

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

**DIVISION OF WATER RIGHTS**

---

**In the Matter of Licenses 1405 and 1572  
(Applications 2948 and 2952)**

**Reclamation District No. 756 and Delta Farms Reclamation District No. 2026**

**ORDER APPROVING TWO TEMPORARY TRANSFERS**

---

**SOURCES:** San Joaquin River, Mokelumne River, South Fork Mokelumne River, Potato Slough, Little Potato Slough, Old River, False River, Washington Slough, and Fishermans Cut

**COUNTY:** San Joaquin

---

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 INTRODUCTION**

On February 21, 2014, Reclamation District No. 756 and Delta Farms Reclamation District No. 2026 (Petitioners) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) petitions to temporarily transfer water under Water Code section 1725, et seq. The petitions request the transfer of 11,603 acre-feet (af) of water and 9,131.31 af of water, respectively, to the Semitropic Water Storage District (Semitropic). The transfer period extends from the date of order issuance through a maximum of September 30, 2014, but shall be further limited to the land fallowing period. The fallowing period is defined as the averaged irrigation season for corn on Webb Tract and Bouldin Island for the five year period preceding the transfer.

**2.0 DESCRIPTION OF TRANSFER**

To make water available for transfer, Petitioners propose to fallow about 5,263 acres of agricultural land on Bouldin Island (served by License 1405) and 4,287 acres of agricultural land on Webb Tract (served by License 1572). In 2014, if the transfer did not occur, 5,263 acres of land on Bouldin Island would be planted with 4,983 acres of corn, 88 acres of milo (sorghum), and 192 acres of alfalfa. In 2014, if the transfer did not occur, 4,287 acres of land on Webb Tract would be planted with corn. Based on this information, Petitioners have estimated that fallowing land on Bouldin Island will make 11,603 af of water available for transfer and that fallowing land on Webb Tract will make 9,131.31 af of water available for transfer. The transfer water to be delivered to Semitropic will be distributed to the Alameda County Water District, Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7 Water Agency), the City of Tracy, and Santa Clara Valley Water District (banking partners) to ensure they can satisfy minimal health and safety needs during the 2014 drought. Semitropic returns banked water to its banking partners either by exchanging a portion of Semitropic's State Water Project (SWP) entitlement (which it receives as member agency of SWP contractor Kern County Water Agency (KCWA)) to the banking partners or by pump back of stored water into the California Aqueduct. There is a concern by Semitropic that there will not be adequate SWP deliveries for exchange and not adequate pump back capacity in 2014 to deliver the water requested by its banking partners.

If Semitropic is able to deliver the water requested by its banking partners through alternate means or if KCWA facilitates an exchange of water to the banking partners, the water would instead be transferred to KCWA.

Petitioners propose that the water made available for transfer be conveyed by either the Department of Water Resources (DWR) through the Banks Pumping Plant or the U.S. Bureau of Reclamation (Reclamation) through the Jones Pumping Plant for delivery to Semitropic. Transfer water would be conveyed to the parties listed above via the California Aqueduct. The petitions state that the maximum combined increase in rate of diversion at both the Banks Pumping Plant and the Jones Pumping Plant pursuant to the proposed transfer is 135.59 cubic feet per second (cfs).

In the absence of this transfer, Petitioners would have undergone normal planting operations on Bouldin Island and Webb Tract and diverted water under Licenses 1405 and 1572 for use within these areas.

### **2.1 Proposed Temporary Changes**

The proposed transfer would make the following temporary changes to Licenses 1405 and 1572: (a) add the Banks Pumping Plant and the Jones Pumping Plant as points of diversion, (b) add the Semitropic service area to the place of use, and (c) add domestic, power generation, municipal, industrial, salinity control, and water quality control as purposes of use.

### **2.2 Availability of Water for Transfer**

The Petitioners propose to make water available for transfer by fallowing crop lands. Attachment 1 of the petitions estimated evapotranspiration of applied water (ETAW) for the crop types that would be planted on Bouldin Island and Webb Tract in 2014 without fallowing. The ETAW for the 2014 transfer is estimated at 2.13 acre-feet/acre (af/acre) for corn, 2.49 af/acre for milo (sorghum), and 4.01 af/acre for alfalfa. The Petitioners indicated that the fallowing program will result in no substantial change to the land on Bouldin Island and Webb Tract other than occasional discing to control weeds, as necessary.

