

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 845 (APPLICATION 1739)
OF THERMALITO WATER AND SEWER DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
3,500 ACRE-FEET OF WATER TO SANTA CLARA VALLEY WATER DISTRICT**

SOURCE: Concow Creek

COUNTY: Butte

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On May 25, 2021, Thermalito Water and Sewer District (Thermalito or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for change (Petition) involving the transfer of water under water right License 845 (Application 1739), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 3,500 acre-feet (af) of water will be transferred to Santa Clara Valley Water District. The temporary transfer changes approved pursuant to Water Code section 1725 under this petition may be effective until November 30, 2021.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by releasing water that would otherwise be stored in Concow reservoir.

2.1 Reservoir Release

Under a reservoir release transfer, surface water supply is made available for transfer as a result of a petitioner releasing water held in storage that would remain in storage if the transfer were not to occur. The transfer proposed by Thermalito involves water

currently stored in Concow Reservoir. Following the transfer, the reservoir may have additional storage capacity that will result in diversions that would not occur in the absence of the transfer, referred to as reservoir refill. Reservoir refill has the potential to 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.

Refill criteria developed in conjunction with the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) can ensure that the future refill of the reservoir space made available in Concow Reservoir from this transfer does not adversely impact other legal users of water.

3.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER

3.1 Description of the proposed temporary changes

In order to facilitate the transfer, Thermalito proposes to temporarily add the following to License 845:

- 1) State Water Project's (SWP) Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M;
- 2) Barker Slough Pumping Plant as a point of diversion, located within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M;
- 3) Bill Jones Pumping Plant as a point of diversion, located within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M;
- 4) San Luis Reservoir as a point of rediversion, located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M;
- 5) a portion of the Santa Clara Valley Water District (as shown on Map 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630), and a portion of the service area of the Central Valley Project (CVP) as shown on Map 214-202-84 on file with the Division of Water Rights; and
- 6) industrial purpose of use.

¹The Delta is in balanced conditions when the State Water Project (SWP) and Central Valley Project (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.

3.2 Summary of Thermalito's License 845

License 845 authorizes the storage of up to 8,200 acre-feet per annum of water from Concow Creek between December 1 and April 1 of each year for domestic, agricultural, municipal, and recreational purposes. The authorized point of diversion for License 845 is located on Concow Creek, by California Coordinate System of 1983, Zone 2, North 2,404,388 feet and East 6,694,359 feet, being within SE¼ of NE¼ of Section 16, T22N, R4E, MDB&M. The authorized place of use consists of recreational uses at Concow Reservoir and domestic, agricultural and municipal uses on 13,800 acres within Thermalito's service area.

4.0 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 the Petition on June 4, 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 21, 2021. Timely comments on the transfer were received from the California Department of Fish and Wildlife (CDFW), Reclamation, and Central Delta Water Agency (CDWA). Petitioner provided responses to the comments by email to the Division dated June 30, 2021 and are available in the record for License 845.

4.1 Comments of CDFW

By letter dated June 15, 2021, CDFW commented on the proposed transfer. CDFW expressed concern over potential adverse impacts to foothill yellow-legged frog (FYLF), a special status species listed under the California Endangered Species Act. Changes in the volume, timing, and temperature of water released from Concow Reservoir into Concow Creek has the potential to significantly impact FYLF during critical life stages. To minimize potential impacts and better understand the relationship between releases and sensitive species, CDFW proposes the following information be submitted to support the petition:

- 1) Develop a proposed flow schedule and ramping rates in coordination CDFW;
- 2) Conduct pre-, during-, and post-transfer species and temperature monitoring, and coordinate survey locations with CDFW;
- 3) Adaptively manage water transfer releases based on pre-transfer monitoring by postponing transfer releases until no FYLF egg or tadpole life stages are observed.

Thermalito Response:

Thermalito stated that CDFW assertions are not consistent with the statutory criteria of Water Code section 1725 et seq. and fail to identify applicable scientific support for its statement that the transfer could significantly impact FYLF or for the conditions proposed by CDFW.

