

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 2840 (APPLICATION 10030)
OF TULE BASIN FARMS, LLC**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
3,206 ACRE-FEET OF WATER TO STATE WATER CONTRACTOR AGENCIES**

SOURCE: West Borrow Pit of Sutter Bypass

COUNTY: Sutter

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On February 18, 2022, Tule Basin Farms, LLC (Tule Basin 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 2840 (Application 10030), pursuant to Water Code section 1725 et seq. With the petition, Tule Basin originally proposed to transfer up to 3,520 acre-feet (af) of water to participating State Water Contractor (SWC) Agencies. The SWC Agencies that will use the water include: Dudley Ridge Water District, County of Kings, Metropolitan Water District of Southern California, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Kern County Water Agency, Palmdale Water District, Napa County Flood Control and Water Conservation District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, and Tulare Lake Water Storage District. By letter dated May 27, 2022, Tule Basin elected to reduce the quantity of water to be transferred from 3,520 af to 3,206 af. The temporary transfer period commences on the date of this Order and is effective through September 30, 2022. Temporary transfers are effective for up to one year from the date of approval.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by pumping groundwater in lieu of diverting

surface water under License 2840.

2.1 Groundwater Substitution

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of a petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater pumping. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped by the Petitioner to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion).

Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to have an unreasonable effect on fish and wildlife as well as injure other legal users of water if it occurs when the Delta is in balanced conditions¹ or there is limited streamflow in the channel from which the water is being transferred.

Proposals for transfers of water through State Water Project (SWP) and/or Central Valley Project (CVP) facilities that involve groundwater substitution are developed to be consistent with the Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), dated December 2019, prepared by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation). Depending on well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use, or if an alternative accounting method should be applied. The DWR and Reclamation criteria used to evaluate groundwater substitution transfers are intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

DWR and Reclamation are currently applying a minimum 13 percent streamflow depletion factor (SDF) to most groundwater substitution transfer projects meeting the criteria contained in the Draft Technical Information unless available information analyzed by DWR and Reclamation supports the need for the development of a site-specific SDF. DWR and Reclamation can apply SDFs larger than 13 percent for certain transfers as determined necessary. Transfer proponents may also submit site-specific

¹ The Delta is in balanced conditions when the SWP and CVP agree that releases from 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.

technical analysis supporting a modified proposed SDF for review and consideration by DWR and Reclamation.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfers. The areas within Tule Basin where the groundwater substitution pumping is to occur are within the Reclamation District No. 1500 Groundwater Sustainability Agency (RD 1500 GSA), and Tule Basin has notified RD 1500 GSA's point of contact regarding the proposed groundwater substitution activity within the RD 1500 GSA boundary. Groundwater substitution transfers are also required to comply with current groundwater management law under the 2014 Sustainable Groundwater Management Act (SGMA). Tule Basin is located within the Sacramento Valley Sutter Subbasin and the Sutter Subbasin is covered by nine different GSAs including RD 1500 GSA. The Sutter Subbasin GSAs worked collaboratively to prepare a single Groundwater Sustainability Plan (GSP) for the Sutter Subbasin that is currently under review by DWR. SGMA requires GSAs to avoid depletions of interconnected surface waters that have significant and unreasonable adverse impacts on beneficial uses of surface water (significant and unreasonable depletions). GSAs avoid significant and unreasonable depletions through the implementation of one or more GSPs. The transfer proposed by Tule Basin will be subject to the requirements of the adopted GSP.

Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers

Depletion of surface stream flows due to groundwater pumping, including groundwater substitution transfers, has been a long-standing issue of concern in California. Part of the concern involves whether the SDFs being used pursuant to groundwater substitution transfers are stringent enough to protect against long-term negative impacts to surface water flows. The depleting effect of increased groundwater pumping on surface flows persists for years following the increased groundwater pumping.

Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation have estimated impacts on streamflow due to groundwater pumping by using analytical and numerical groundwater models. DWR and Reclamation utilized information from modeling conducted for Reclamation's 2019 Long-Term Water Transfers EIS/EIR (Transfer EIS/EIR) to establish a minimum 13 percent average SDF for most single year transfers requiring the use of SWP or CVP facilities. The selection of a minimum SDF of 13 percent was based on modeling analysis of groundwater substitution transfers occurring across ten different individual years within the modeling period and assessed the total volume of depletions over a duration of ten years from the start of each transfer year. The analysis showed the SDF ranged from 14 percent to over 40 percent with an uncertainty of +/- one percent, hence 13 percent was selected as the minimum.² The Transfer EIS/EIR mitigation measures

² Technical consulting staff involved in the preparation of the Transfer EIS/EIR

also state that streamflow depletions are in part dependent on hydrologic conditions following the transfer.