To ensure that the fallowing results in consumptive savings, the Petitioners propose to institute a fallowing verification plan acceptable to DWR and Reclamation. Surface water not applied to the fallowed land will remain in the Delta channels where it will be conveyed by DWR through the Banks Pumping Plant to the Semitropic banking partners and/or KCWA, subject to DWR's or Reclamation's export and conveyance capacity and DWR's or Reclamation's compliance with applicable water quality standards.

Water savings were evaluated in an independent report prepared by the University of California, Davis for a 2009 land fallowing transfer involving Webb Tract. The 2009 transfer was from Delta Wetlands (Reclamation District No. 756 and Delta Farms Reclamation District No. 2026) to the Metropolitan Water District of Southern California. The report found that fallowing of transfer lands yielded 0.5 af/acre water savings, due to high groundwater, weed growth, and organic soils, among other factors. To ensure that no injury occurs to downstream parties (DWR and Reclamation) as a result of the current transfer, ongoing documentation of actual water savings resulting from fallowing is required by this Order. The Order also requires that the transfer quantities be limited, on an ongoing basis, to the documented water savings.

### **2.3 Other Agency Consultation**

Prior to submitting the petitions to the State Water Board the petitioners submitted a copy to the California Department of Fish and Wildlife (CDFW). CDFW staff was consulted during development of the fallowing and monitoring program and did not identify any concerns regarding impacts to fish,

wildlife, or other beneficial uses. Additionally, CDFW did not submit comments regarding the proposed temporary change.

### **3.0 BACKGROUND**

#### **3.1 Substance of License 1405**

License 1405 authorizes direct diversion of 71.56 cfs between March 1 and November 1 of each year for irrigation purposes. Water is diverted using movable points of diversion located on the San Joaquin River, Mokelumne River, South Fork Mokelumne River, Potato Slough, and Little Potato Slough. The authorized place of use consists of 6,006 acres located on Bouldin Island.

During the past five years, the following acreages were irrigated: (a) 5,262.45 acres in 2013; and (b) 4,933 acres in 2012, 2011, 2010, and 2009, as reported in the State Water Board's e-WRIMS database. The five year average of irrigated acreage was 4,999 acres. The reported water use for the past five years was 17,400 af each year.

The license is conditioned:

As there is a possibility that there will not be sufficient water in San Joaquin River during the latter part of the irrigation season to satisfy all requirements, this license is issued subject to the express condition that the use hereunder may be regulated by the Division of Water Resources during such periods of water scarcity to the end that such use will not interfere with rights under prior applications.

#### **3.2 Substance of License 1572**

License 1572 authorizes direct diversion of 63.94 cfs of water between March 1 and November 1 of each year for irrigation purposes. Water is diverted using movable points of diversion located on the San Joaquin River, Old River, False River, Washington Slough, and Fishermans Cut. The place of use consists of 5,115.491 acres located on Webb Tract. During the past five years, the following acreages were irrigated: (a) 4,122 acres in 2013; and (b) 5,116 acres in 2009 through 2012, as reported in the State Water Board's e-WRIMS database. The five year average of irrigated acreage was 4,917.2 acres. The reported water use for the past five years was 14,700 af each year.

The license is conditioned:

In accordance with the provisions of Section 42 of the Water Commission Act, nothing herein shall be construed as confirming the right to use more than two and one-half (2 ½) acre-feet of water per acre in any one year in the irrigation of uncultivated areas of land not devoted to cultivated crops.

This condition only affects uncultivated lands (such as pasture land). Accordingly, the condition does not limit the current transfer.

### **4.0 CALIFORNIA DROUGHT CONDITIONS IN 2014**

On January 17, 2014, Governor Brown issued a Drought Emergency Proclamation based on California's record dry conditions. The Proclamation indicated that the State's water supplies dipped to alarming levels as evidenced by the snowpack measuring approximately 20 percent of the normal average for January. The SWP and CVP reservoirs had very low water levels for January. California's major river systems, including the Sacramento and San Joaquin rivers, had significantly reduced surface water flow. Also, groundwater levels throughout the State had dropped significantly. With the Proclamation,

the Governor directed the State Water Board to in part expedite processing of water transfers as previously called for in Executive Order B-21-13.

The zero percent SWP allocation that existed at the time of submittal of these petitions for transfer has since increased to five percent. Although not a large increase it still provides some relief to the SWP contractors that are transfer recipients in these petitions.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor re-iterates direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), section 13247 of the Water Code is suspended. Water Code section 13247 requires state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans. Thus, applicable San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan (Bay-Delta Plan) and corresponding Revised Decision 1641 (D-1641) requirements, would not be made conditions of approval of the subject petitions.

