

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMIT 13856 (APPLICATION 18085)
PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF 35,000 ACRE-FEET OF WATER
FROM PLACER COUNTY WATER AGENCY TO WESTLANDS WATER DISTRICT**

SOURCES: Duncan Canyon, North Fork American River, Middle Fork American River, Rubicon River

COUNTIES: Placer and Sacramento

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 23, 2014, Placer County Water Agency (PCWA or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under Water Code Section 1725, et seq. PCWA has requested to transfer 35,000 acre-feet (af) of water to Westlands Water District (Westlands). The transfer would begin around mid-June of 2014 and would be complete by September 30, 2014. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

1.1 Description of the Transfer

PCWA proposes to transfer 35,000 af of Middle Fork American River Project (MFP) water ("transfer water") currently stored in Hell Hole Reservoir on the Rubicon River and French Meadows Reservoir on the Middle Fork American River (MFAR) to Westlands for designated beneficial uses within the Westlands service area.

PCWA proposes the following temporary (one year or less) changes in the place of use (POU) and point(s) of diversion (POD) in Permit 13856 to accomplish the transfer of water to Westlands:

- 1) The temporary addition of the United States Bureau of Reclamation's (Reclamation) Central Valley Project (CVP) Bill Jones Pumping Plant intake facility and/or the California Department of Water Resources' (DWR) State Water Project (SWP) Harvey O. Banks Pumping Plant as POD(s) for Westlands to receive PCWA transfer water.
- 2) The temporary addition of San Luis Reservoir (SLR) as a POD and for temporary storage of transfer water.
- 3) The temporary addition of the Westlands service area for consumptive and beneficial uses of the transfer water.

2.0 BACKGROUND

2.1 Substance of PCWA's Permit

Permit 13856 (Application 18085) authorizes direct diversion and storage/consumptive use of 249,000 af of MFP water as described below: (a) direct diversion of 1,225 cubic feet per second (cfs) from about November 1 through about July 1 of the succeeding year from North Fork American River; (b) 25,000 af by offstream storage, at a maximum rate of diversion of 400 cfs from about November 1 of each year to about July 1 of the succeeding year from Duncan Creek to French Meadows Reservoir; (c) 95,000 af by storage from about November 1 of each year to about July 1 of the succeeding year from the MFAR at French Meadows Reservoir; and (d) 129,000 af by storage from about November 1 of each year to about July 1 of the succeeding year from the Rubicon River at Hell Hole Reservoir. The authorized purposes of use include: irrigation, municipal, industrial, recreation, and incidental domestic use. The authorized place of use is shown on PCWA's map set dated July 31, 1996. Permit 13856 expired on December 1, 2007, and on January 7, 2008 PCWA filed a petition for extension of time. Since the petition for extension of time is currently pending before the State Water Board, the Division will consider the maximum amount of water put to beneficial use at the time of permit expiration for the purposes of the proposed temporary change.

On May 27, 2014, the State Water Board issued curtailment notices for those diverting water in the Sacramento River and San Joaquin River watersheds with post-1914 water rights. However, releases of water collected to storage prior to issuance of the curtailment notice, such as in the case of this transfer, are not subject to curtailment.

2.2 The Middle Fork Project

PCWA owns and operates the MFP and holds appropriative water rights for the MFP pursuant to Permits 13856 and 13858 (Applications 18085 and 18087). The permits allow for the combined diversion and storage of 315,000 af per annum of MFP water held in two storage reservoirs (French Meadows Reservoir and Hell Hole Reservoir). The MFP is a multi-purpose project designed to conserve waters of the MFAR, the Rubicon River, and tributaries for domestic, municipal, industrial, recreational, and irrigation uses, as well as for hydroelectrical power generation. The MFP's principal project features include French Meadows Reservoir and Hell Hole Reservoir (French Meadows Reservoir is located on the MFAR and Hell Hole Reservoir is located on the Rubicon River); five associated diversion dams (Duncan, North Fork Long Canyon, South Fork Long Canyon, Middle Fork Interbay, and Ralston Afterbay); and five power plants (French Meadows, Hell Hole, Middle Fork, Ralston, and Oxbow).

For the purposes of the proposed 35,000 af transfer, PCWA will be solely exercising Permit 13856, which allows for the storage and consumptive use of 249,000 af of MFP water (25,000 af at the Duncan Creek diversion; 95,000 af in French Meadows; and 129,000 af in Hell Hole Reservoir).

