

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)
OF SOUTH SUTTER WATER DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
2,000 ACRE-FEET OF WATER TO WOODLAND-DAVIS CLEAN WATER AGENCY**

SOURCE: Bear River

COUNTIES: Placer and Yuba

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On August 14, 2024, the South Sutter Water District (SSWD or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change (Petition) Involving the Transfer of Water under water right License 11118 (Application 14804), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 2,000 acre-feet (af) of water will be transferred to Woodland-Davis Clean Water Agency (WDCWA) from November 1, 2024 through March 31, 2025.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by releasing water that would otherwise be stored in Camp Far West Reservoir (Reservoir) under License 11118.

2.1 Reservoir Reoperation

This transfer involves water currently stored in the Reservoir. Refill criteria developed in coordination with the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) are required to ensure that future refill of the reservoir space

made available in the Reservoir from this transfer does not adversely impact the State Water Project (SWP), the Central Valley Project (CVP), or other legal users of water. Pursuant to the criteria, any refill occurring during balanced conditions in the Sacramento-San Joaquin Delta Estuary¹ (Delta) is subject to repayment of water to DWR and Reclamation according to a schedule agreed to by SSWD, DWR, and Reclamation.

3.0 PETITION FOR TEMPORARY CHANGE INVOLVING TRANSFER

3.1 Summary of SSWD's License 11118

License 11118 (Application 14804), which has a priority date of May 12, 1952, authorizes the diversion to storage in the Reservoir of up to 58,370 af of water per year from the Bear River between October 1 of each year to June 30 of the succeeding year. License 11118 also authorizes the direct diversion of up to 330 cubic feet per second (cfs) and rediversion from storage at the Camp Far West Diversion Dam (Diversion Dam) between May 1 and September 1 of each year. The Diversion Dam is located about one mile downstream of the Reservoir.

Water diverted under License 11118 is used for irrigation and domestic purposes within the authorized places of use, as well as incidental power generation. The authorized places of use under License 11118 are a net 59,000 acres within a gross area of 65,796 acres for domestic and irrigation uses within SSWD's service area, 4,180 acres for irrigation use within the Camp Far West Irrigation District (CFWID) (including 102 acres outside SSWD's boundaries and served under contract), and a power generation plant located on SSWD's conveyance canal.

In order to protect fish and wildlife resources in the Bear River downstream of the Diversion Dam, SSWD is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 of each year to March 31 of the succeeding year. SSWD's petition states that the water intended for transfer is in addition to those required releases.

In 2000, SSWD and CFWID entered into the Bay-Delta Settlement Agreement (Agreement) with DWR to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. The Agreement provides that DWR may request SSWD to

¹ The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from the upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta Requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

release up to 4,400 af of water from the Reservoir during July 1 through September 30 of each Dry Year and Critical Year². SSWD's petition states that the water intended for transfer is in addition to releases that may be requested by DWR pursuant to the Agreement.

3.2 Description of the Proposed Temporary Changes

The proposed transfer would include the following temporary changes to SSWD's water right License 11118:

- 1) Add the WDCWA's Pumping Plant at the Sacramento River as an additional point of rediversion;
- 2) Add the WDCWA's service area as shown on maps filed with the Division under water right Application 30358 as an additional place of use; and
- 3) Add municipal and industrial as additional purposes of use.

3.3 Water Available for Transfer

SSWD will deliver previously stored surface water to WDCWA. The quantity of surface water proposed to be delivered by SSWD to WDCWA will be made available by releases of up to 2,000 af of water currently stored in the Reservoir. This transfer will involve the delivery of previously stored surface water to WDCWA and refill of the Reservoir, which normally occurs during periods of high runoff. Under the proposed transfer, releases of stored water would be increased compared to conditions in the absence of the proposed temporary transfer.

4.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TEMPORARY CHANGE

On August 15, 2024, public notice of the Petition was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. The comment deadline was September 13, 2024. Timely comments on the proposed transfer were received from the California Department of Fish and Wildlife (CDFW), Reclamation, and DWR. Petitioner provided responses to timely comments by letters to the Division dated September 23, 2024. The letters are available in the Division's record for License 11118.

