

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF SPECIFIED LICENSE AND PERMITS OF THE  
STATE WATER PROJECT AND THE CENTRAL VALLEY PROJECT**

**ORDER APPROVING A PETITION FOR TEMPORARY CHANGE IN THE PLACE OF  
USE OF LICENSE AND PERMITS OF THE CALIFORNIA DEPARTMENT OF WATER  
RESOURCES AND UNITED STATES BUREAU OF RECLAMATION**

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SOURCE: Sacramento – San Joaquin Delta

COUNTIES: Fresno, Kern, Kings, Los Angeles, Merced, Orange, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, Santa Clara, Stanislaus, Tulare, and Ventura (SWP and CVP Places of Use)

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 OVERVIEW**

On May 11, 2022, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) (hereinafter jointly referred to as Petitioners) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change under Water Code Section 1725, et seq. With the Petition, DWR requests a one-year modification of Permit 16479 and Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 to temporarily change the authorized place of use of: (1) the DWR permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones); and (2) the Reclamation license and permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks). The Petitioners use the term “downstream” to identify that portion of the SWP and CVP that is served by water diverted from the Jones and Banks Pumping Plants. These areas are served via a system of canals and holding reservoirs that is within the Petitioners’ control. These areas are not within the downstream water supply as defined in Water Code section 1725. The maximum total exchange quantity requested is up to 393,385 acre-feet (af).

The changes requested will temporarily consolidate the SWP's and CVP's (hereinafter jointly referred to as the Projects) respective authorized places of use for the license and permits that are the subject of the Petition. Petitioners indicate that the changes will more effectively and efficiently utilize the operational flexibility of the combined Projects to supply water south of Banks and Jones (collectively, the Delta Pumps). The Petitioners also indicate that the changes will address physical and timing limitations, will reduce energy and conveyance costs, and/or will implement certain parts of the San Joaquin River Restoration Program. The Petitioners state that the requested changes will facilitate the delivery of available Project supplies that already have been exported south of the Sacramento-San Joaquin Delta (Delta) and will maximize the beneficial use of available supplies. The Petitioners indicate approval of the petition will not increase the quantity or alter the timing of diversions from the Delta or San Joaquin River.

The temporary changes would become effective on the date of this Order and would remain in effect for one year from the date of approval. The total exchange quantity consists of the exchanges detailed in Section 2.5 below. The SWP and CVP license and permits subject to the proposed changes are listed in the table below.

#### **SWP Water Rights Subject to Temporary Change**

<b>Application Number</b>	<b>Permit (P) Number</b>	<b>Description</b>
14443	P16479	Oroville Project

#### **CVP Water Rights Subject to Temporary Change**

<b>Application Number</b>	<b>License (L) or Permit (P) Number</b>	<b>Description</b>
23	L1986	Friant Project
234	P11885	Friant Project
1465	P11886	Friant Project
5626	P12721	Shasta Project
5628	P11967	Trinity Project
5638	P11887	Friant Project
9363	P12722	Shasta Project
9364	P12723	Shasta Project
9368	P12727	Jones Pumping Plant
13370	P11315	Folsom Project
13371	P11316	Folsom Project
15374	P11968	Trinity Project
15375	P11969	Trinity Project
15764	P12860	San Luis Reservoir
16767	P11971	Trinity Project
17374	P11973	Trinity Project
17376	P12364	Whiskeytown Lake

On July 14, 2021, the State Water Board approved a similar petition filed by the same Petitioners to exchange up to 431,780 af of water to primarily the same buyers. As of July 18, 2022, 106,362 af of water have been exchanged.

## **2.0 SUBSTANCE OF TEMPORARY CHANGE PETITION**

### **2.1 Existing Place of Use of Petitioners Water Rights**

The service area of the SWP is shown on maps 1878-1, 1878-2, 1878-3, and 1878-4 (on file under Application 5629) and the service area of the CVP is shown on map 214-208-12581 (on file under Application 5626).

