

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 6184 (APPLICATION 16401)
OF TUDOR MUTUAL WATER COMPANY**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
1,200 ACRE-FEET OF WATER TO STATE WATER CONTRACTOR AGENCIES**

**ORDER DENYING TEMPORARY CHANGE IN POINTS OF DIVERSION, POINTS OF
REDIVERSION, PURPOSES OF USE, AND PLACE OF USE**

SOURCE: Feather River

COUNTY: Sutter

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On May 7, 2021, Tudor Mutual Water Company (Tudor MWC 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 6184 (Application 16401), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 1,200 acre-feet (af) of water will be transferred to participating State Water Contractors (SWC) Agencies. The temporary transfer period is proposed to be effective through September 30, 2021. The SWC agencies include: Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, Santa Clarita Valley Water Agency, San Geronio Pass Water Agency, Metropolitan Water District of Southern California, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Santa Barbara County Flood Control and Water Conservation District, San Gabriel Valley Water Company, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, and Napa County Flood Control and Water Conservation District (hereinafter collectively referred to as SWC Agencies).

2.0 PETITION FOR TEMPORARY CHANGE INVOLVING TRANSFER

2.1 Description of the proposed temporary changes

In order to facilitate the transfer, Tudor MWC proposes to temporarily add the following to License 6184:

1) Points of Diversion:

SWP's Banks Pumping Plant via the Clifton Court Forebay located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M; and

Barker Slough Pumping Plant located within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M (as shown on maps filed with the Division under Application 5630)

2) Points of Rediversion:

San Luis Reservoir located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M;

Castaic Dam located within N $\frac{1}{2}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R16W, SBB&M;

Perris Dam located within N $\frac{1}{2}$ of SE $\frac{1}{4}$ of projected Section 4, T4S, R3W, SBB&M; and

Pyramid Dam located within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 2, T6N, R18W, SBB&M (as shown on maps filed with the Division under Application 5630)

3) a portion of the SWP's service area (as shown on Maps 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630); and

4) Municipal, Industrial, and Domestic purposes of use.

The proposed petition will facilitate Tudor MWC's temporary transfer up to 1,200 af of surface water from June 1, 2021 to September 30, 2021, which will be made available by groundwater substitution, prior to subtracting streamflow depletion loss, to participating SWC Agencies in order to provide an additional water supply for irrigation, municipal, industrial, and domestic purposes of use. Groundwater substitution involves the use of groundwater pumped to produce crops within Tudor MWC's service area in exchange for a like amount of surface water that will remain instream for diversion at the proposed additional points of diversion.

2.2 Summary of Tudor Mutual Water Company's License 6184

License 6184 authorizes the direct diversion of up to 32 cubic feet per second of water from the Feather River from about April 1 to about October 1 of each year for irrigation use of 2,614 net acres within a gross area of 2,723 acres.

The existing point of direct diversion is located at:

California Coordinate System of 1983, Zone 2, North 2,129, 986 feet and East 6,676,158 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 1, T13N, R3E, MDB&M.

The irrigated area is located within Sections 1, 2, 3, 4, 9, 10, 11, and 12, T13N, R3E, MDB&M.

3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 10, 2021, Governor Gavin Newsom declared a State of Emergency for the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought. The signed proclamation modifies noticing requirements and notice duration for temporary transfers of water. As such, the Division noticed Tudor MWC's petition on May 17, 2021 to the Division's website and via the State Water Board's electronic subscription mailing list pursuant to modified Water Code section 1726(d).

The comment deadline was June 1, 2021. Timely comments on the petition were received from Reclamation, Mr. Richard Morat, Central Delta Water Agency, and the California Department of Fish and Wildlife. By email, dated June 21, 2021, Petitioner's agent requested an extension to submit the responses to comments. Petitioner provided responses to the comments by letter to the Division on July 2, 2021. The comments and Tudor MWC's response to comments are available in the record for License 6184.

4.0 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).)

5.0 WATER UNAVAILABLE FOR TRANSFER UNDER LICENSE 6184

The State Water Board has developed a methodology to identify when supply and demand data indicate that water is unavailable for diversion by water right holders in the Sacramento-San Joaquin Watershed, referred to as the Water Unavailability Methodology for the Delta Watershed, or Methodology. This Methodology was most recently updated on June 15, 2021; a summary report describing the Methodology (titled “Water Unavailability Methodology for the Delta Watershed”), as well as the dataset used to implement the Methodology (titled “wua_spreadsheet_061621.xlsx”), are available at the following website:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/drought_to_ols_methods/delta_method.html. Based on the available data and Methodology, the information available to the State Water Board indicates that available supplies in the Sacramento River watershed are insufficient to support diversion of any post-1914 water right, which includes License 6184. On June 15, 2021, the State Water Board mailed a *Notice of Water Unavailability for Post-1914 Water Right Holders and Warning of Impending Water Unavailability for Pre-1914 and Riparian Claimants in the Sacramento-San Joaquin Delta Watershed* (Notice of Unavailability) to water users including Tudor MWC to notify them that the State Water Board’s best available information indicated that there is insufficient water for diversions under post-1914 rights.

Further, transferable water is limited to the extent of the surface water direct diversion rights of the water right holder at the time of the transfer. It is unclear whether water would be lawfully diverted and consumptively used in the absence of the transfer given that the Methodology indicates supplies are insufficient meet the priority of License 6184.

The evidence, including the Methodology and related dataset and the information supplied by Tudor MWC, shows that diversions pursuant to License 6184 could injure senior diverters in the Sacramento River watershed.

6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

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

7.0 CONCLUSIONS

Given the information available to the State Water Board as described in Section 5.0 of this Order, the State Water Board is unable to make the findings required by Water Code section 1727, subdivision (b)(1), that this transfer will not injure any legal user of water.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed by Tudor Mutual Water Company under License 6184 for temporary changes in the points of diversion, points of diversions, place of use, and purposes of use to authorize the transfer of up to a total of 1,200 acre-feet of water to the State Water Contractor Agencies is denied. All existing terms and conditions of License 6184 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JULE RIZZARDO, FOR

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: JUL 09 2021