

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

DIVISION OF WATER RIGHTS

**IN THE MATTER WATER RIGHT PERMIT 2452 (APPLICATION 3544)
OF MONTAGUE WATER CONSERVATION DISTRICT**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP
TO 500 ACRE-FEET OF WATER TO THE CITY OF MONTAGUE**

SOURCE: Shasta River

COUNTIES: Siskiyou

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On April 21, 2021, Montague Water Conservation District (District 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 Permit 2452 (Application 3544), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 500 acre-feet (af) of water will be transferred to the City of Montague (City). The temporary changes approved pursuant to Water Code section 1725 under this petition may be effective until December 31, 2021.

1.1. Background

The District is an irrigation district that owns and operates the Dwinnell Reservoir (also known as Lake Shastina) on the Shasta River. The District releases water from Dwinnell Dam to either the Cross Canal for conveyance to the Shasta River or to the Main Irrigation Canal for irrigation delivery. The District's water rights in the Shasta River watershed are summarized in Section 3.2 of this Order.

The District also extracts percolating groundwater from three wells, referred to as the Flying L Wells, in the vicinity of Dwinnell Dam that discharge to a cold-water habitat near the Shasta River. The Flying L Wells typically produce up to 6.5 cubic feet per second (cfs) of water with release temperatures ranging from 12.8-13.0 degrees Celsius.

Shasta River water rights have been adjudicated and are described in Shasta River Decree No. 7035 (Shasta River Decree) dated December 29, 1932. Diversions pursuant to the Shasta River Decree are managed by the Scott Valley and Shasta Valley Watermaster District (Watermaster). The District entered into a Prior Right Agreement with the prior right holders when Dwinnell Reservoir was constructed to provide water from Dwinnell Reservoir in lieu of prior rights up to a cumulative total of 3,382 acre-feet per annum (afa). Upon demand, the District releases water from Dwinnell Reservoir into the Shasta River to satisfy the Prior Right Agreement.

On December 19, 2013, the District entered into a Settlement Agreement with Klamath Riverkeeper and the Karuk tribe. Some of the Petitioner's interim obligations under the Settlement Agreement that are relevant to the proposed change include:

- 1) Providing 2,250 af of water each year for instream flow purposes during a dry year. This water allotment is to be released under a schedule developed by the parties to the Settlement Agreement in consultation with fisheries agencies, as described in the Settlement Agreement; and,
- 2) Maintaining a minimum pool of 2,000 af in storage in Dwinnell Reservoir on October 1 of each year. This water allotment is to be maintained in order to allow the District to meet the water supply needs of the City and potential instream flow releases after October 1.

The District must satisfy the demands of the Prior Right Agreement as a first priority under the Settlement Agreement.

Currently, the City is not an authorized place of use under the District's permits for water stored at Dwinnell Reservoir. The District filed a long-term change petition in 2015, and further amended in 2020 seeking, among other changes, authorization to supply water to the City under Permit 2452 for municipal use. In 2014, the District also faced drought conditions and received approval of a temporary urgency change petition (2014 TUCP) to modify Permit 2452. The 2014 TUCP added the City's intake as a point of rediversion, added municipal and fish and wildlife preservation and enhancement as purposes of use, added the City's boundaries to the place of use, and added direct diversion as a method of diversion. An additional groundwater well was also constructed during this time that discharges cold water into the Cross Channel to mix with water released from Dwinnell Dam to avoid warm water temperature impacts to fisheries. In 2020, the District petitioned and received approval from the Division for a temporary water transfer to deliver surface water to the City under Permit 2452. This 2021 petition is similar to the 2020 petition.

1.2. Purpose of Transfer

This petition seeks a temporary change to transfer water only under Permit 2452 and not under the District's two other surface water rights. The purpose of the proposed transfer is to address the City's water supply crisis this year. Normally, the City obtains

its water supply from the Little Shasta River under the District's water right Permit 2581 when water is available for diversion. However, the District typically is not able to divert water from the Little Shasta River under Permit 2581 from April to November due to its relatively low priority under the Shasta River Decree. When water is not available under Permit 2581, the District has historically provided water from Dwinnell Reservoir to the City through its Main Canal, when the District is releasing water to the Main Canal for delivery to its irrigation customers. Water deliveries to the City from Dwinnell Reservoir are timed to occur in conjunction with deliveries to irrigation customers due to the high conveyance loss rate that occurs when moving water in the Main Canal without irrigation deliveries.