² "Dry Year" and "Critical Year" shall mean those years as defined on Page 18 of the State Water Board's *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Plan)*, December 2018. This Plan supersedes the May 1995 Plan.

4.1 Comments of CDFW

By letter dated September 5, 2024, CDFW commented on the proposed water transfer as summarized below.

- 1) CDFW requested confirmation from the State Water Board that the proposed water transfer meets the criteria for a reservoir storage release. Additionally, CDFW requested that any Order issued for this proposed transfer include a description of the operations information for this water transfer and an explanation supporting the determination of transfer type.
- 2) Water transfer flows may have the potential to act as attraction flows for Chinook, steelhead, and rainbow trout, and may have the potential to exacerbate flow fluctuations in the lower Bear River in a manner harmful to fish that are occupying the system. To reduce the likelihood of adversely affecting Bear River fisheries, CDFW requested that the transfer releases not exceed 15 cfs. Additionally, CDFW requested a review of the proposed transfer schedule within 15 days of the State Water Board's approval and notification when transfer releases begin and when they end, either due to Camp Far West Reservoir winter spill or final cessation of the transfer releases in March.

Petitioner and State Water Board Response:

As indicated in the Petition, SSWD requested to facilitate the transfer of water to WDCWA through reservoir release from the Reservoir. Additionally, DWR and Reclamation requested in their comment letters for this Petition that SSWD be subject to a refill agreement pursuant to this Order, which is necessary for reservoir release transfer proposals. Therefore, the State Water Board determines that SSWD's transfer meets the criteria for a reservoir release transfer. Section 2 of this Order includes detailed information regarding the transfer type and reservoir reoperation.

SSWD indicated in a letter dated September 23, 2024 that it agrees to CDFW's conditions per comment 2 of Section 4.1 of this Order. Thus, the Order is conditioned to require SSWD to hold transfer releases at rate up to 15 cfs and to provide CDFW a proposed transfer release schedule within 15 days following the issuance of this Order. This Order further conditions SSWD to notify CDFW when transfer releases begin and end, either due to the Reservoir winter spill or final cessation of the transfer releases in March 2025.

4.2 Comments of Reclamation

On September 13, 2024, Reclamation commented on the proposed transfer. Reclamation stated that a refill agreement is necessary in order for the proposed

temporary change to not have an adverse effect on the water rights or operations of the CVP. Reclamation requested that the Order approving the proposed transfer be subject to a refill agreement between SSWD, Reclamation, and DWR.

Petitioner and State Water Board Response:

As stated in Section 2.1 of this Order, refill criteria are needed to ensure that the refill of the Reservoir resulting from the proposed temporary change does not adversely impact operations and/or water rights of the SWP and CVP. In a letter dated September 23, 2024, the Petitioner indicated that it anticipates a refill criteria agreement will be entered for this transfer, and it has transmitted a draft refill criteria agreement to Reclamation and DWR for their review on September 18, 2024. The transfer is conditioned that SSWD is subject to a refill criteria agreement with DWR and Reclamation ensuring that future refill of any storage space in the Reservoir created by the transfer will not reduce the amount of water that DWR, Reclamation, or other legal water users, could divert under their water rights. This Order requires SSWD to comply with the refill criteria.

4.3 Comments of DWR

By letter dated September 13, 2024, DWR commented on the proposed transfer. DWR requested that the Order approving the proposed transfer be subject to the following: 1) a refill agreement between SSWD, DWR, and Reclamation; 2) a condition that requires SSWD to provide DWR the following: the accounting methodology for this proposed transfer, monthly diversions through the Main Canal, deliveries to Camp Far West Irrigation District, any other releases from 2011 onward, and a description of how allocations to SSWD customers are established during years SSWD participates in transfers; and 3) SSWD to submit a complete transfer proposal using DWR's Water Transfers Information Management System (WTIMS) online database at <https://info.water.gov/wtims/>, and provide a copy of all the reports pursuant this Order and monthly refill accounting reports after the completion of the transfer.