Review of modeling results from the Transfer EIS/EIR shows that the surface water depletions due to groundwater pumping and surface water and groundwater interaction over the modeled period of record compared to total groundwater substitution transfers during those same years result in an average SDF of approximately 25 percent.³ Further, the Transfer EIS/EIR states that during a period of multiple dry years, the impacts during a single year can be greater and can have a potentially significant effect on water supply.

Because 2022 is the third consecutive year of dry conditions as emphasized by the Governor's Executive Order N-7-22, it is necessary to implement a more conservative approach to the SDF reflective of the risk of continued dry conditions to ensure avoidance of injury to other lawful users of water and unreasonable effects on fish and wildlife during this year and future years. Given that the DWR and Reclamation imposition of SDFs for transfers require transfer-specific considerations based on the hydrologic circumstances of the transfer year, and the Transfer EIS/EIR indicates depletions increase during a sequence of dry years, the State Water Board will condition this Order to ensure future impacts of depletions are addressed, should new information come to light demonstrating those impacts. Consistent with the analysis used as the basis for SDFs applied to transfers, which assessed cumulative depletions over a period of ten years following the transfer, the consideration of additional impacts shall also be applicable for a period of ten years following this Order. The Sacramento Valley Groundwater-Surface Water Simulation Model (SVSim) developed by DWR to assess streamflow depletions, has completed calibration and was released to the public on June 8, 2022. The availability of the calibrated SVSim model constitutes new information regarding streamflow depletion. However, as of the date of this Order, Division staff have not had the opportunity to review SVSim and the related model documentation in order to apply it to specific transfers. Other examples of potential new

presented a summary of the basis for the 13 percent SDF to State Water Board staff on January 26, 2022. The presentation showed that the modeled single-year depletion percentages used as the basis for the 13 percent mitigation measure ranged from 14 percent to over 40 percent, with increases to over 40 percent occurring when the transfer occurred at the beginning of a sequence of dry years.

³ Based on Transfer EIS/EIR Figure 3.1-3: Potential Changes in Total Exports at the Delta Pumping Station as a Result of Surface Water and Groundwater Interaction and Figure K-14: Annual Available Water Transfer Supply (EIR/EIS), from Reclamation's March 2019 Long-Term Water Transfers EIS/EIR. The figures provide the annual modeled surface water depletion amounts and the annual modeled groundwater pumping amounts due to transfers. The total of the annual amounts from the two figures indicates a long-term average SDF of approximately 25 percent over the modeled period.

information include new management actions, such as groundwater recharge, undertaken to offset depletions and monitoring related to those management actions.

3.0 BACKGROUND

3.1 Summary of Tule Basin's License 2840

License 2840 (Application 10030) authorizes the direct diversion of up to 21.05 cfs of water from the West Borrow Pit of the Sutter Bypass between April 1 and November 1 of each year for irrigation purposes. The authorized point of diversion for License 2840 is located on the West Borrow Pit of the Sutter Bypass, by California Coordinate System of 1983, Zone 2, North 2,157,587 feet and East 6,628,158 feet, being within SE¼ of SE¼ of Section 5, T14N, R2E, MDB&M. The authorized place of use consists of 842.13 acres within the North Basin Tract.

3.2 Description of the proposed temporary changes

In order to facilitate the transfer, Tule Basin proposes to temporarily add the following to License 2840:

- 1) SWP's Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, located within NW¼ of SE¼ of projected Section 20, T1S, R4E, MDB&M;
- 2) Barker Slough Pumping Plant as a point of diversion, located within NE¼ of SW¼ of projected Section 18, T5N, R2E, MDB&M;
- 3) San Luis Reservoir as a point of rediversion, located within SW¼ of SE¼ of projected Section 15, T10S, R8E, MDB&M;
- 4) Castaic Dam as a point of rediversion, located within N½ of SW¼ of projected Section 18, T5N, R16W, SBB&M;
- 5) Perris Dam as a point of rediversion, located within N½ of SE¼ of projected Section 4, T4S, R3W, SBB&M;
- 6) Pyramid Dam as a point of rediversion, located within SW¼ of NW¼ of projected Section 2, T6N, R18W, SBB&M
- 7) a portion of the SWP's service area as shown on Map 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630; and
- 8) Municipal, industrial, and domestic purposes of use.

3.3 Governor Newsom's 2021 and 2022 Proclamations of a Drought State of Emergency

California is experiencing severe to exceptional drought conditions across the state. Water Year 2020-2021 was a second consecutive dry year with record-breaking high temperatures. In response to California's severe drought conditions in 2021, Governor

Gavin Newsom proclaimed a regional drought state of emergency on April 21, 2021 for the Russian River Watershed, and on May 10, 2021 he signed a proclamation expanding the drought state of emergency to the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds. On July 8, 2021, the Governor signed a proclamation further expanding the regional drought state of emergency to include nine counties where drought effects are increasingly severe or where state emergency response may be needed. The Governor's drought proclamations brought a total of 50 of the state's 58 counties under the drought state of emergency.