Based on CDFW's concerns, Thermalito proposed to modify its transfer period from July 1 through November 30, 2021, to mid-September through November 15, 2021. FYLF in the Sierra Nevada generally breed in May or June and complete metamorphosis in August or early September. Thermalito indicated that with the modified transfer period, it would avoid any impacts to FYLF breeding or tadpole rearing. Thermalito also claimed that the modified transfer period would avoid impacts to other aquatic resources, such as resident rainbow trout (*Oncorhynchus mykiss*) and benthic macroinvertebrates, which are not particularly affected by flow or water temperature changes in the fall.

Thermalito indicated that given the proposed changes to its transfer petition, it believes that coordinating with CDFW on ramping rates during the transfer is not needed. Further, Thermalito believes that monitoring FYLF and water temperature prior to, during and after a September through mid-November water transfer would provide no useful information since FYLF is not breeding and has completed the larval growth phase during the modified transfer period. Thermalito claimed that FYLF and other aquatic resources are relatively insensitive to water temperature during the modified transfer period. Thermalito stated that it monitors, and will continue to monitor during the 2021 transfer, its operations to ensure compliance with all legal and regulatory requirements, including that its operations will not unreasonably impact aquatic and terrestrial species, including the FYLF.

State Water Board Response:

To address concerns of FYLF and as indicated in Thermalito's response, Thermalito's transfer duration shall be conditioned to the period commencing on September 15 through November 15, 2021. This Order also includes a term requiring coordination on releases with CDFW.

4.2 Comments of Reclamation

By letter dated June 17, 2021, Reclamation commented on the proposed transfer. Reclamation requested that any Order approving the transfer be consistent with the *Draft Technical Information for Preparing Water Transfer Proposals* and a refill agreement be executed between Reclamation and Thermalito. Such an agreement would be necessary to protect Reclamation's water rights and CVP operations from injury and allow Reclamation to meet all applicable water quality standards pertaining to

the San Joaquin River and Sacramento-San Joaquin Delta Estuary. Reclamation also recommends including a term in any Order approving the transfer stating that transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

Thermalito Response

Thermalito did not object to the two conditions proposed by Reclamation including obtaining a refill agreement with DWR, and that transferable water should be credited only during balanced conditions in the Sacramento-San Joaquin River Delta. Thermalito also indicated it agreed to obtain a Warren Act contract if legally necessary to convey transfer water to the buyer.

State Water Board Response:

To avoid injury to the water rights and operations of the CVP, this Order includes a requirement for Thermalito to obtain a reservoir refill agreement with Reclamation and DWR prior to initiating the transfer. Further, this Order will require that transferable water be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

4.3 Comments of CDWA

By letter dated June 21, 2021, CDWA commented on the proposed transfer. Summaries of CDWA's comments follow.

1. CDWA believes no transfer of water for export from the Delta watershed should be allowed unless State Water Board Revised Decision 1641 (D-1641) requirements without temporary urgency changes will be met.
2. CDWA indicated that Thermalito has not provided adequate information to show that water proposed for transfer is excess stored water originally diverted in compliance with License 845.
3. CDWA believes that the State Water Board's June 1, 2021, approval of Reclamation and DWR's Temporary Urgency Change Petition (TUCP) to change D-1641 related terms and conditions contained in the CVP and SWP water rights and the potential for similar TUCPs in subsequent dry years will complicate making the necessary findings to approve Thermalito's transfer.
4. CDWA states that the State Water Board's June 15, 2015 *Notice of Unavailability of Water 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) implied that post-1914 appropriators in the Delta cannot divert water which consists of storage releases necessary to meet other downstream purposes, such as salinity control in the Delta. CDWA believes that the release of water from storage is not necessarily water to which others are entitled in preference to Delta landowners' diversions under post-1914 licenses

and other rights. CDWA also states that the storage of water that would have otherwise flowed into the Delta potentially creates a detriment that must be offset by release of such water or other water at a later period, and the water needs within the watersheds of origin should not be deprived to facilitate the export of water from the Delta.

5. CDWA states that Santa Clara Valley Water District is a party to other transfers this year, including a transfer under Reclamation and DWR water rights. CDWA believes that the State Water Board analyzes petitions for temporary change involving transfers of water in a piecemealed fashion resulting in cumulative impacts being redirected to non-parties to the transfers and to other legal users of water (including third party groundwater impacts), the public trust and threatened and endangered species. CDWA ultimately believes that due to piecemealing, a proper analysis of the transfer pursuant to Water Code section 1725 et seq. is precluded.