PCWA has determined that it has at least 35,000 af of surplus water stored in the MFP. PCWA's determination was reached by review of current MFP storage levels, modeled inflow, and projected MFP operations data for 2014 and after accounting for downstream demands (e.g., water supply deliveries, recreation releases, minimum instream flow requirements, evaporative losses, and discretionary [planned] hydropower generation, etc.). As of May 21, 2014, PCWA had approximately 221,600 af of water held in storage in its MFP reservoirs.

2.3 Lower American River Water Forum Agreement

PCWA is a signatory stakeholder of the American River Water Forum Agreement (WFA) that was established in 2000 and adopted by 40 regional stakeholders (including environmental groups such as the Sierra Club, Save the American River, and Friends of the River). The goal of the WFA is to ensure conservation of resources in the American River watershed consistent with the following seven elements: 1) increased surface water diversions; 2) actions to meet customer needs while reducing diversion impacts in drier years; 3) support for improved pattern of fishery flow releases from Folsom Reservoir; 4) lower American River habitat management; 5) water conservation; 6) groundwater management; and 7) Water Forum successor effort. As such, the WFA is to ensure a balance in managing regional water supplies and fisheries resources

in the American River watershed, with a focus on the lower American River from Folsom Reservoir/Lake Natoma downstream to the confluence with the Sacramento River, which is a critical reach for threatened Central Valley steelhead and fall-run Chinook salmon.

Due to the current drought, PCWA is being allocated only 59% of its 110,400 af of contracted water supply with Pacific Gas & Electric Company (PG&E) through the Drum-Spaulding Project. The Drum-Spaulding Project supply is the main source for PCWA Service Zones 1, 3, and 5. PCWA will be taking 34,000 af of its 35,500 af pumping capacity at the American River Pump Station (ARPS) in 2014 to help replace the reduced water supplies for areas typically supplied by the Drum-Spaulding Project.

In accordance with the WFA, PCWA must send "replacement" water downstream from its MFP storage reservoirs to benefit the Lower American River. The amount of replacement water would be based on the amount of water pumped at the ARPS in 2014. A portion of the proposed transfer water would be used for the purposes of replacement water or environmental releases pursuant to the WFA. The WFA specifies that given PCWA's demands at the ARPS during the driest years, PCWA will re-operate its MFP and replace water to the lower American River under terms acceptable to PCWA. The WFA also requires that the source of this replacement (in drier years) would be water not normally released from the MFP (e.g., previously stored water).

2.4 Westlands

Westlands was formed in 1952 and encompasses more than 600,000 acres of farmland in western Fresno and Kings Counties. According to information provided in the petition, Westlands is interested in augmenting its water supply with PCWA's transfer water because CVP contract water is virtually unavailable (zero percent south of Delta contracted CVP allocations) in 2014. The additional water would provide Westlands' agricultural customers with a critical water supply for irrigation of crops. Westlands serves approximately 600 family-owned farms that average 900 acres in size and which produce 60 high quality commercial food and fiber crops. Approximately 50,000 people live and work in the communities dependent on Westlands's agricultural economy. The communities in and near Westlands' boundaries include Mendota, Huron, Tranquility, Firebaugh, Three Rocks, Cantua Creek, Helm, San Joaquin, Kerman, Lemoore, and Coalinga.

2.5 Proposed Temporary Changes

PCWA proposes to transfer 35,000 af of MFP water currently stored in Hell Hole Reservoir and French Meadows Reservoir to Westlands. To accomplish the water transfer, the Petitioner has requested the following changes in the place of use and addition of PORDs under PCWA's water right Permit 13856:

- 1) The temporary addition of the CVP Bill Jones Pumping Plant intake facility and/or the SWP Harvey O. Banks Pumping Plant as PORD(s).
- 2) The temporary addition of San Luis Reservoir as a PORD and for temporary storage of transfer water.
- 3) The temporary addition of the Westlands service area for consumptive and beneficial uses of the transfer water.

2.6 MFP Carryover Storage and Refill Reservation

PCWA's typical combined end-of-year carryover storage target (storage low point) is 150,000 af in its MFP reservoirs (French Meadows and Hell Hole). As a result of previous refill agreements associated with the 2013 Westlands transfer of 20,000 af and a 2014 transfer of 5,000 af to East Bay Municipal Utility District (EBMUD), PCWA's current MFP carryover target for the 2014 water year is 125,000 af. The proposed transfer to Westlands would carry an additional 35,000 af deficit in carryover until conditions in PCWA's refill agreements allow refill of the deficits (e.g., Folsom Reservoir reaches flood control levels or completely fills). The 2014 total carryover target with all previous and the currently proposed transfer to Westlands would result in a 2014/2015 carryover target of 90,000 af. According to information provided in the petition, the carryover level of 90,000 af remains well above the minimum carryover level required by the Federal

Regulatory Commission (FERC) of total combined storage (28,000 af in French Meadows and 26,000 af in Hell Hole) and is sufficient to meet PCWA's 2015 downstream demands (e.g., consumptive water supply, minimum instream flow requirements, etc.) if 2015 becomes a consecutive dry year.