The Governor's July 8, 2021 Proclamation states:

“since my May 10, 2021 Proclamation, California's water supplies continue to be severely depleted, and high temperatures are now increasing water loss from reservoirs and streams (especially north of the Tehachapi Mountains), and thus demands by communities and agriculture have increased, supplies of cold water needed for salmon and other anadromous fish that are relied upon by tribal, commercial, and recreational fisheries have been reduced, and risk has increased of drought impacts continuing in 2022 because of continued water loss from climate change-driven warming temperatures and less water available in reservoirs and streams from two years of below average precipitation.”

The July 8, 2021 Proclamation directed the State Water Board to consider,

“modifying requirements for reservoir releases or diversion limitations to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, enhance instream conditions for fish and wildlife, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. The Water Board shall require monitoring and evaluation of any such changes to inform future actions.”

On October 19, 2021, the Governor extended the drought emergency proclamation to include California's remaining eight counties.

On March 28, 2022 Governor Newsom issued Executive Order N-7-22, finding that “early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply” and that “the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water.” The March 28, 2022 Order applies various measures to encourage water conservation and to increase resilience of state water supplies during prolonged drought conditions.

4.0 PUBLIC NOTICE AND COMMENTS ON PROPOSED TRANSFER

Governor Newsom's May 10, 2021 drought proclamation modified noticing requirements and notice duration for temporary transfers of water. Consistent with the Governor's proclamation, the Division noticed Tule Basin's petition on February 28, 2022, to the Division's website and via the State Water Board's electronic subscription mailing list pursuant to modified Water Code section 1726, subdivision (d).

Timely comments on the proposed transfer were received from 1) Mr. Richard Morat; 2) California Department of Fish and Wildlife (CDFW); 3) Reclamation; 4) Central Delta Water Agency (CDWA); and 5) AquAlliance, California Water Impact Network, and California Sportfishing Protection Alliance (collectively hereinafter referred to as AquAlliance, et al.). Each of the comment letters consisted of summary remarks that applied to all 20 petitions filed for temporary transfer involving water rights in the Sacramento Valley which propose to transfer a maximum combined total of 213,856.9 af of water to various SWP and CVP contractors during the 2022 transfer season. Tule Basin is included in the group of 20 petitions.⁴

Following delays in Petitioner responses to the above comments, the State Water Board indicated in an April 13, 2022 email to the Petitioner that an Order on the transfer petition would be issued within 18 business days following submittal of the Petitioner's responses to comments. The Petitioner did not object. The Petitioner's responses to comments were received on May 27, June 7, and June 10, 2022, and are available in the record for License 2840.

4.1 Comments of Richard Morat

By email dated March 10, 2022, Richard Morat commented on the proposed transfer. Mr. Morat stated that approving the petition will result in changes in rates and timing of riverine and estuarine flows and water temperatures that will adversely impact fish including negative impacts to migrating juvenile salmon. Mr. Morat stated that if all of this year's proposed transfers are allowed, it will affect a higher ratio of Delta exports to Delta inflow and outflow, which would exacerbate negative impacts to fisheries in the Delta. Mr. Morat provided the following specific comments regarding the proposed transfer: 1) Reduce early spring transfers which are most damaging to riverine and estuarine fish; 2) Public health and safety needs should be considered during and beyond the transfer period; 3) There is a record of non-compliance of State Water Board Order WR 90-5 (Order WR 90-5) and the record of non-compliance by Reclamation; and 4) There is a potential for re-submittal of a temporary urgency change petition (TUCP) by Reclamation and DWR to relax State Water Board Revised Water

⁴ On March 15, 2022, 17 of the 20 petitions for temporary transfer were withdrawn by the petitioners.

Right Decision 1641 (D-1641) standards.⁵

Petitioner Response:

Regarding Mr. Morat's first, third, and fourth comments, the Petitioner stated that the proposed transfer will result in greater inflow to the Delta, further, the diversion of water made available for transfer is subject to compliance with D-1641, Order WR 90-5, or any future State Water Board order or decision implementing Bay Delta water quality objectives. Regarding Mr. Morat's second comment, the Petitioner stated that SWC Agencies involved in the proposed transfer will only receive five percent of their SWP allocation in 2022 and the water transferred will assist in meeting the SWC Agencies' water supply needs including for municipal, industrial, and domestic uses. Therefore, the transferred water will be used in part for public health and safety needs.

State Water Board Response:

Regarding Mr. Morat's comment about the timing of the transfer, the proposed transfer of water by Tule Basin will not take place in early spring, but instead likely will occur during the summer and early fall. Further, approval of this transfer will require Tule Basin to reduce its licensed diversion of surface water from its point of diversion on the West Borrow Pit of the Sutter Bypass, resulting in additional water flowing in the Sutter Bypass and downstream in the Sacramento River and the Delta during the period of transfer.