The northern region of California is experiencing critically dry hydrologic conditions. Dwinnell Reservoir only contained 8,700 af of water as of April 1, 2021, while the average amount usually in storage is approximately 33,000 af during this time of the year. Siskiyou County declared a local emergency related to drought conditions on April 6, 2021, and the District declared a local drought emergency on April 14, 2021. Due to the local drought this year, the District will not release water from Dwinnell Reservoir to the Main Canal for irrigation use. However, the City must rely on the District's release from Dwinnell Reservoir for municipal supply, as this is the City's only water source when water is not available under Permit 2581. Delivery of water to the City via the Main Canal requires pulse flows at a total of 2,400 af to 3,000 af, which is almost 10 times of the amount needed for the City's municipal supply. The District will potentially run out of water this year to supply the City if it is limited to delivering water via the Main Canal.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by releasing water to the Shasta River that would otherwise be stored in Dwinnell Reservoir and/or diverted to the Main Canal under Permit 2452.

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 the District involves water currently stored in Dwinnell Reservoir.

3.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER

3.1. Description of the Proposed Temporary Changes

In order to facilitate the transfer, the District proposes to temporarily add the following to Permit 2452:

- 1) a point of redirection located on the Shasta River, at North 2,503,900 feet and East 6,416,000 feet by California Coordinate System of 1983 (CCS83), Zone 1, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T45N, R6W, MDB&M;
- 2) the City as an additional place of use; and
- 3) municipal and industrial to the purposes of use.

The District will make surface water available for temporary transfer via reservoir release. Absent the proposed temporary change, the transferred water would remain in storage in Dwinnell Reservoir.

3.2. Summary of the District's Permits

Permit 2452 (Application 3544)

Permit 2452, which has a priority date of July 23, 1923, authorizes the collection of storage of up to 35,000 afa from the Shasta River in Dwinnell Reservoir from October 1 of each year to June 15 of the succeeding year for irrigation purposes. The existing point of diversion to storage at Dwinnell Reservoir is located by CCS83, Zone 1, North 2,444,850 feet and East 6,459,180 feet, being within SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 25, T43N, R5W, MDB&M.

Permit 2453 (Application 3555)

Permit 2453, which has a priority date of July 30, 1925, authorizes the collection of storage of up to 14,000 afa from Parks Creek for redirection by storage in Dwinnell Reservoir from October 1 of each year to June 15 of the succeeding year for irrigation purposes. The point of diversion to storage is located by CCS83, Zone 1, North 2,412,884 feet and East 6,438,860 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 29, T42N, R5W, MDB&M.

Permit 2581 (Application 4909)

Permit 2581, which has a priority date of February 4, 1926, authorizes the direct diversion of up to 2.3 cfs from the Little Shasta River from January 1 to December 31 of each year for domestic and industrial purposes. The point of direct diversion is located by CCS83, Zone 1, North 2,511,484 feet and East 6,457,210 feet, being within SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T45N, R5W, MDB&M.

4.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On April 28, 2021, a public notice of the transfer was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on April 28, 2021, Petitioner noticed the Petition via publication in the Siskiyou Daily News and mailed the notice via first class mail to interested and downstream parties. The comment deadline was May 28, 2021. Timely comments on the transfer were received from

- 1) the State Water Board, Division of Drinking Water (DDW), Klamath District;
- 2) Mr. Brandon A. Criss and Mr. Michael N. Kobseff, (collectively "Siskiyou County, Board of Supervisors");
- 3) Senator Brian Dahle and Assemblywoman Megan Dahle, (collectively "California Legislature");
- 4) the California Department of Fish and Wildlife (CDFW);
- 5) North Coast Stream Flow Coalition (Coalition); and
- 6) Friends of the Shasta River (FOSR).

By e-mail dated May 17, 2021, FOSR asserted that they were not provided copies of the petition or information related to the temporary transfer and would need additional time to submit comments. The State Water Board granted FOSR an extension until June 2, 2021 to submit comments. Petitioner provided responses to the Coalition comments by e-mail to the Division dated June 1, 2021 and are available in the record for Permit 2452.