PCWA will enter into a Reservoir Refill Agreement with Reclamation to ensure that other downstream legal users of water with vested rights in the American River watershed are not unreasonably impacted by the proposed transfer. Reclamation will coordinate with the Department of Water Resources (DWR) to ensure refill conditions are met and SWP or CVP conditions are not negatively impacted by the transfer.

To accomplish the transfer, Westlands will need to execute a Warren Act contract with Reclamation in order to temporarily store (less than 30 days) the transfer water in Folsom Reservoir prior to its release. As part of the Warren Act contract, Reclamation has the discretion to determine whether a National Marine Fisheries Service (NMFS) and/or United States Fish and Wildlife Service (USFWS) Section 7 consultation will be necessary regarding federally listed threatened and endangered species.

2.7 Governor's 2014 Drought Emergency Proclamations

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 puts 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 approvals 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 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, the Governor issued a Proclamation of a Continued State of Emergency (April Proclamation). The April Proclamation reiterates the Governor's 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. In addition, the Governor suspended certain regulatory requirements of the Water Code to allow these actions to take place as quickly as possible. The 30-day comment period provided in section 1726(f) was suspended in order to expeditiously process temporary transfers and was replaced with a 15-day comment period.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 30, 2014, public notice of the petition for temporary change was provided through the Division's website and via the State Water Board's LYRIS e-mail notification system. In addition, on May 30, 2014, the Petitioner noticed the project via publication in The Sacramento Bee newspaper and mailed the notice via first class mail to interested parties.

3.1 Comments by Richard Morat

On June 5, 2014, the Division received a comment letter from Richard Morat regarding PCWA's petition for temporary transfer. Mr. Morat's comments are summarized as follows: a) concern that a water transfer from the northern to southern part of the State, which involves transport through the Sacramento River and Delta during a dry year is not normal under a natural hydrograph; b) the proposed transfer requires additional operation of fish salvage operations at export facilities; c) potential for secondary impacts of the transfer on conservation storage replenishment and the American River, Sacramento River, and Delta since replenishment could delay and reduce environmental/aquatic resources recovery from the drought; and d) a refill agreement is necessary to address conservation storage replenishment so that refill occurs only when flows are surplus to the lower American River, Sacramento River, and Delta.

3.2 Comments by Reclamation

On June 12, 2014, Reclamation submitted a comment letter regarding PCWA's proposed transfer to Westlands. Reclamation expressed concern regarding the effects of PCWA's proposed transfer on Folsom Reservoir cold water pool temperature management. Reclamation previously commented on PCWA's transfer to EBMUD, which was approved on April 2, 2014. Reclamation cited its March 24, 2014 comment letter on the transfer to EBMUD, which states "...Reclamation finds that the timing of the Petitioner's July and August transfer could adversely impact Folsom Reservoir cold water pool temperature operations and affect the operations of the Central Valley Project based on similar conditions that occurred in the years of 2001 and 2008. In these years, Reclamation observed inflow river temperature exceeding the downstream water temperature standard and exacerbating cold water pool management." Reclamation requested that the following items be conditions of approval for the proposed transfer to Westlands in order to protect its water rights and operations on the American River:

- The transfer is contingent upon a refill agreement being signed and adopted between Reclamation and the Petitioner. Any order approving the transfer shall include a term requiring the transfer be conducted consistent with that refill agreement.
- Westlands will execute a Warren Act contract with Reclamation prior to introduction of water appropriated under Permit 15836 into Folsom Reservoir.
- Petitioner needs to coordinate with Reclamation on the Folsom operations schedule as part of on-going real-time operations for the CVP. 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.

3.3 Comments by Outdoor California

On June 13, 2014, Nathan Rangel, president of Outdoor California, submitted a letter in support of PCWA's proposed transfer to Westlands. Mr. Rangel indicated that the proposed transfer would allow greater whitewater rafting opportunities this summer on approximately 15 miles of river by ensuring a reliable flow in the MFAR and would also prevent potential overcrowding on the South Fork American River. The letter indicated that PCWA's transfer could benefit public rafting on the MFAR by extending the number of hours per day that rafting flows would be provided. Without the transfer, PCWA has guaranteed only the minimum hours per day that rafting flows would be provided. Mr. Rangel also noted that the transfer water would extend weekend rafting opportunities after Labor Day.

