB&M, as shown on maps on file with the State Water Board under DWR Application 5626.

4. Rediversion of water at Banks is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of

D-1641, or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Order item 5. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable BOs and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations.

5. Rediversion of water at Banks 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.
6. Water may not be transferred through Banks until FPUD has executed an acceptable Refill Agreement between DWR, Reclamation and FPUD to address potential refill concerns. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation and FPUD shall be submitted to the Division within 15 days of the date of execution of the Refill Agreement. The terms of the Refill Agreement shall be binding until such time as all the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill Agreement. FPUD may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.
7. The transfer period authorized above is further limited to the period allowed pursuant to any applicable BO or ESA consultations (or informal consultations) related to transfers at the Delta pumps. FPUD shall provide documentation of the diversion period allowed pursuant to the BOs or consultations prior to transfer of water. Such documentation may include an electronic link to any transfer BOs or ESA consultations, informal ESA consultations, opinions, or other documents issued by CDFW, National Marine Fisheries Service or U.S. Fish and Wildlife Service.
8. If at any time prior to, or during the period of the transfer, the State Water Board issues a notice curtailing the use of water pursuant to the water right involved in the transfer, only water collected to storage prior to issuance of the curtailment notice may be transferred.
9. FPUD is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall include the following information:
 - a. The average daily release rates and corresponding volume of water released from Folsom Reservoir as a result of this transfer (reported on a daily basis).
 - b. The daily average rate of water diverted and daily volume of water diverted at the point of diversion at Banks pursuant to this Order.
 - c. The daily amounts of water delivered to SCVWD pursuant to this Order.
 - d. Recognizing that reservoir refill will occur after the transfer ends; monthly reporting of reservoir refill is not required during the transfer period. However, FPUD shall provide annual reporting by May 1 of each year on monthly reservoir refill until the reservoir Refill Agreement has been satisfied. This occurs when the value of the Refill Reservation, as defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to FPUD in time for inclusion in a monthly or annual report, FPUD shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

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. Permittee shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
12. I reserve authority to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: APR 13 2015