4.1. Comments of State Water Resources Control Board, Division of Drinking Water

On May 6, 2021, the DDW submitted a letter indicating that it is fully supportive of the District's temporary transfer petition as well as its pending long-term change petition. The DDW stated that the proposed diversion from the Shasta River will have the following benefits:

- 1) Provides a supply of essential drinking water to the City when the irrigation canal system is dry;
- 2) Efficient use of water transmission by use of a buried water main (pipe) versus very inefficient open channel transmission having high loss of volume;
- 3) Improves raw water quality because water is not degraded by agriculture and livestock as in the earthen canal water;

- 4) Less water treatment chemicals are required for the City; and
- 5) Provides an opportunity for future improvements of raw water quality and water loss reductions.

4.2. Comments of Siskiyou County, Board of Supervisors, and California Legislature

The Siskiyou County, Board of Supervisors, and the California Legislature submitted similar comments in support of the District's petition on May 17, 2021 and May 19, 2021, respectively. They indicated that the 2021 transfer petition and pending long-term petition is critical to providing an essential and efficient water supply to the City. It will also benefit all interested parties, both the economy and the environment. They request the transfer petition to be approved as expeditiously as possible.

4.3. Comments of California Department of Fish and Wildlife

CDFW submitted a letter dated May 26, 2021, supporting the transfer. CDFW indicated that it has worked with the District to develop actions to improve the upper Shasta River temperatures and flows. With the transfer approval, the water will provide additional instream flows, benefiting fish and wildlife resources as an alternative to delivering the water through the District's canal. In addition, it would mitigate a critical municipal water shortage in the City. CDFW recommends that releases of water stored in Dwinnell Reservoir for the purpose of re-diversion for delivery to the City shall not exceed 18 degrees Celsius, as measured at the monitoring site near the outlet of the cold-water habitat created downstream of Dwinnell Dam.

4.4. Comments of North Coast Stream Flow Coalition

By letter dated May 27, 2021, the Coalition commented on the proposed transfer. The Coalition comments included the following:

- 1) poor water quality in Dwinnell Reservoir;
- 2) proposed transfer may be violating the Endangered Species Act (ESA) and California Endangered Species Act (CESA); and
- 3) proposed transfer be subject to an Environmental Impact Report (EIR).

State Water Board Response:

- 1) The Coalition stated that the water pooled in Dwinnell Reservoir is of poor quality, including high water temperature, high nutrient levels creating excessive Biological Oxygen Demand and un-ionized ammonia. In addition, the Coalition indicated that Dwinnell Reservoir harbors two species of toxic algae.

No specific information and/or data was provided to substantiate Coalition water quality concerns. CDFW and the U.S. National Marine Fisheries Service (NMFS) support the proposed transfer as it would provide additional flow in the Shasta River, particularly in this critically dry year. CDFW and NMFS did not raise concerns regarding other water quality issues other than temperature. The potential for an increase in temperatures in the Shasta River as a result of the proposed transfer is a valid issue, and as stated in Section 7.3 of this order, terms are included to ensure that no negative temperature effects occur in the Shasta River as a result of the transfer. Further, the District indicated in its June 1 response that the North Coast Regional Water Quality Control Board (North Coast Regional Board) provided a negative result for toxic algae within the Dwinnell Reservoir and downstream to the Shasta River. The District also indicated in its June 1 response that independent of the temporary transfer petition, the District continues to coordinate with the North Coast Regional Board related to monitoring water quality released to the Shasta River. In addition, the District is required to release water to meet its other existing downstream commitments and requirements below Dwinnell Reservoir; this approval does not change those obligations.

- 2) The Coalition indicated that releasing the water downstream into the Shasta River can be reasonably expected to result in the “take” of Coho salmon, which would violate the ESA and CESA. As stated in Section 7.3 of this order, the transfer is subject to the Biological Opinion which was issued by NMFS in 2017 under the Federal ESA to protected endangered and threatened fish species in the Shasta River, including Coho salmon, Chinook salmon, and steelhead trout. Additionally, a condition is included to require the District’s compliance if a “take” will result from any act authorized under this transfer.
- 3) The Coalition indicated that an EIR should have been developed as it is likely to have significant negative impacts to the environment. Additionally, the Coalition indicated that an EIR is required for the proposed transfer to be legally approved. Temporary transfers are statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Water Code section 1729. Thus, an EIR is not required by the State Water Board to approve this proposed temporary water transfer.