On January 29, 2014, DWR and Reclamation jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code section 1435 et seq., to temporarily modify requirements in their water right permits and license for the SWP and Central Valley Project (CVP) for the next 180 days in response to drought conditions. An order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, February 28, March 18, April 9, April 11, April 18, and May 2, 2014. The Order restricted exports in the Delta at the SWP and CVP pumping facilities to health and safety needs of no more than 1,500 cfs, with the exception of transfers. Any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flows, or transfers.

On January 17, 2014, the State Water Board issued a Notice of Surface Water Shortage and Potential for Curtailment of Water Right Diversions. The notice advised that if dry weather conditions persist, the State Water Board will notify water right holders in critically dry watersheds of the requirement to limit or stop diversions of water under their water right, based on their priority. The notice suggested that water right holders look into the use of alternative water supplies, such as groundwater wells, purchased water supplies under contractual arrangements, and recycled wastewater. Following persistent dry hydrologic conditions, the State Water Board plans to issue Water Diversion Curtailment Notices to water right holders in water short areas in the near future. This Order is conditioned to require that the transfers be curtailed, if the underlying water right licenses are curtailed.

## **5.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE**

On March 3, 2014, public notice of the petitions for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, on March 5, 2014, the Petitioners noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties. Comments were submitted by DWR, Reclamation, Grassland Water District and Richard Morat. Letters of support were filed by Alameda County Water District, Zone 7 Water Agency, City of Livermore, and Dublin San Ramon Services District. These comments and the State Water Board responses are summarized below.

## 5.1 Comments of DWR

On April 2, 2014, DWR stated that it is supportive of water transfers. However, it is important that transfers be limited to those proposals that make water available without diminishing the supply available to other legal users of water or the environment. A crop idling transfer pilot study on Webb Tract occurred in 2009, and is summarized in the report "Determination of Conserved Water Associated with the 2009 Webb Tract Water Transfer Pilot Study" dated April 2010. The report indicates that water savings associated with land fallowing were lower than expected due to excessive weed growth, high groundwater, and organic soils, among others. DWR requests that Semitropic prepare a monitoring and reporting plan to determine real-time transferable water prior to transfer approval. DWR stated that it was working with Semitropic on this issue.

Another transfer issue identified by DWR is the ability of the SWP to export transfer water. The equation for allowable exports is based on the formula contained in the State Water Board's D-1641 which must be complied with in accordance with the Bay-Delta Plan. The Net Delta Outflow Index (NDOI) in Figure 3 on page 190 of D-1641 which is used in the calculation of Export/Inflow Ratio and allowable exports, does not have the flexibility to account for water made available within the Delta (primarily downstream of Freeport and Vernalis). DWR recommends that the State Water Board provide a method of accounting for the transfer at the export pumping facilities when outflow based objectives are controlling.

### DWR Response:

On April 18, 2014, DWR reiterated that it is working with Semitropic to prepare a monitoring and reporting plan to aid in real-time assessment of transferable water. DWR also stated that it does not have the discretion to alter the method of calculating NDOI in D-1641 and allowable exports. DWR will rely on the State Water Board to provide an acceptable method of accounting for the changes in in-Delta diversions and consumptive use and any necessary changes to DWR's and Reclamation's water rights permits through the existing TUCP or other petition as appropriate.

### State Water Board Response:

In evaluating and processing a transfer petition, the State Water Board is required to make findings pursuant to Water Code section 1727. This includes finding that the temporary change would not injure any legal user of water. The evaluation of this issue is found in Section 7. Real-time information is needed to document that the transfer quantities do not exceed the water savings associated with land fallowing. This Order is conditioned to require a monitoring and reporting plan.

The State Water Board does not have a method for accounting for the transfer water within the Delta without modification to the NDOI equation in Figure 3 on page 190 of D-1641. The State Water Board cannot modify the NDOI equation without amending D-1641. Since changes to the NDOI equation are outside the scope of this transfer, the issue cannot be directly addressed herein. To avoid injury, the transfer is conditioned to be allowed only after the NDOI issue is addressed by the State Water Board in an appropriate forum (such as a temporary urgent change order jointly issued to DWR and Reclamation).

## 5.2 Comments of Reclamation

On April 2, 2014, Reclamation submitted the following comments and requested denial of the petitions:

- a) The Petitioners must submit what actions will be taken to monitor fallowed fields to ensure the accuracy of the estimates of consumptive use savings, taking into account any impacts from weed growth and evaporation of water from bare fields.