3.4 PCWA's Response to Comments

On June 27, 2014, PCWA responded separately to the comments of Richard Morat and of Reclamation. In its response to Mr. Morat, PCWA indicated that the transfer would not have an unreasonable affect on fish, wildlife, and other instream beneficial uses since it would be conducted in a manner that is consistent with the following: (a) all applicable state and federal regulations for the storage and conveyance of non-CVP transfer water from PCWA to Westlands; (b) a Warren Act Contract executed by and between Westlands and Reclamation; (c) a Refill Agreement executed by and between PCWA and Reclamation; (d) Water Code section 1725-1732; (e) the Public Trust Doctrine; (f) state and federal endangered species acts; (g) current Biological Opinion(s) (BOs) for the continued operation of CVP and SWP storage, conveyance, and export facilities; and (h) the State Water Board-approved Temporary Urgency Change Order for the CVP and SWP.

In its response letter to Reclamation, PCWA indicated its concurrence with the conditions which Reclamation identified as necessary for the transfer approval.

3.5 State Water Board Response to Comments

In evaluating and processing a transfer petition, the State Water Board is required to make findings pursuant to Water Code section 1727. This section of the Water Code directs the Board to approve a temporary change if it determines that a preponderance of the evidence shows both of the following: (1) 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; and (2) the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. The Petitioner has the burden of establishing that a proposed temporary change would comply with the items listed above. The State Water Board has considered the comments received and has reviewed the information in the record in evaluating the proposed transfer.

In regard to Mr. Morat's comments, the State Water Board's response can be found in a letter entitled "Comments on 2014 Temporary Transfers of Water" that is included by reference and is located in the file for Application 18085. The Division's response letter addresses Mr. Morat's comments as summarized in Section 3.1. This Order contains a term, which requires PCWA to enter into a Refill Agreement with Reclamation to address potential refill concerns in PCWA's MFP reservoirs prior to any transfer of water through the Delta Pumps.

Insofar as general impacts to public trust resources are concerned, Reclamation has indicated that depending on the timing of the transfer, there could be impacts to the cold water pool in Folsom Reservoir due to transfer of water. An order condition provides for real-time monitoring and determination of cold water impacts on a weekly basis (or other time-step acceptable to Reclamation and the transferor). This will ensure that the transfer stops at any time that there could be impacts to the cold water pool, but allows resumption during any time period when impacts will not occur. With the incorporation of this term and a term requiring redirection of water at the Delta Pumps to be subject to compliance with all applicable BOs, and any other conditions imposed by other regulatory agencies, there will be no unreasonable affect to fish, wildlife, or other instream beneficial uses. In addition, the transfer water will assist PCWA in meeting the WFA fishery obligations in the lower American River from Folsom Reservoir to the PORD(s) in the Delta.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The Petitioner filed the petition for temporary transfer of water pursuant to 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 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 concurrently with the Water Code section 1727 evaluation.

5.0 REQUIRED FINDINGS OF FACT

5.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to 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.” PCWA’s petition states that the 35,000 af of proposed transfer water is currently held in storage in MFP reservoirs and would remain in storage absent the transfer.

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

5.2 No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the 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 French Meadows Reservoir and Hell Hole Reservoir pursuant to Permit 13856. In the absence of the proposed transfer, the water would remain in storage for future use by PCWA and would not be available to other water users. Since the water would otherwise have remained in storage, there will be no changes in return flows as a result of the transfer.

PCWA will enter into a Reservoir Refill Agreement with Reclamation (that is also acceptable to DWR), ensuring that future refill of any storage space in MFP reservoirs and/or Folsom Reservoir created by the transfer will not reduce the amount of water that Reclamation, DWR, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of 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 will not injure any legal user of water.

5.3 No Unreasonable Affect on 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).)

PCWA has indicated that although the primary purpose of the transfer is for consumptive and beneficial municipal and industrial uses within the Westlands service area, the transfer release from the MFP reservoirs will improve water quality and provide numerous benefits for many instream beneficial uses including fish and wildlife resources. The transfer releases are in addition to PCWA’s existing downstream flow requirements and meet PCWA’s WFA commitments to release additional water under certain conditions in dry years to preserve and protect the lower American River.