4.5. Comments of Friends of the Shasta River

By letter dated June 2, 2021, FOSR commented on the proposed transfer. FOSR comments were primarily comprised of a series of questions and assertions that information pertaining to those questions had not been provided. The questions focused on the following:

- 1) inadequate information regarding the proposed water transfer;

- 2) negative impacts on threatened Coho salmon and other species due to Dwinnell Reservoir's warm polluted water; and
- 3) poor quality of water in Dwinnell Reservoir and/or the Shasta River.

State Water Board Response:

- 1) FOSR was provided a copy of the District's temporary transfer petition on May 18, 2021 and further additional information on May 27, 2021. The District indicated that it believes that the information provided in the petition as well as information included in the May 26 response to FOSR's request include adequate information showing that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.
- 2) See State Water Board's Response to items 1 and 2 of Section 4.4, and the discussion included in Section 7.3.
- 3) FOSR raised concerns regarding the poor quality of water in Dwinnell Reservoir and/or the Shasta River. FOSR did not provide specific facts or data, but stated that the current quality of water in Dwinnell Reservoir and/or the Shasta River contains manure, bacteria, fine organics, and other tailwater runoff constituents. The State Water Board's DDW supports the proposed water transfer as it will improve raw water quality, requires less water treatment chemicals by the City, and provides a reliable source of water supply. It is anticipated that the City will receive high quality water as well as a reliable source of water supply as a result of the proposed water transfer. Additionally, CDFW did not identify these concerns in its letter of support for the proposed change, nor did the North Coast Regional Board identify these issues in relation to operation of the temporary transfer. For further discussion, see Sections 4.4 and 7.3 of this Order which further address the issues raised by FOSR.

FOSR emphasized that the questions and issues included in its letter are relevant to long-term changes the District has proposed under Water Code section 1701 et seq., and that FOSR strongly opposes making the proposed water transfer permanent. This temporary transfer petition is not a permanent change. The proposed temporary water transfer is for a period of one year or less. Following the expiration of the temporary change period, water right Permit 2452 will automatically revert to its existing terms and conditions. The District is conditioned to provide the information required in Condition 9 of this order to any interested party within five business days of being requested.

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 CEQA. (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:

- 1) 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.
- 2) 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 water proposed for transfer is stored in Dwinnell Reservoir pursuant to the terms of Permit 2452. Due to the drought conditions of this year, the District ceased delivery for irrigation in mid-May 2021 to conserve water stored in Dwinnell Reservoir and to make it available for municipal supply for the City. Therefore, in the absence of the proposed change, the 500 af of water proposed for the transfer would remain in storage in Dwinnell Reservoir due to drought conditions constraining the ability of the District to deliver the water for irrigation.

The State Water Board conducted an independent evaluation of its records. The combined annual use under Permit 2452 was 17,155 af, 17,780 af, 11,976 af, 18,553 af, and 4,584 af during 2016, 2017, 2018, 2019, and 2020, respectively. These data indicate that the District 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.

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 section 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 be 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 Dwinnell Reservoir pursuant to Permit 2452, which will be preserved for delivery to the City for municipal and industrial uses. The releases from storage pursuant to the temporary transfer will not reduce available supply to any other legal user of water downstream of Dwinnell Reservoir. The District is required to release water to meet its existing obligations to downstream right holders and other requirements below Dwinnell Reservoir; approval of the transfer does not change these obligations. This order includes a condition requiring compliance with all existing agreements and obligations.

The District has flow gages at both the point of release below Dwinnell Reservoir and the point of rediversion on Shasta River for monitoring the delivery of transfer water to the City. The District proposes to monitor flows in real-time at both locations and report flow measurement data to the Division of Water Rights and Watermaster on a monthly basis, or as requested, while releasing water to the City under this order. The District also proposes to notify the Division of Water Rights and Watermaster prior to releasing water from Dwinnell Reservoir for the transfer, and to provide such notice three days prior to the release if feasible, or as soon as possible. Terms are included in this order to reflect these commitments.