- b) Even if consumptive use changes are quantified, the Petitioners must explain to what degree significant movement of water onto the tract would occur that would impact the net water savings.
- c) The State Water Board must authorize necessary changes to the delta gross channel depletions estimates (net delta consumptive use) to allow Reclamation to coordinate operations with DWR and recognize the existence of transferable water.
- d) Reclamation does not intend to petition the State Water Board to make changes to D-1641 or provide access to CVP facilities to facilitate this transfer.

Petitioners Response:

Consumptive savings will be measured through monitoring soil evaporation rates and evapotranspiration of weed growth on the fallowed fields. Only the amount of conserved water will be available for transfer. Water would not be diverted onto Bouldin Island and Webb Tract during the 2014 irrigation season. The groundwater elevations on the islands are maintained at 3 to 5 feet below the surface through pumping. Through a monitoring program, any movement of water onto the tract that would impact the net water savings will be accounted for and will reduce the consumptive use savings generated for the fallowing program.

DWR and Reclamation should subtract the water conserved from fallowing Bouldin Island and Webb Tract from the "net delta consumptive use" factor for NDOI described in D-1641. As a practical matter, subtracting the net consumptive use savings of fallowing from "net Delta consumptive use" means a higher percentage of Delta inflow is available to meet outflow and/or export. Petitioners suggest that that DWR and Reclamation can account for the change in the NDOI equation without approval of the State Water Board.

Supplemental Response from Reclamation:

On April 18, 2014, Reclamation responded that the current petitions propose over 2 af/acre water savings. A similar 2009 water transfer only conserved 0.5 af/acre of land fallowed. Therefore, Reclamation is of the opinion that the historic information and available science does not support the proposed transfer.

Reclamation will be injured by any errors in the estimation and/or measurement of transferrable water under this proposal, especially considering the current environmental conditions this year. Reclamation does not intend to petition the State Water Board to make changes to D-1641 or provide access to CVP facilities to facilitate this transfer, due to the reasons previously stated. Reclamation reasserted its request that the State Water Board not approve this petition at this time.

State Water Board Response:

The State Water Board does not have a method for accounting for the transfer water within the Delta without modification to the NDOI equation in Figure 3 on page 190 of D-1641. The State Water Board cannot modify the NDOI equation without amending D-1641. DWR and Reclamation initially indicated that they did not intend to petition to modify D-1641. However, it appears that this issue may be subject to further evaluation. The State Water Board will conditionally approve the transfer, based on resolution of the NDOI accounting issue in an appropriate forum.

By letter dated April 18, 2014, Reclamation responded to the Petitioners. The response basically restates the concerns identified in Reclamation's April 2 letter.

### **5.3 Letters of Support Filed by Alameda County Water District, Zone 7 Water Agency, City of Livermore, and Dublin San Ramon Services District**

Collectively these agencies are supportive of the transfer. They have concerns that, without this transfer, they cannot meet the health and safety needs of their customers. Given the zero percent SWP allocation and inadequate pumpback capacity on the part of the SWP due to the drought related Delta crisis, without the transfer, they predict they will be forced to stress the local groundwater basins to meet the water needs of their customers.

#### State Water Board Response:

The State Water Board recognizes the impact of the drought on these agencies, and is committed to expediting water transfers, where such transfers can be granted without injury to other legal users of water and fish, wildlife or other in stream beneficial uses. The zero percent SWP allocation was increased to five percent in April 2014 thus providing some more flexibility to SWP contractors. In addition, the State Water Board's May 2, 2014 *Order that Modified an Order that Approved a Temporary Urgency Change in License and Permit Terms and Conditions Required for Compliance with Delta Water Quality Objectives in Response to Drought Conditions*, states that the Real-Time Drought Operations Management Team with representatives from DWR, Reclamation, State Water Board, CDFW, National Marine Fisheries Service, and U. S. Fish and Wildlife Service meets on a regular basis to discuss potential changes to SWP and CVP operations to meet health and safety requirements and to reasonably protect all beneficial uses of water.

### **5.4 Comments of Grassland Water District (Grassland)**

On April 2, 2014, Grassland commented that fallowing almost 10,000 acres of corn on two contiguous Delta islands will greatly affect the availability of food that sustains over 1 million birds that inhabit the Delta in the fall and winter. This amount of fallowed acreage represents a reduction of approximately one third of waterfowl habitat. This could unreasonably affect the health and survival of public trust waterfowl resources. The State Water Board should consider the adoption of mitigation measures for these impacts.