Delta outflow and water quality requirements are established by D-1641 and applicable biological opinions and are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer. State Water Board Order WR 90-5 established temperature control requirements for the upper Sacramento River, and Reclamation will be required to meet these requirements during the entirety of the transfer.

The State Water Board is supportive of transfers to provide water where it is needed. In December 2021, DWR announced that the SWP allocations would be limited to critical health and safety needs.⁶ It is anticipated that SWC Agencies involved in this transfer will receive only five percent of their SWP allocation this year, which is far lower than the initial fifteen percent SWP allocation. The temporary change petition seeks to add municipal, industrial, and domestic purposes of use through September 2022. The State Water Board believes that the proposed transfer will help provide additional water for health and safety needs.

⁵ On April 4, 2022, the State Water Board conditionally approved a TUCP filed by Reclamation and DWR to modify certain terms of the CVP and SWP water rights subject to D-1641 during the period from April 1 through June 30, 2022.

⁶ <https://water.ca.gov/News/News-Releases/2021/Dec-21/SWP-December-Allocation>

4.2 Comments of CDFW

By letter dated March 14, 2022, CDFW commented on the proposed groundwater-related transfers as summarized below.

- 1) CDFW recommended a more protective groundwater level trigger to reduce or cease pumping groundwater pursuant to the transfer to avoid adverse impacts on groundwater dependent ecosystems (GDEs) after sequential dry or critically dry years. Additionally, the Petitioner should ensure that the groundwater pumping reduction and cessation triggers used during the transfer period are at least as protective as the sustainable management criteria in the applicable subbasin GSP.
- 2) The minimum SDF of 13 percent included in the Draft Technical Information may be insufficient to replace increased surface water depletion caused by lowered groundwater levels induced by transfer pumping especially during consecutive dry years. CDFW recommended a more conservative presumptive standard for SDFs based on available information, or the development of site-specific and hydrologic-specific SDFs.
- 3) If proposed transfer production wells do not show that groundwater levels have fully recovered to pre-transfer levels, alternative production wells that do demonstrate full recovery between transfer seasons should be used to avoid adverse impacts related to cumulative effect of repeated groundwater transfer.

Petitioner Response:

Regarding CDFW's first issue, the Petitioner stated that the Sutter Subbasin GSP has identified no potential GDEs within or near Tule Basin's service area. Also, monitoring programs will be implemented consistent with the Draft Technical Information, and the Petitioner's operations including triggers for cessation of groundwater pumping pursuant to the proposed transfer will be consistent with the Sutter Subbasin GSP.

Regarding CDFW's concern that the 13 percent SDF is not adequately protective, a 13 percent SDF has been applied to recent water transfers and is consistent with the majority of other transferors in the Sacramento Valley and with the Draft Technical Information. Finally, regarding recovery of groundwater to pre-transfer levels, the Petitioner stated that it has developed groundwater monitoring and mitigation programs to ensure the transfer does not result in any unreasonable and adverse impacts to the groundwater basin or third parties. The Petitioner stated that following the 2020 water transfer, groundwater levels fully recovered to pre-transfer levels.

State Water Board Response:

This Order includes a condition requiring Tule Basin to take additional actions should

the 13 percent SDF applied to this transfer be determined to not adequately protect surface water supplies in the next ten years. In accordance with requirements of the Draft Technical Information, Tule Basin will provide DWR and Reclamation with documentation of RD 1500 GSA's determination that the proposed transfer is consistent with the Sutter Subbasin GSP. Further, in order to avoid impacts to groundwater, Condition 17 of this Order requires the Petitioner to measure the daily average pumping rate of groundwater pumped in excess of that which would have been pumped in the absence of this transfer, and to monitor the groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer.

4.3 Comments of Reclamation

By letter dated March 15, 2022, Reclamation commented on the proposed transfer. Reclamation requested that any Order approving the proposed transfer include the following conditions to protect Reclamation's water rights and operations for the CVP Jones Pumping Plant.

- 1) Each Petitioner's groundwater substitution proposal is subject to evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the December 2019 Draft Technical Information.
- 2) Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
- 3) No water may be transferred when the water right(s) under which the water is made available for transfer has been curtailed by the State Water Board.

Petitioner Response:

The Petitioner acknowledged that the groundwater substitution transfer will be conducted consistent with the Draft Technical Information as required by both DWR, Reclamation and the State Water Board's Order approving the petition. The Petitioner also stated that the transfer of water is subject to compliance with D-1641, Order WR 90-5, or any future State Water Board order or decision implementing Bay-Delta water quality objectives, as well as all biological opinions, incidental take permits, court orders, and any other conditions imposed by other regulatory agencies applicable to operation of the CVP and SWP.

State Water Board Response:

In order to avoid injury to Reclamation's water rights, Condition 14 of this Order requires compliance with the groundwater substitution agreement executed pursuant to the Draft Technical Information. Further, the Delta was declared to be in balance by DWR on June 15, 2022 and is expected to remain so through at least the end of the transfer

period. This Order is also conditioned such that no water may be transferred if License 2840 is curtailed.