Rediversion of water at the Delta pumping plants pursuant to this Order is subject to compliance by the SWP and CVP project operators with the objectives currently required of DWR and Reclamation set forth in Tables 1,2, and 3 on pages 181-187 of Decision 1641 (D-1641), including compliance with the various plans required under D-1641. Rediversion at these facilities pursuant to this Order is also subject to compliance by the operators with all applicable BOs and any court orders applicable to these operations.

There is a potential for the transfer to negatively affect the cold water pool in Folsom Reservoir if water is transferred after June 1, 2014. As indicated in Section 3.5, the Division will condition approval of the transfer with a term to ensure that there are no negative impacts on Folsom Reservoir’s cold water pool due to potential input of warmer water associated with the transfer.

The release of 35,000 af of transfer water may provide multiple benefits in the North and Middle Forks of the American River, such as achieving drier-year flow augmentation objectives in the WFA, enhancing drier-year hydropower generation, and enhancing commercial and recreational rafting in the MFAR.

The Order also contains a condition to ensure that water used under the transfer is used in a method consistent with good water management practices and contains a requirement for Westlands to implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River.

With the incorporation of the terms and conditions listed in the Order, there is no evidence in the record that the proposed transfer of water would unreasonably affect fish, wildlife, or other instream beneficial uses. In addition to ensuring that the Department of Fish and Wildlife (DFW) received copy of the petition, on June 2, 2014, Division staff inquired whether DFW had any concerns related to the temporary change. DFW did not submit comments or relay any concerns regarding the temporary change.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

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 2010-0029.

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 water.
3. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of 35,000 af of water under Permit 13856 is approved.

All existing terms and conditions of Permit 13856 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing for one year. 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 Reservoir resulting from incoming transfer water. Such approval may be given on a weekly basis or other time-step acceptable to Reclamation and the transferor. Transferor shall provide documentation to the Deputy Director for Water Rights by email 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 on-going real-time operations for the CVP.

- The transfer period is further limited to the period allowed pursuant to any applicable BOs or Endangered Species Act (ESA) consultations (or informal consultations) related to transfers at State and federal Delta pump facilities. Permittee is responsible under its water right for meeting all requirements of the applicable ESA for its diversion period allowed pursuant to the BOs or consultation 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 the DFW, NMFS, and/or USFWS.
2. The place of use under Permit 13856 is temporarily expanded to include the service area of Westlands as shown in Attachment C submitted with the petition.
 3. The Harvey O. Banks Pumping Plant (located within the SW ¼ of Section 35, T1S, R3E, MDB&M and Bill Jones Pumping Plant (located within the SW ¼ of Section 35, T1S, R3E, MDB&M) (collectively as “Delta Pumps”) are temporarily added as authorized PORDs.
 4. San Luis Reservoir (located within the SE ¼ of Section 7, T10S, R9E, MDB&M) is temporarily added as a PORD and place of storage for purposes of the transfer.
 5. The State Water Board has issued a curtailment notice for Permit 13856. Accordingly, only water collected to storage prior to issuance of the curtailment notice may be transferred.
 6. Rediversion of water at the Delta Pumps 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 State Water Board Revised Decision 1641 (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. 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.
 7. Water may not be transferred through the Delta Pumps until Petitioner has executed a Refill Agreement between Reclamation and Petitioner to address potential refill concerns in PCWA’s MFP reservoirs. The executed Refill Agreement must be acceptable to DWR. Documentation that an acceptable Refill Agreement has been agreed to by Reclamation, DWR, and Petitioner shall be submitted to the Division within 15 days of the date of execution of the agreement.
 8. Petitioner shall ensure that Westlands has executed a Warren Act contract with Reclamation prior to transferring water into Folsom Reservoir under this Order. Petitioner shall provide confirmation from Reclamation and Westlands to the Deputy Director for Water Rights (email confirmation is acceptable) that this condition has been complied with, within 30 days of issuance of this Order.
 9. 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.
 10. The Petitioner 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 duration and magnitude of the increased releases of water and the corresponding volume of water released from MFP reservoirs as a result of this transfer (reported on a daily basis);
 - b. 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); 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, Petitioner shall provide annual reporting by July 1 of each year on monthly reservoir refill until the Reservoir Refill Agreement has been satisfied. This occurs when the value of the Refill Reservation as defined in the Refill Agreement equals zero. These reports shall include the daily values of the Refill Reservation.

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

11. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. In addition, Westlands shall implement all reasonable measures to prevent subsurface drainage of poor quality water to the San Joaquin River. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.
12. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change order, including method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

13. This Order does not authorize any act 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 act authorized under this transfer, the Petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
14. I reserve 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:

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: JUL 08 2014