Grassland also expressed concern that the four agencies receiving the transfer water claim to need water for "health and safety" needs. However, the phrase "health and safety" has not been accurately defined and has been broadly used in recent months to justify a number of water supply actions that threaten wildlife. These agencies have a fairly diversified water supply and several of them could adopt conservation measures.

#### Petitioners Response:

The normal practice of fall and winter water diversions to leach salts and create waterfowl habitat will continue even without corn being grown on Bouldin Island and Webb Tract. This will be accomplished in 2014 using the islands' riparian water rights, which are not utilized in the temporary water transfers. In fact, the diversions may occur earlier because there is no need to wait for crop harvest to flood the fields, which will provide more shallow water habitat sooner for waterfowl.

The removal of approximately 3.9% of the harvested corn and rice in the Delta counties through the proposed transfers will not unreasonably affect waterfowl through reduced food supplies. The remaining corn and rice fields in the Delta (Sacramento, Solano, and Yolo counties) should provide sufficient food for waterfowl present in the area. These nearby areas will provide corn production (and some rice), which will provide foraging resources to waterfowl in the form of corn kernels, sprouting vegetation from corn seeds, and terrestrial invertebrate prey (including corn crop pests).

Supplemental Response from Grassland:

On May 7, 2014, Grassland commented on: 1) the lack of wildlife-protective measures during the growing season, 2) reduction in critical food supply for waterfowl, and 3) mitigation opportunities. Grassland stated that it would withdraw the protest to the transfer if these issues could be resolved.

State Water Board Response:

Although there will be a reduction in cropped area as a result of the transfers, the Petitioners have estimated the reduction to be 3.9% of Delta counties acreage in corn/rice. Impacts to waterfowl will be reduced in two ways. First, the Petitioners intend to continue the historic practice of flooding their fields in fall and winter. This will maintain habitat. Second, the Petitioners have agreed to a condition in the Order regarding maintenance of existing perennial aquatic and riparian habitat. The vegetation will not be disced, mowed or sprayed.

**5.5 Comments of Richard Morat**

On March 30, 2014, Richard Morat requested that the State Water Board consider the following issues:

- a) The amount of water made available by fallowing crops needs to be accurately calculated.
- b) The State Water Board should consider if pumping is required to keep groundwater out of the root zones to ensure the amounts of transferable water are accurate and the impacts of delta hydrology are protected.
- c) Impacts to raptors and wading birds and the prey species (small mammals) due to fallowing of all crops should be considered.
- d) The State Water Board must determine that the difference in impacts to fish by diverting water at the Banks and Jones pumping plants rather than at the smaller points of diversion on Bouldin Island and Webb Tract are not unreasonable.

Petitioners Response:

Petitioners will be required to prepare a monitoring and reporting plan for this transfer. The estimate of ETAW for the crops to be fallowed will be included to determine the amount of water available for transfer. Only water conserved by fallowing will be available for transfer. The existing aquatic, riparian and herbaceous upland habitats on Bouldin Island and Webb Tract will not be affected by the fallowing and proposed transfer and will continue to serve as wildlife habitat during the fallowing transfer. Of the crops to be fallowed, corn makes up 98%, sorghum and alfalfa make up 1% and 2% of the acreage.

The proposed transfer will benefit fish and other instream beneficial uses for the islands by increasing the flow in Delta channels between the present points of diversion from the islands and the South Delta pumping facilities, and by reducing return drainage from the islands.

Additional Response by Richard Morat:

By email dated April 12, 2014, Richard Morat further commented that:

- a) The State Water Board is the only agency with the statutory authority and duty to make the call of "no unreasonable effect on fish, wildlife or other beneficial uses."
- b) The Petitioners state that this transfer will cause increased flow in Delta channels between the present points of diversion and the South Delta pumping facilities. Increased flow away from the ocean and towards the export facilities with ineffective salvage is a problem.

c) It is irrelevant whether CDFW commented on the similar Webb Tract 2009 transfer.

Mr. Morat also asked how many letters the State Water Board has received from USFWS and NMFS regarding the 2013 to 2014 temporary transfers.

State Water Board Response:

A monitoring and reporting plan will be required prior to transfer. This plan must indicate how much water will be made available due to crop fallowing. Pumping already occurs on the islands to keep the groundwater level at 3 to 5 feet below the surface level. The pumping operation will not change as a result of fallowing.

Pumping at the Banks and Jones pumping plants was analyzed in the Biological Opinion (BO) on Transfers issued by the National Marine Fisheries Service (NMFS), covering the period July through September of each year. This Order is conditioned to required compliance with the Endangered Species Act, including any restrictions based on the existing BO, subsequent BOs or informal consultation covering transfer outside the July through September period. Further evaluation of fishery impacts at the pumps by the State Water Board is not needed, because NMFS has already evaluated the issue for July through September and NMFS will determine if additional review is needed for transfer outside of this time period.