4.4 Comments of CDWA

By letter dated March 15, 2022, CDWA commented on the proposed transfer. CDWA's comments are summarized as follows:

- 1) Reclamation should not export water proposed for transfer through the Delta when there are existing or potential needs for that water in the Delta watershed.
- 2) Transfer water should not be exported from the Delta unless D-1641 requirements (without temporary urgency changes) are and will be met.
- 3) The petitions did not include sufficient information to evaluate and approve the transfers.
- 4) Water exported from the Delta and stored in San Luis Reservoir or other storage reservoirs should be held until it is shown that D-1641, without temporary changes or other relaxation, can be met in 2022 and in future dry years. If necessary, that water should be released to the Delta to meet D-1641 requirements.
- 5) The serial nature of previous and the proposed transfers should prohibit analysis under Water Code section 1725 et seq. and should instead be evaluated as long-term transfers pursuant to Water Code section 1735 et seq. The transfers are being evaluated in a piecemealed, singular and partitioned fashion that precludes a proper analysis to comply with the California Environmental Quality Act (CEQA).

Petitioner Response:

The Petitioner stated that it disagrees with CDWA's assertions that the Delta Protection Act applies to water that is the subject of this proposed transfer, and that the proposed transfer would result in the export of non-surplus water from the Delta. The Petition involves surface water made available by the Petitioner via groundwater pumping, for use by the participating SWC Agencies under the Petitioner's water right. Additionally, the Petitioner stated that CDWA fails to explain how the proposed water transfer would deprive the Delta of flows it would receive absent the transfer, or otherwise result in diminished Delta flows, or to CVP or SWP operations compared to the without-transfer scenario. The Petitioner stated that the proposed transfer would increase the flow of water to the Delta.

Regarding CDWA's concerns relative to D-1641 and potential effects to instream beneficial uses, the Petitioner provided a list of evidence (see Petitioner's response letter, dated June 10, 2022) that the proposed transfer will not unreasonably affect fish,

wildlife, or other instream beneficial uses.

Regarding CDWA's concern of insufficient information in the petitions, the Petitioner stated that the petition included the required forms, information, and associated documentation. The Petitioner stated that it provided adequate information with the petition demonstrating that the proposed transfer would not violate the conditions set forth in Water Code section 1727, subdivision (b).

The Petitioner stated that the Water Code does not require petitioners for temporary changes under Water Code section 1725 et seq. to seek approval for the proposed changes under other provisions of the Water Code or prohibit the approval of a series of similar temporary changes. A proposed temporary change is exempt from the requirements of CEQA, therefore there are no CEQA requirements for a cumulative review.

State Water Board Response:

- 1) The Petitioner, not Reclamation, owns the water right for the water proposed to be transferred, and water diverted, used or transferred under License 2840 cannot be redirected for existing or potential needs in the Delta pursuant to Reclamation's obligations.
- 2) The State Water Board's April 4, 2022 TUCP approval Order applies only to Reclamation and DWR water rights and does not involve Tule Basin's License 2840. Further, Water Code section 1727 subdivision (e) indicates that when determining whether to approve a temporary change involving a transfer, "...the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change." Reclamation and DWR filed the TUCP in response to the 2022 drought conditions. Reclamation and DWR did not file the TUCP to mitigate potential impacts from Tule Basin's proposed transfer, therefore the State Water Board cannot deny Tule Basin's petition for temporary changes based on Reclamation and DWR filing the TUCP to achieve compliance with D-1641.
- 3) Water Code section 1725 et. seq indicates that a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the propose change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. As described in Sections 8.1 through 8.3 of this Order, the State Water Board believes adequate information has been included in the Petition and finds that the proposed transfer is water that would have been consumptively used by the licensee in the absence of the proposed change, would

not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

- 4) Water exported from the Delta to facilitate this transfer cannot be held in storage and released to the Delta in order to meet D-1641 requirements as the water is being diverted and transferred pursuant to Tule Basin's water rights and is not water diverted under DWR's or Reclamation's water rights. DWR and Reclamation are the parties responsible in meeting D-1641 requirements with water that is diverted under SWP and CVP water rights.
- 5) The serial nature of previous and approved transfers does not transmute those changes into "long-term" changes, which would otherwise be subject to environmental and legal requirements under Water Code section 1735 et seq. Approval of a temporary change lasts at most one year and must be petitioned for, defended, and approved according to the criteria in Water Code section 1725 et seq., each and every year the Petitioner wishes to operate in accordance with the change. In contrast, a long-term transfer need only be approved once before the transfer can proceed in each subsequent year. The one-year transfer that is the subject of this Petition meets the statutory definition of a "temporary" transfer, and Water Code section 1729 therefore exempts approval of the Petition from the CEQA. Given the water transfer is for a one-year duration or less and the variance of Tule Basin's proposed place of use in its past transfers and current proposed transfer, it does not meet the criteria for a long-term transfer and is not subject to the extensive environmental and legal analyses pursuant to Water Code section 1735 et seq.