Thermalito Response:

A summary of Thermalito's responses to CDWA's comments follow.

1. Thermalito stated that Reclamation and DWR are the agencies responsible for meeting the requirements of D-1641 as well as the Delta Protection Act and the Watershed Protection Act. Thermalito claims to be a senior right holder and not subject to those requirements.
2. Thermalito believes that CDWA was conflating the State Water Board transfer approval process under Water Code sections 1725 et seq. with DWR's separate approval process under Water Code 1810. Thermalito indicated it will provide the information to CDWA once it provides the information to DWR.
3. Thermalito claims they are not obligated to meet D-1641 requirements in the Delta or any other upstream requirements imposed on DWR or Reclamation pursuant to its SWP and CVP water rights. If the transfer does not occur, Thermalito indicates it will retain that volume of water in storage for future use in accordance with License 845. Thermalito stated that under no scenario will the stored water proposed for transfer be used to meet D-1641 standards.
4. Thermalito indicated that CDWA is conflating curtailments of water rights in the Delta with the transfer process and the transfer would not reduce the amount of water available to water right holders in the Delta. Thermalito stated that if the proposed transfer did not occur, Thermalito would retain that contemplated transfer volume in storage for future use in accordance with its water rights. Thermalito indicated that under no scenario would the transfer water be used to meet the needs of Delta water right holders. Also, Thermalito believes that if the transfer were to move forward, the transfer is likely to help control Delta salinity by increasing flows through the Delta during the prevailing emergency drought conditions while also being assessed a Delta carriage loss.

5. Thermalito stated that Santa Clara Valley Water District is also buying water from other parties due to emergency drought conditions prevailing throughout California. Thermalito believes that multiple sellers selling to one buyer does not result in legal injury to other lawful users of water or an unreasonable effect to fish and wildlife. Thermalito indicates that 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 inherently focused on the transferor - the water right holder petitioning for the change, in this case the right held by Thermalito.

State Water Board Response:

1. The June 1, 2021 TUCP approval Order applies only to Reclamation and DWR water rights and does not involve Thermalito's License 845. 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 2021 drought emergency. Reclamation and DWR did not file the TUCP to mitigate potential impacts from Thermalito's proposed transfer, therefore the State Water Board cannot deny Thermalito's petition for temporary changes based on Reclamation and DWR filing the TUCP to achieve compliance with D-1641.
2. Water Code section 1725 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 proposed temporary change. As discussed in Section 7.1 below, the State Water Board believes adequate information has been included in both the petition and Thermalito's Reports of Licensee for License 845 to indicate that Thermalito has stored water adequate to allow a transfer of up to 3,500 af to Santa Clara Valley Water District.
3. Thermalito's License 845 is not subject to Reclamation and DWR's 2021 TUCP requesting to change terms and conditions of CVP and SWP water rights.
4. License 845 does not require and there are no other State Water Board orders in place that require Thermalito to release (and abandon) its water previously diverted to storage to provide water for downstream Delta diverters.
5. Santa Clara Valley Water District is purchasing water from several parties to provide critical water supplies to its service area this year since Santa Clara County has declared a local emergency due to extreme drought conditions. Thermalito is correct in pointing out that 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. Consequently, the State Water Board believes regardless of whether

Santa Clara Valley Water District will be the recipient of several water transfers, each transfer will be evaluated appropriately as required pursuant to Water Code section 1725 et seq.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.

6.0 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 7.3 of this Order).

7.0 REQUIRED FINDINGS OF FACT

7.1 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.”

The State Water Board conducted an independent evaluation of its records. The combined annual use under License 845 was 1,984 af, 2,039 af, 2,013 af, and 2,319 af during 2017, 2018, 2019, and 2020 respectively. The maximum authorized collection and withdrawal from storage under License 845 is 8,200 af, and the storage capacity of Concow Reservoir is 7,225 af². In each of the above referenced annual use reports, Concow Reservoir spilled, indicating that storage was maximized at some point during that year.