Per Water Code Section 1727 (e), 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. Pumping at the Banks and Jones pumping plants would occur with or without these transfers. Therefore, these transfers should not cause additional impacts to fish due to pumping at the Banks and Jones pumping plants because the total pumping at these facilities will not increase beyond historic levels as a result of the transfers.

The concern regarding the State Water Board's authority is addressed in Section 8 below.

The proposed transfers would increase the flow in Delta channels between the present points of diversion and the South Delta pumping facilities. This increased flow would benefit fish and reduce return drainage from the islands. Diversion of water at the Banks pumping plant and the Jones pumping plant by DWR or Reclamation pursuant to this Order is subject to compliance by the operators with the Delta Smelt Biological Opinions and other applicable biological opinions, and any court orders applicable to these operations.

CDFW was given the opportunity to comment on the 2014 transfer petitions. The State Water Board did not rely on a response or lack of response from CDFW in 2009 for the current review.

The request for information on regarding the number of comments from fisheries agencies on other parties past transfers is not pertinent to this transfer.

## **6.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Temporary transfers under Water Code section 1729 are exempt from the California Environmental Quality Act (CEQA). (CEQA Guidelines, § 15282.) The State Water Board will file a Notice of Exemption five days from the issuance of an order.

The State Water Board has considered the project and any conditions required as a condition of approval to avoid significant effects to the environment. The State Water Board has also considered its public trust responsibilities.

## **7.0 REQUIRED FINDINGS OF FACT**

### **7.1 Availability of Water for Transfer**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) The water proposed for transfer pursuant to these temporary changes consists of water made available through fallowing of Bouldin Island and Webb Tract. In the absence of the proposed transfer, Bouldin Island and Webb Tract would be planted with crops (mostly corn) similar to its 2013 cropping patterns. Since both Bouldin Island and Webb Tract are below sea level, the use of crop ETAW estimates to calculate the amount of water made available through fallowing may overestimate the amount of water conserved. As previously noted, a 2009 transfer on Webb Tract did not yield the expected water savings. To address this concern, this Order requires a satisfactory monitoring and compliance plan be developed prior to transfer of water.

Ongoing monitoring is necessary for these transfers, and development of continuous data showing real-time water available for transfer. Along with ongoing monitoring, there is a need for self-reporting of compliance with the monitoring plan and curtailment of the transfer at any time that the Petitioner's cannot document ongoing water savings. This Order is conditioned accordingly.

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

### **7.2 No Injury to Other Legal Users of Water**

Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. The water proposed for transfer pursuant to these temporary changes consists of water made available through fallowing of Bouldin Island and Webb Tract. If the State Water Board issues any notice curtailing the use of water pursuant to Licenses 1405 and 1572, the diversion of water at the Banks pumping plant and the Jones pumping plant pursuant to this Order is prohibited.

DWR and Reclamation will potentially be injured by not being able to account for any transfer water made available in the calculation of the NDOI (see Sections 5.1 and 5.2). The State Water Board does not currently have a method for accounting for the transfer water within the Delta without modification to the NDOI equation in Figure 3 on page 190 of D-1641. The State Water Board cannot modify the NDOI equation without amending D-1641. The Order is conditioned to allow transfer of water only after this issue is addressed.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water.

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

Water Code section 1729 exempts temporary changes involving the transfer of water from the requirements of the CEQA. (Pub. Resources Code, § 21000, et seq.) However, the State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).)

CDFW was contacted regarding the proposed temporary change and did not identify any concerns regarding fish, wildlife, and other instream beneficial uses and did not file comments on the proposed temporary change. Potential impacts to fisheries are also addressed in Section 5.5.

The potential impacts on waterfowl are addressed in Section 5.4. Although there may be some impacts to waterfowl habitat due to reduction in corn acreage in the Delta, the loss of corn acreage is estimated to be 3.9%. The potential impacts will be reduced by continuation of fall and winter field flooding and maintenance of perennial aquatic and riparian habitat. Thus, the transfer does not appear to cause an unreasonable effect on wildlife.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfers will not unreasonably affect fish, wildlife, or other instream beneficial uses.

### **8.0 STATE WATER BOARD DELEGATION OF AUTHORITY**

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, granting the authority to act on petitions for temporary change to the Deputy Director for Water Rights, except where the State Water Board holds a hearing. The State Water Board did not conduct a hearing on the petition subject to this Order, and this Order is adopted pursuant to the delegation of authority in Resolution 2007-0057.