4.5 Comments of AquAlliance et al.

By letter dated March 15, 2022, AquAlliance, et al. provided comments on Tule Basin's proposed transfer via summary remarks on all 20 petitions filed for temporary transfer involving water rights in the Sacramento Valley which propose to transfer water to various SWP and CVP contractors south of the Delta.

Following is a summary of AquAlliance, et al.'s comments.

- 1) The Petitioners did not provide adequate information regarding when the transfer would occur to support a prima facie finding that there would be water available during the period of the proposed transfer, and that the transfer would not result in injury to legal users of water or unreasonably affect fish, wildlife, or other instream beneficial uses. Also, the Petitioners failed to provide information regarding whether the amount of water to be transferred or exchanged would have been consumptively used in the absence of the proposed transfer.
- 2) The Petitioners reliance on future information or analysis that will be provided to

Reclamation and DWR as required by the Draft Technical Information does not support the State Water Board's approval of the proposed transfer.

- 3) The Petitioners have not substantiated that the 13 percent SDF is adequate to avoid adverse impacts to streamflow and habitat as a result of groundwater pumping. Additionally, the Petitioners failed to provide information demonstrating that the groundwater substitution operations under the water transfer will be consistent with the regional groundwater management plans.
- 4) The State Water Board should evaluate all of the pending petitions to transfer Sacramento Valley water to parties south of the Delta as one regional transfer to allow for adequate consideration of potential cumulative effects caused by the transfers.

Petitioner Response:

- 1) The Petitioners stated that they provided the required forms, information, and associated documentation as required by the State Water Board and the information demonstrated that the proposed transfer would not violate stipulated conditions set forth in Water Code section 1727, subdivision (b).
- 2) The Petitioner stated that groundwater transfers are subject to compliance with the Draft Technical Information which is required by both the State Water Board's approval Order and prior agreements between DWR and the Petitioner. The Petitioner stated that it has participated in past transfers consistent with the Draft Technical Information including post-transfer reporting, and all prior transfers have occurred without any claims of injury and monitoring showed that groundwater levels recovered following transfer-related pumping.
- 3) The Petitioner stated that the minimum 13 percent SDF applied to most transfers by DWR and Reclamation is based on the best available scientific information to quantify streamflow depletion for the majority of groundwater substitution transfers in the Sacramento Valley as included as Mitigation Measure WS-1 from the Transfer EIS/EIR.
- 4) The Petitioner stated that because the proposed transfer is exempt from the requirements of CEQA, there is no CEQA requirement for a cumulative review.

State Water Board Response:

- 1) AquAlliance, et al. argued that the proposed transfer may injure other legal users of water, but do not identify any specific water right holders. AquAlliance, et al. raised broader concerns about how the State Water Board determines whether a transfer may cause injury to a legal user of water but does not provide any

evidence that this particular transfer will do so.

The State Water Board believes that the Petitioner provided adequate information in the Petition to establish a prima facie showing that that the proposed transfer will not injure any legal user of water as required pursuant to Water Code section 1727. (See Section 8.2) Water transferred only involves water that would have been consumptively used. (See Section 8.1) Before making the finding that the proposed transfer will not injure any other legal user of water, the State Water Board considers the impact of reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) A water availability analysis is required for the issuance of a permit for new appropriations of water, but not for a petition for temporary change. (Wat. Code, § 1375, subd. (d); Cal. Code Regs., tit. 23, § 695.) Finally, the Order is conditioned to require cessation of the transfer should License 2840 be curtailed.

Water that otherwise would have been appropriated at the Petitioner's point of diversion under License 2840 will flow downstream through the Sutter Bypass and Sacramento River into the Delta to the added points of diversion at the Banks Pumping Plant and Barker Slough Pumping Plant. Also, Condition 12 of this Order requires that the diversion of water comply with D-1641, the federal and State Endangered Species Acts (ESA), and applicable biological opinions. Therefore, the State Water Board considers that the Petitioner has established a prima facie case in showing that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

- 2) The State Water Board's approval of the petition is subject to the Petitioner's compliance with the Draft Technical Information. Specifically, Condition 14 of this Order requires the Petitioner to comply with all provisions of the Draft Technical Information to transfer water as proposed with the petition. The State Water Board also retains ongoing authority to revise this Order as described by Conditions 18 and 20 of this Order; this ongoing authority can be exercised should new information come to light following issuance of the Order.
- 3) See the State Water Board's response in Section 4.2 of this Order.
- 4) Water Code section 1725 et seq. requires an analysis based on each individual water right that is subject to a change petition and the analysis required is focused on the water right holder petitioning for the change. Regardless of whether there are several parties that are petitioning to transfer water south of the Delta, each proposed transfer will be evaluated as required pursuant to Water Code section 1725 et seq.