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 North Coast Regional Board with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding the transfer as described in Section 4.3. Condition 7 has been included in this Order based on CDFW's comments. The North Coast Regional 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.

Release of stored water at Dwinnell Reservoir may have the potential to introduce water with elevated temperatures into the Shasta River. The District has consulted with CDFW and NMFS regarding the proposed transfer in the context of its long-term change petition that includes the use of the point of rediversion for municipal supply

delivery. CDFW indicated that it would support release of water to the point of redirection only if the water temperature did not exceed 18 degrees Celsius at the monitoring site on the Shasta River below the outlet of the cold-water habitat and the water remained in the stream between Dwinnell Dam and the proposed point of redirection. Accordingly, the District proposes to use water from the Flying L Wells to cool the cumulative releases from Dwinnell Reservoir when water temperatures exceed 18 degrees Celsius at the monitoring site located on the Shasta River. The District will monitor the water temperature at its established monitoring site on the Shasta River below the outlet of the cold-water habitat. Terms are included in this order to ensure that no temperature effects occur as a result of the transfer. The same monitoring works were used in the District's 2020 water transfer. Initially, the North Coast Regional Board had concerns regarding the monitoring conducted by the District, but data indicated that the District was operating within bounds of the 2020 water transfer approval.

The transfer is also subject to the Biological Opinion which was issued by NMFS in 2017 under the Federal Endangered Species Act to protected endangered and threatened fish species in the Shasta River, including Coho salmon, Chinook salmon, and steelhead trout, and subject to the 2013 Settlement Agreement with the Klamath Riverkeeper and the Karuk tribe.

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 GOVERNOR'S PROCLAMATIONS OF A DROUGHT STATE OF EMERGENCY

This Order is consistent with the May 10, 2021 Proclamation of a Drought State of Emergency (Proclamation) issued by Governor Gavin Newsom for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The State Water Board and Department of Water Resources are directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California. This Order is also consistent with the Proclamation directing the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers.

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.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 500 acre-feet (af) of water under Montague Water Conservation District's (District or Petitioner) Permit 2452 is approved.

All existing conditions of Permit 2452 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 December 31, 2021.
- 2) Municipal and industrial uses are temporarily added as purposes of use.
- 3) The following point of rediversion (City Diversion) is temporarily added to Permit 2452:
 - a) Downstream of Dwinnell Reservoir, located on the Shasta River as follows: California Coordinate System, Zone 1, NAD 83, North 2,503,900 feet and East 6,416,000 feet, being within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T45N, R6W, MDB&M.
- 4) The place of use under Permit 2452 is temporarily expanded to include the service areas of the City of Montague (City) as shown on the map accompanying the Petition.

- 5) 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.
- 6) No transfer of water is authorized unless petitioner complies with all existing agreements, including obligations under the Shasta River Decree, the Prior Right Agreement, and the Settlement Agreement between the District, Klamath Riverkeeper, and the Karuk tribe.
- 7) The District shall not release water stored in Dwinnell Reservoir for the purpose of rediversion for delivery to the City unless water temperature at the monitoring site on the Shasta River below the outlet of the cold-water habitat is at or below 18 degrees Celsius.
- 8) The District shall notify the Division of Water Rights, and the Scott Valley and Shasta Valley Watermaster District prior to releasing water from Dwinnell Reservoir for the transfer and shall provide such notice three days prior to the release if feasible, or as soon as possible.
- 9) During releases of water from Dwinnell Dam for the purpose of rediversion at the City Diversion, the District shall record the change in storage at Dwinnell Dam, the rate, volume of water released from Dwinnell Dam and temperature of water at its monitoring site located below the outlet of the cold-water habitat, and the rate and volume of water rediverted at the City Diversion. This information shall be recorded on an hourly basis and the District shall provide the information to the State Water Board on a monthly basis, or as requested, for the duration of the transfer. This information shall also be provided to any interested party within five business days of being requested.
- 10) 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.
- 11) 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.
- 12) 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.

- 13) 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: JUN 03 2021