Petitioner and State Water Board Response:

See State Water Board's response in Section 4.2 of this Order regarding a refill agreement. In a letter dated September 23, 2024, the Petitioner indicated that they will enter the requested information into WTIMS and transmit DWR copies of all required reports sent to the Division. Thus, this Order is conditioned to require SSWD to enter the applicable transfer information into WTIMS, given the important role of WTIMS in compiling information related to temporary transfers. Additionally, this Order is conditioned to require SSWD to provide an updated accounting memorandum for this proposed transfer.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act. (Pub. Resources Code, § 21000 et seq.) The State Water Board will file a Notice of Exemption for this project within five days of issuance of this Order.

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 involve only the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” (Wat. Code, §§ 1725 and 1725.5.)

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, § 1728, 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. (Wat. Code, § 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, § 1725.5) “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 1728, subdivision (b)(2).

7.0 REQUIRED FINDINGS OF FACT

7.1 Availability of Water for Transfer

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, 1725.5, 1726.) Water Code section 1725.5 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.” The water proposed for transfer is currently stored in the Reservoir pursuant to the terms of License 11118. As of September 24, 2024, the Reservoir held approximately 7,773 af of water in storage. SSWD indicated the transfer water would have been consumptively used within SSWD’s service area in the absence of the proposed transfer.

Under License 11118, SSWD can both directly divert and collect water to storage. SSWD would not provide water by direct diversion under License 11118 to WDCWA; this transfer includes a condition requiring only delivery of stored water to WDCWA.

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 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 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 §1728, subd. (b)(1).)

This Order requires SSWD to comply with refill criteria to ensure that future refill of the reservoir space made available in the Reservoir from this transfer does not adversely impact the SWP or CVP. SSWD has indicated it has sufficient supply to continue the same surface water deliveries to its existing customers with or without the proposed temporary water transfer. In addition, SSWD is required to release water to meet other existing downstream commitments and requirements on the Bear River; this approval does not change those obligations. Therefore, there will be no downstream change of the streamflow, water quality, timing of diversion, return flows, effects on legal users of water, or change in the purposes of use authorized by License 11118 during the period of the proposed temporary transfer.

In light of the above, I find in accordance with Water Code section 1728, subdivision (b)(1) that the proposed temporary transfer will not injure any legal user of the water.

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

Before approving a temporary change due to 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, § 1728, subd. (b)(2)). The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Central Valley Water Board) with a copy of the Petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding the transfer as described in Section 4.1 of this Order. Condition 11 has been included in this Order to address CDFW's comments and reduce any potential adverse impacts to the fish and wildlife in the Bear River system. The Central Valley Water Board did not provide any comments to the State Water Board 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 also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows as conditioned in this Order will contribute to false fish attraction flows or significantly change stream temperatures or water quality. The transfer will also be subject to all applicable federal and State Endangered Species Act requirements, including applicable biological opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies.

In light of the above, I find in accordance with Water Code section 1728, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

8.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in Section 4.4.2 of Resolution 2012-0029 and the Deputy Director for Water Rights redelegation of authority dated April 20, 2023.

9.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1728, and therefore I find as follows:

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 neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water, or return flows.
3. The proposed temporary 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 by the South Sutter Water District (SSWD) for temporary change for the transfer of up to 2,000 acre-feet (af) of water under License 11118 is approved.

All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following provisions:

1. The transfer of water is limited to the period commencing on November 1, 2024 and continuing through March 31, 2025.

2. Only water previously stored in Camp Far West Reservoir (Reservoir) may be transferred. Water shall not be provided to Woodland-Davis Clean Water Agency (WDCWA) by direct diversion.
3. The following point of rediversion is temporarily added to License 11118. The water diverted at these facilities is limited to the quantities made available as transfer water, as specified above:

WDCWA Pumping Plant:

California Coordinate System of 1983, Zone 2,
North 2,008,200 feet and East 6,667,300 feet,
being within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 34, Township 10 North, Range 3
East, Mount Diablo Base and Meridian.