5.0 POTENTIAL CURTAILMENT

During any period in 2022 that Tule Basin's right under License 2840 is curtailed, Tule Basin will be required to cease all diversions in accordance with the curtailment order, including any diversions for temporary transfer, regardless of whether the actual diversion would be facilitated by DWR or other SWP facilities. A condition is therefore included in this Order that the transfer shall be consistent with curtailment requirements should the State Water Board curtail Tule Basin's right under License 2840.

6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 file a Notice of Exemption.

7.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

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 reduction in return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) "The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out." (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The

State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2) (see Section 8.3 of this Order).

8.0 REQUIRED FINDINGS OF FACT

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

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the 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 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.”

Tule Basin has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, the groundwater substitution component of this transfer is conditioned to allow use of only those wells found acceptable by DWR and Reclamation, and the wells must be in compliance with DWR’s and Reclamation’s well construction, location, and monitoring criteria as well as the application of the SDF. As described in Section 8.2 of this Order, an initial SDF of 13 percent will be applied to Tule Basin’s groundwater substitution transfer. To account for streamflow depletion related to groundwater pumping, Tule Basin will only transfer 87 percent of the total quantity pumped in exchange for the surface water available for transfer. In addition, the Petitioner also stated that due to surface water supply conditions, it proposed to reduce its transfer quantity further from 3,520 af to 3,206 af. Therefore, the amount available for transfer will be up to 2,789 af.

The State Water Board conducted an independent evaluation of its records. The annual use under License 2840 was 3,422 af, 3,289 af, 7,112 af, 4,030 af, and 2,314 af during 2017, 2018, 2019, 2020, and 2021, respectively. These data indicate that Tule Basin has put the amount proposed to be transferred to recent beneficial use.

In light of the above, and in accordance with Water Code section 1726, subdivision (e), the State Water Board finds that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

8.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to 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 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).)

Thus, with respect to the “no injury” inquiry under Water Code sections 1727, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board’s inquiry is the effect of the change on the rights of others. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her right to use the water, whatever the source of that right may be.” (Id. at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*)

The water proposed for transfer consists of surface water made available through increased groundwater pumping. DWR has reviewed the proposed transfer and determined that, with the inclusion of the 13 percent depletion factor applied to the quantity of water transferred, as well as their oversight of the groundwater substitution operations described in Section 2.1 of this Order, other water right holders will not be injured from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 2.1 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these agreements and plans.

To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. To the extent that new information becomes available indicating that additional depletions due to this transfer are impacting surface flows when the Delta is in balanced conditions, this Order requires Tule Basin to consult with DWR and Reclamation to develop a plan, potentially including a water diversion reduction schedule or other measures including groundwater recharge, to address and offset the reduced stream flows that occurred as a result of the transfer. In general, the transfer of water that would otherwise be stored or consumptively used will not result in injury to other legal users of water. In the absence of the transfer, Tule Basin would have diverted the surface water for delivery to its service area. Additionally, the transfer is conditioned such that diversion pursuant to the transfer must cease if the Division

notifies the Petitioner that water is unavailable under the water right priority for License 2840.

Water Code Section 1745.10 requires that groundwater substitution transfers be (a) consistent with a groundwater management plan adopted pursuant to state law for the affected area or (b) approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin. As indicated in Section 2.1 of this Order, the groundwater substitution wells that will be used by Tule Basin are within the RD 1500 GSA, and Tule Basin has notified the RD 1500 GSA's point of contact regarding the proposed groundwater substitution activity within the GSA boundary. The groundwater substitution activity must be consistent with the GSP adopted for the Sutter Subbasin.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(1), the State Water Board finds that the proposed temporary 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 change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

8.3 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).) 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 the in Section 4.2 of this Order. Conditions 15, 16, and 17 have been included in this Order based on CDFW's comments. The Central Valley Water Board provided no 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 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 ESA requirements, including applicable Biological Opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversions and exports of water at the SWP and CVP Delta pumps.

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

9.0 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. Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated June 6, 2022.

10.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1725 et seq.

The State Water Board concludes that, based on the available information:

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.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 3,206 acre-feet (af) of water under Tule Basin Farm's (Tule Basin or Petitioner) License 2840 is approved.