### **9.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I find as follows:

I conclude that, based on the available evidence:

1. The proposed temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used, stored, or conserved pursuant to Water Code section 1011, in the absence of the temporary change.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petitions for temporary transfer pursuant to Water Code section 1725 are approved, as specified below.

All existing terms and conditions of Licenses 1405 and 1572 remain in effect, except as temporarily amended by the following provisions:

1. Reclamation District No. 756 is authorized to transfer a maximum of 11,603 af under License 1405 and may fallow a maximum of 4,999 acres.
2. Delta Farms Reclamation District No. 2026 is authorized to transfer a maximum of 9,131.31 af under License 1572 and may fallow a maximum of 4,917 acres.
3. a. For items (1) and (2), the transfer quantities shall be determined on a weekly basis as follows. Beginning one week prior to initiation of the transfer, Licensees shall determine the quantity of daily water savings for the week resulting from land fallowing based on an acceptable Monitoring and Reporting Plan (as described in a separate provision below). Each week the data shall be verified by DWR and Reclamation. The quantity transferred shall be based on the weekly data from the preceding week, less any applicable instream and/or conveyance losses as determined by DWR. Monthly reporting of the weekly data shall be provided to the State Water Board, DWR and Reclamation. The transfer quantities cannot be aggregated into lump sums for transfer, but must be based on daily direct diversions for each water right (calculated daily fallowing water savings (minus losses) from the prior week). If DWR and Reclamation concur with a different monitoring and reporting period (for instance, a ten day period), this term may be adjusted by the Deputy Director for Water Rights.  
  
b. This order allows consideration of alternative transfer measurement protocol(s), provided that any protocol is submitted to the Deputy Director for Water Rights a minimum of ten days before the desired date of implementation, for review, modification, and approval by the Deputy Director. In the absence of such approval the methodology mentioned in Part (a) of this term shall be implemented. Any alternative transfer measurement protocol must be based on ongoing crop evapotranspiration minus any applicable losses and be sufficient to document any non-injury to the SWP and CVP. Supporting documentation shall be provided. To be considered, written support for the alternative measurement methodology must be received from DWR and Reclamation.
4. a. The transfer period extends from the date of order issuance through a maximum of September 30, 2014, but shall be further limited to the land fallowing period. The fallowing period is defined as the averaged irrigation season for corn on Webb Tract and Bouldin Island for the five year period preceding the transfer.  
  
b. The transfer period is further limited to the period allowed pursuant to any applicable Biological Opinions (BO) or Endangered Species Act (ESA) consultations (or informal consultations) related to transfers at the State and federal Delta pumps. Both Licensees are responsible, under their separate water rights, for meeting all requirements of the applicable ESA for their respective temporary transfers authorized under this Order. Licensees shall provide documentation of the diversion period allowed pursuant to the BO's or consultations prior to transfer of water. Such documentation may include an electronic link to any transfer BOs or ESA consultations, informal ESA consultations, opinions, or other documents issued by CDFW, National Marine Fisheries Service and/or U.S. Fish and Wildlife Service.