### **2.2 Place of Use under the Proposed Temporary Change Petition**

In order to consolidate the SWP and CVP authorized places of use, the Petitioners have requested:

- 1) the temporary addition of the CVP service area downstream of Jones to the place of use under DWR's Permit 16479; and
- 2) the temporary addition of the SWP service area downstream of Banks to Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364. These temporary additions would be for the purpose of completing the exchanges described below and would be effective for one year following the date the Petition is approved. The areas to be added to the SWP are shown on Map 214-202-83 and the areas to be added to the CVP are shown on Map 214-202-84 submitted with the Petition.

### **2.3 Drought Conditions**

Due to drought conditions in 2022, no Project contractors have been given a 100 percent allocation, which is not expected to change. Therefore, for 2022 all Project contractors' demands will exceed their Project supplies/allocations.

As of July 12, 2022, Project allocations were:

SWP south-of-Delta contractors: 5 percent

CVP south-of-Delta irrigation contractors: zero percent

CVP south-of-Delta municipal and industrial contractors: public health and safety needs consistent with the CVP Municipal and Industrial Water Shortage Policy<sup>1</sup>

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<sup>1</sup> For additional information regarding CVP delivery of health and safety needs, see *Central Valley Project Municipal and Industrial Water Shortage Policy Guidelines and*

CVP Friant contractors: 20 percent

For the San Joaquin River Restoration Program, Reclamation is currently forecasting a “Dry-Normal” water year type, providing 245,500 acre-feet to be used for Restoration Program purposes.

#### **2.4 Governor Newsom’s 2021 and 2022 Proclamations of a Drought State of Emergency**

California is experiencing severe to exceptional drought conditions across the state. Water Year 2020-2021 was a second consecutive dry year with record-breaking high temperatures. In response to California’s severe drought conditions in 2021, Governor Gavin Newsom proclaimed a regional drought state of emergency on April 21, 2021 for the Russian River Watershed, and on May 10, 2021 he signed a proclamation expanding the drought state of emergency to the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds. On July 8, 2021, the Governor signed a proclamation further expanding the regional drought state of emergency to include nine counties where drought effects are increasingly severe or where state emergency response may be needed. The Governor’s drought proclamations brought a total of 50 of the state’s 58 counties under the drought state of emergency.

The Governor’s July 8, 2021 Proclamation states:

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

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

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

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

## **2.5 Exchanges Proposed**

The Petition identifies the possible exchanges enumerated below and the corresponding justification for each. On July 9, 2020, DWR and Reclamation submitted a memorandum with information regarding the use of water in the absence of the proposed exchanges, which has been incorporated into the descriptions of each exchange. This information is still pertinent and has been updated as applicable for the Petition. All exchanges covered by this Petition will occur south of the Delta and the total amount of water exchanged will not exceed 393,385 af. Note that for exchanges associated with a groundwater bank, the quantities listed below already account for banking losses (i.e., groundwater bank losses already have been subtracted from the quantity to be delivered pursuant to respective groundwater banking agreements). Petitioners state that banking loss is 10 percent in the Semitropic Water Storage District's (Semitropic) groundwater bank, 10 percent in Arvin-Edison Water Storage District's (Arvin-Edison) groundwater bank, 10 percent in Kern Bank and West Kern Bank, and 11 percent in Rosedale-Rio Bravo Water Storage District's (Rosedale) groundwater bank.

### *Santa Clara Valley Water District*

Santa Clara Valley Water District (Valley Water) contracts for water supplies from both SWP and CVP. DWR delivers SWP water to Valley Water through the South Bay Aqueduct (SBA) and Reclamation delivers CVP water to Valley Water from the San Luis Reservoir through the San Felipe Division. Valley Water has previously banked CVP water in the Semitropic's groundwater bank. Petitioners request the approval of up to 125,000 af of exchanges including: (1) exchange of up to 75,000 af of SWP and CVP water to address potential operational and maintenance issues in the San Felipe Division and SBA, and (2) exchange of up to 50,000 af of banked CVP water with SWP water.