4. The place of use under License 11118 is temporarily amended to include the WDCWA service area as shown on maps filed with the Division of Water Rights under water right Application 30358.
5. Municipal and Industrial are temporarily added as purposes of use.
6. During the period of the transfer, SSWD 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 SSWD.
7. Water may not be transferred until SSWD has executed a Refill Agreement between the Department of Water Resources (DWR), U.S. Bureau of Reclamation (Reclamation), and SSWD to address potential refill concerns in the Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR and Reclamation and SSWD shall be submitted to the Deputy Director for Water Rights (Deputy Director) within 15 days of the date of execution of the agreement. The refill criteria shall govern the conditions under which refill of the water released pursuant to this Order occurs, including the conditions under which refill impacts may accrue and how SSWD shall rectify any impacts. At the conclusion of refilling water in the Reservoir for the water released pursuant to this Order, if a refill impact has occurred, SSWD shall release the amount of water identified in the refill criteria to DWR and Reclamation in a manner and on a schedule agreed to between SSWD, DWR, and Reclamation. Any release required pursuant to this paragraph shall be conducted in a manner that does not injure any legal user of water and does not unreasonably affect fish, wildlife, or other instream beneficial uses.
8. Within 90 days of completion of the transfer, SSWD shall provide to the Deputy Director a report describing the transfer authorized by this Order. The report shall include the following information:

- a. The general location of where the water was delivered, and the acreage and/or population served by water delivered to WDCWA;
 - b. The average daily release rates and corresponding volume of water released from the Reservoir as a result of this transfer (reported on a daily basis);
 - c. For each day of the transfer, the daily average rate of water diverted at the Reservoir and daily volume of water re-diverted at the WDCWA Pumping Plant; and
 - d. The daily amounts of water delivered to WDCWA pursuant to this Order.
9. SSWD must submit an updated accounting methodology in a memorandum, developed pursuant to Condition 9 of the October 5, 2023 Order approving SSWD's temporary transfer, within 60 days of the date of this Order. The updated methodology shall include data of monthly volumes of diversions through the Main Canal, deliveries to Camp Far West Irrigation District, and any other releases from the Reservoir from 2011 to 2024, as well as a description of how allocations to SSWD customers are established during years SSWD participates in transfers.

If the Deputy Director finds the methodology deficient for demonstrating additional flows in the Bear River for the transfer and those deficiencies are not remediated within a timeframe established by the Deputy Director, SSWD must cease transfer activities pursuant to this Order. If the approved methodology shows that the amounts proposed for the transfer are not being made available in the Bear River downstream of SSWD, the Deputy Director may order additional releases or bypasses of flow from the Reservoir and Camp Far West Diversion Dam during the transfer period, up to the amount of the approved transfer and consistent with an accounting methodology established by the Deputy Director.

10. SSWD shall provide a report to the Deputy Director by February 1, 2025 describing its refill of the transferred amount of water pursuant to this Order. For periods of refill or refill impacts, including any releases made by SSWD to address a refill impact. The report shall include the daily values for these periods and shall be referred to as the "2024-2025 water transfer report," and be included in the SSWD's annual Report of Licensee as an attachment. If reservoir refill or releases for refill impacts are not complete by February 1, 2025, subsequent reports shall be attached to SSWD's annual Report of Licensee and be submitted by February 1 of each year until completion of refill. The 2024-2025 water transfer report shall include a discussion of any measures and/or methods taken to ensure that releases made to satisfy and be consistent with the refill criteria

pursuant to Condition 7 were conducted in a manner that did not injure any legal user of water and did not unreasonably affect fish, wildlife, or other instream beneficial uses.

11. Reservoir releases pursuant to this transfer shall not exceed 15 cubic feet per second. SSWD shall provide a proposed transfer schedule to the California Department of Fish and Wildlife (CDFW) for review within 15 days following the issuance of this Order. Additionally, SSWD shall notify CDFW when transfer releases begin and end, either due to the Reservoir winter spill or final cessation of the transfer releases in March 2025. SSWD shall provide confirmation to the Deputy Director (email confirmation is acceptable) that this condition has been complied with, within 15 days of completion of transfer.
12. SSWD shall utilize the California Department of Water Resource's (DWR) Water Transfers Information Management System (WTIMS) to document this transfer by entering the data identified by WTIMS for reservoir re-operation transfers applicable to the transfer approved by this Order. Additionally, SSWD shall transmit to DWR copies of all required reports submitted to the Deputy Director pursuant to this Order.
13. 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.
14. This Order does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this Order, right holder shall obtain any authorization for an incidental take prior to commencing the transfer of water. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

15. 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 or new information may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: OCT 18 2024