5. Each Licensee is separately responsible for implementation and compliance with a Monitoring and Reporting Plan, acceptable to the Deputy Director for Water Rights, DWR and Reclamation. An acceptable plan is required prior to initiation of the transfer. At a minimum, each plan shall document:
  - a. Verification of the proposed ETAW calculations. Verification shall consist of initial calculations and analysis (prior to plan approval) using one data cycle of approximately 16 days to demonstrate that the plan provides accurate, reliable data showing the quantities of real-water savings. DWR and Reclamation shall have opportunity to comment and recommend changes to the calculation or data collection methodology.
  - b. The number of monitoring stations that will be utilized to determine ongoing land following status.
  - c. Weekly evaluation of vegetative land coverage, including weed or other vegetative growth, height of plant growth, plant type, and ETAW for plant type. The initial evaluation shall include information on idled crop acreage in the five years preceding the transfer (the acreage evaluation shall list and deduct lands used for roadway access, field access, ditches, buildings or facilities, levees, lands not cultivated, lands set aside as conservation or mitigation areas, and all other areas not actually used for idled crop production).
  - d. Monitoring for climatic conditions and associated expected ETAW of both the idled crops and weed or other vegetative land coverage based on climatic conditions.
  - e. Reporting of water made available for transfer, based on expected idled crops ETAW minus ongoing vegetative cover ETAW, taking into consideration climatic conditions. The reporting shall be by field. Aggregate data is not acceptable.
  - f. Any additional requirements required to be added to the Monitoring and Reporting Plan in order for the plan to be acceptable to DWR and/or Reclamation is hereby incorporated as requirements of this Order. A copy of the final Monitoring and Reporting Plan shall be provided to the Division within 10 days of acceptance by DWR and Reclamation.
  - g. The use of herbicides for land following is subject to all applicable regulations. The Monitoring and Reporting Plan shall include information on methods used for land following, applicable regulations governing the following techniques, and include a report of compliance with any applicable regulations.
  - h. For each Licensee, transfer of water is prohibited during any time period when the requirements of the Monitoring and Reporting Plan are not met. Each Licensee is required to self-report non-compliance to the Division, DWR and Reclamation within 3 days; and to also report the expected duration of non-compliance. During such time period, this Order does not authorize use of the Delta pumps for transfer purposes. Once compliance is re-established, the transfer may re-commence.
6. The places of use under Licenses 1405 and 1572 are temporarily amended to include the service area of Semitropic, Alameda County Water District, Santa Clara Valley Water District, and Zone 7 Water Agency, as shown on SWP/CVP place of use maps on file with the Division under Application 5626.
7. The following points of diversion shall be temporarily added to Licenses 1405 and 1572. The water diverted at these facilities is limited to the quantities made available as transfer water, as specified above:

- a. Banks Pumping Plant via the Clifton Court Forebay – being within the NW¼ of SE¼ of projected Section 20, T1S, R4E, MDB&M.
  - b. San Luis Reservoir - being within the SW ¼ of SE ¼ of projected Section 15, T10S, R8E, MDB&M.
8. Rediversion of water at Banks Pumping Plant is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in consistent with the April 8, 2014 CVP and SWP Drought Operations Plan and the State Water Board's SWP-CVP Order issued January 31, 2014 and subsequently amended.

Transfer under this Order is only allowed after the 2014 SWP-CVP Order is amended to address how this transfer will be accounted for in regards to the minimum NDOI described in Figure 3 on page 190 of D-1641. Each Licensee shall provide information necessary for such accounting, as specified by DWR and Reclamation.

The Division retains continuing jurisdiction to amend or revise this transfer condition, as necessary, based on actions taken by the State Water Board related to the NDOI issue, use of the Delta pumps for export, or other issues related to use of the Delta pumps that may affect this transfer.

9. Diversion of water at Banks Pumping Plant is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of 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 Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Order item 9. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
10. Domestic, power generation, municipal, industrial, salinity control, and water quality control are temporarily added as purposes of use under Licenses 1405 and 1572.
11. Existing perennial aquatic and riparian habitat will be maintained during the following transfer. Existing perennial aquatic and riparian vegetation will not be disced, mowed or sprayed, and spray drift shall be controlled to avoid these areas. Petitioners will implement CDFW's recommendation for the 2009 following transfer to maintain water elevations in the drainage ditches at levels normal for the irrigation season.
12. If at any time prior to, or during the period of the transfers, the State Water Board issues any notice curtailing the use of water pursuant to License 1405 and/or License 1572, the transfer of water under any license receiving a curtailment notice shall immediately cease. No transfer credit shall accrue for land following during the curtailment period. Further, all transfer credit shall be accounted for on a daily basis, not on a 30-day average basis.
13. The Petitioners are separately responsible for providing the Deputy Director for Water Rights a monthly report under their respective water rights describing the conservation and transfer of water pursuant to this Order. The reports shall include the following information:
- a. All information required to be produced as a result of the Monitoring and Reporting Plan, and documentation of compliance with the Monitoring and Reporting Plan;

- b. The daily average rate of water diverted and daily volume of water diverted at either the Banks Pumping Plant or the Jones Pumping Plant pursuant to this Order;
- c. The daily amounts of water delivered to Semitropic, Alameda County Water District, Santa Clara Valley Water District, and Zone 7 Water Agency pursuant to this Order; and
- d. Final measurement of the amount of water actually conserved through following.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to Petitioners in time for inclusion in a monthly report, Petitioners shall provide the information to the Deputy Director for Water Rights within 30 days of receipt

14. 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.

15. 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 (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the licensee shall obtain authorization for an incidental take prior to commencing transfer of water. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
16. I reserve jurisdiction to supervise the transfers, 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.
17. The temporary changes authorized under this Order shall not result in creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the Board. The temporary changes approved in this Order shall automatically expire 180 days after the date of its issuance or unless it has been revoked.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: MAY 12 2014