In 2021, without transferring water, Thermalito’s projected end-of-year storage target in Concow Reservoir is 6,367 af. In its petition, Thermalito indicated that in the absence of the proposed transfer, the transfer water would have remained stored in Concow Reservoir, however with the transfer the 2021 low-point storage in Concow Reservoir will be drawn down to 2,867 af (6,367 af minus 3,500 af), rather than the non-transfer target of 6,637 af. Absent the proposed changes, Thermalito would have released water from Concow Reservoir to the landowners within the District for domestic, irrigation, and municipal purposes or would have retained the volume of water in storage pursuant to its water right.

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.

² The end of the year storage (on or before December 31) in Concow Reservoir is typically 6,367 af, which represents a full reservoir without flashboards. Flashboards are installed on or about March 15 through the end of October, which adds three feet of storage to its maximum storage capacity of 7,225 af.

7.2 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.*)

In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water.

The water proposed for transfer pursuant to this temporary change consists of water previously stored in Concow Reservoir pursuant to License 845. In the absence of the proposed transfer, the water would remain in storage for future use by Thermalito and would not be available to other water users. Further, the release of the water from storage at Concow Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream. Additionally, this Order is conditioned to only allow transfer of water collected to storage prior to issuance of the Order.

The refill criteria provide for an accounting of refill of Concow Reservoir resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and Reclamation, according to a schedule agreed to by Thermalito, DWR, and Reclamation.

Thermalito will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Concow Reservoir created by the transfer will not reduce the amount of water that Reclamation, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of the water would occur due to the transfer.

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.

7.3 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 FYLF, which are discussed in Section 4.1 of this Order; the Order is conditioned to ensure potential impacts to FYLF raised by CDFW are avoided. 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 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 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.

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.

9.0 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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 3,500 acre-feet (af) of water under Thermalito Water and Sewer District's (Petitioner) License 845 is approved.

All existing conditions of License 845 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on September 15, 2021 and continuing through November 15, 2021.
2. Industrial use is temporarily added as purposes of use.

3. The following points of diversion are temporarily added to License 845:

Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay located as follows: California Coordinate System, 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: California Coordinate System, Zone 2, NAD 83, North 1,861,989 feet and East 6,620,558 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M;

Bill Jones Pumping Plant located as follows: California Coordinate System, Zone 2, NAD 83, North 2,121,505 feet and East 6,255,368 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M.

4. The following points of rediversion are temporarily added to License 845:

San Luis Reservoir located as follows: California Coordinate System, 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.

5. The place of use under License 845 is temporarily expanded to include a portion of the service areas of the Santa Clara Valley Water District (as shown on Map 1878 – 1, 2, 3, and 4 on file with the Division under Application 5630), and a portion of the service area of the CVP as shown on Map 214-202-84 on file with the Division of Water Rights.
6. 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.
7. Only water collected to storage prior to issuance of this Order may be transferred pursuant to this Order.
8. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
9. Diversion of water at the Banks Pumping Plant is subject to compliance by the operators (California Department of Water Resources (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 requirements (ESA), including applicable Biological Opinions (BOs), Incidental Take Permits (ITP), court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

10. Rediversion 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.
11. Petitioner shall coordinate with the California Department of Fish and Wildlife (CDFW) and DWR in the development of reservoir release schedules and obtain CDFW concurrence that the release schedule will not impact foothill yellow-legged frog (FYLF). Documentation of the concurrence shall be submitted to the Deputy Director for Water Rights within 15 days after Petitioner obtains CDFW's concurrence.
12. Water may not be transferred through Banks Pumping Plant until Thermalito has executed a Refill Agreement between the U.S. Bureau of Reclamation (Reclamation), DWR, and Thermalito to address potential refill concerns in Concow Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and Thermalito shall be submitted to the Division within 15 days of the date of execution of the agreement. The terms of the Refill Agreement shall be binding until such time as all the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill Agreement. Thermalito may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.
13. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
14. By December 15, 2021, Thermalito shall provide to the Deputy Director for Water Rights one or more tables describing the transfer authorized by this Order. The table(s) 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 Santa Clara Valley Water District pursuant to this Order;
 - b) For each day of the transfer, the daily average rate of water made available for transfer pursuant to this Order;

c) The average daily streamflow measured at the nearest representative gaging station on Concow Creek.

15. 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.

16. 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 Endangered Species Act (ESA) (Fish and Game Code sections 2050 to 2097) or the federal ESA (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the 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.

17. 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: JUL 16 2021