All existing conditions of License 2840 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 through September 30, 2022.
2. The transfer amount under License 2840 is limited to a total of up to 3,206 af prior to subtracting streamflow depletion loss by groundwater substitution.
3. The Petitioner shall reduce its diversion rate at the original point of diversion authorized under License 2840 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 87 percent of the rate of additional groundwater pumping. Accordingly, the maximum amount of water available for transfer given a 13 percent depletion rate is 2,789 af.
4. The stream depletion factor (SDF) is initially set at 13 percent for the purposes of this transfer. If new information becomes available following the transfer that the Deputy Director for Water Rights determines demonstrates cumulative streamflow depletions due to the transfer are higher than 13 percent and the streamflow depletions are occurring or have occurred while the Delta is in balanced conditions within a ten-year period following the date of this Order, Tule Basin shall prepare a plan and implementation schedule in consultation with Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) to address the additional losses of State Water Project (SWP) or Central Valley Project (CVP) stored water identified by the Deputy Director For Water Rights. Tule Basin shall reduce direct diversions under License 2840 equivalent to the losses to the SWP and CVP according to a schedule agreed to by DWR and Reclamation and approved by the Deputy Director for Water Rights. In lieu of reducing future direct diversions under License 2840, and with approval by the Deputy Director for Water Rights, Tule Basin may reduce their Settlement Contract water allocation or undertake other water management actions, such as groundwater recharge, to compensate for the losses.
5. Municipal, industrial, and domestic uses are temporarily added as purposes of use.
6. The following points of diversion are temporarily added to License 2840:

- Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay, located as follows: California Coordinate System (CCS), Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M;
 - Barker Slough Pumping Plant, located as follows: CCS, Zone 2, NAD 83, North 1,862,435 feet and East 6,619,928 feet being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M
7. The following points of rediversion are temporarily added to License 2840:
- San Luis Reservoir located as follows: CCS, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M;
 - Castaic Dam, located as follows: CCS, Zone 5, NAD 83, North 2,012,680 feet and East 6,378,993 feet, being within the N $\frac{1}{2}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R16 W, SBB&M;
 - Perris Dam, located as follows: CCS, Zone 6, NAD 83, North 2,254,478 feet and East 6,275,612 feet, being within the N $\frac{1}{2}$ of SE $\frac{1}{4}$ of projected Section 4, T4S, R3W, SBB&M;
 - Pyramid Dam, located as follows: CCS, Zone 5, NAD 83, North 2,057,463 feet and East 6,331,046 feet, being within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 2, T6N, R18W, SBB&M.
8. The place of use under License 2840 is temporarily expanded to include the service areas of Dudley Ridge Water District, County of Kings, Metropolitan Water District of Southern California, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Kern County Water Agency, Palmdale Water District, Napa County Flood Control and Water Conservation District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, and Tule Lake Water Storage District (hereinafter collectively referred to as State Water Contractor (SWC) Agencies), which are within a portion of the SWP's service area as shown on Map 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630.
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 by the Petitioner.
10. The transfer of water pursuant to License 2840 must cease during any time when License 2840 is curtailed.
11. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.

12. Diversion of water at the Banks Pumping Plant is subject to compliance by the operators (DWR) with the objectives currently required of operators set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Revised Water Right 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 Banks Pumping Plant by DWR. Diversion of water is also subject to compliance by DWR with all applicable federal and State Endangered Species Act (ESA) requirements, including applicable biological opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
13. Diversion of water at Banks Pumping Plant is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.
14. Petitioner shall comply with all provisions contained in the groundwater substitution agreement pursuant to the Draft Technical Information for Preparing Water Transfer Proposals, between DWR, Reclamation, and Tule Basin as a condition of transferring water pursuant to this Order.
15. Tule Basin shall develop and submit to the Deputy Director for Water Rights, by April 1 of each year following 2022, a map defining the groundwater elevations within the vicinity of Tule Basin, until such time as these elevations correspond to pre-transfer levels. Each monitoring well will be identified using the same numbering and naming convention as used by the Groundwater Sustainability Plan (GSP) adopted by the Sutter Subbasin Groundwater Sustainability Agencies (Sutter Subbasin GSAs). The methods and units used to measure groundwater elevations will be consistent with those utilized in the GSP and related annual reports.
16. The Petitioner shall comply with any applicable requirements of the GSP adopted by the Sutter Subbasin GSAs, or related implementation actions of the plan, such as regulations, adopted by the Reclamation District No. 1500 GSA.
17. By December 15, 2022, Tule Basin shall provide to the Deputy Director for Water Rights a report including one or more tables describing the transfer authorized by this Order. The report shall include the following information.
 - a. The general location of where water was delivered, and the acreage and/or population served by water delivered to SWC Agencies pursuant to this Order;
 - b. The location and characteristics of the wells used to pump groundwater, if available.

- c. For each day of the transfer, the daily average rate of water made available for transfer pursuant to this Order;
 - d. For each day of the transfer, the daily average diversion rate of water directly diverted pursuant to License 2840 during the transfer period;
 - e. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
 - f. The daily average pumping rate of groundwater pumped by Licensee in excess of that which would have been pumped in the absence of this transfer; and
 - g. Groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer. Each monitoring well will be identified using the same numbering and naming convention as used in the GSP adopted by the Sutter Subbasin GSAs. The methods and units used to measure groundwater elevations will be consistent with those utilized in the GSP and related annual reports.
18. 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.

19. 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 & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531-1544). If a “take” will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take prior to commencing transfer of water. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
20. The State Water Board reserves 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

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: July 1, 2022