Valley Water anticipates potential constraints on their operational flexibility to receive their CVP deliveries via the San Felipe Division. With the approval of the Petition, during reduction of CVP deliveries from the San Felipe Division, DWR will export and deliver SWP water equivalent to the reduced CVP amount through SBA to Valley Water. Reclamation will return an equal amount of CVP water at the O'Neill Forebay to DWR for use within the SWP service area south of the O'Neill Forebay.

The SBA has experienced many unplanned outages over the last several years due to aging infrastructure that resulted in Valley Water being reliant on CVP deliveries to meet its demands. Valley Water anticipates unplanned shutdowns on the SBA may limit SWP deliveries to its service area. With the approval of the Petition, Reclamation will export and deliver CVP water through the San Felipe Division to help Valley Water

maintain its operational flexibility when there are reductions in SWP deliveries from the SBA. DWR will return an equal amount of SWP water to Reclamation for use within the CVP service area south of these facilities.

Valley Water has previously banked CVP water in Semitropic. With the approval of the Petition, Semitropic will extract up to 40,000 af of Valley Water's banked CVP water from the aquifer and either: (a) pump the stored water into the California Aqueduct through Semitropic's turn-in facilities for delivery to the SWP service area south of Semitropic, or (b) use Valley Water's previously stored water within Semitropic's own service area. In exchange, DWR will deliver an equal amount of SWP water to Valley Water through either the SBA and/or the San Felipe Division from San Luis Reservoir. The proposed exchange would not increase the total amount of CVP or SWP water allocated to Valley Water by DWR or Reclamation.

Valley Water's demand exceeds its zero percent CVP allocation. Absent the Petition, Valley Water's CVP supplies would be banked in Semitropic if storage capacity is available or another groundwater bank that has capacity. DWR anticipates that the demand among south-of-Delta SWP contractors will exceed the 5 percent allocation. The SWP water to be exchanged would be supplied to other SWP contractors within existing allocations. Valley Water's demand also exceeds its 5 percent SWP allocation. Absent the exchange, DWR could enter into a Warren Act contract with Reclamation to supply SWP water through Pacheco Tunnel directly. Alternatively, the unused SWP supplies could be banked in Semitropic's groundwater bank if storage capacity were available or another groundwater bank has capacity.

Demand among CVP contractors will exceed their respective zero percent allocations, given the current drought conditions. The CVP water to be exchanged would be supplied to other south-of-Delta CVP contractors within their existing allocations. Absent the exchanges, Semitropic would not be able to return Valley Water's CVP water directly, and Valley Water's CVP supplies would be returned via CVP to CVP exchanges under other existing CVP programs.

#### *Kern County Water Agency – Kern-Tulare Water District Exchange: Cross Valley Canal Capacity Limitations*

Kern-Tulare Water District (Kern-Tulare) is within Kern County and has a contract for CVP water through the Cross Valley Canal (CVC). DWR will deliver up to 53,300 af of Kern County Water Agency's (Kern County WA) SWP water to Kern-Tulare within the SWP place of use during the 2022 summer months. With the approval of the Petition, Reclamation will return the same amount of Kern-Tulare's CVP water in later 2022 and/or early 2023 through the CVC or other points of delivery as approved to Kern County WA.

Kern-Tulare and Kern County WA's demands exceed their zero percent CVP and 5 percent SWP allocations. Absent the exchange, Kern-Tulare would use its CVP water at a later time, and Kern County WA would use its SWP water within its service area.

*Kern County WA – Westlands Water District Exchange of Banked CVP Water in Semitropic's Groundwater Bank*

Westlands Water District (Westlands), a CVP contractor outside of the SWP place of use, has stored CVP water in Semitropic's groundwater bank. DWR proposes to make available up to 33,000 af of Kern County WA's SWP water at O'Neill Forebay for Reclamation. Reclamation will then deliver this water to Westlands through the Joint-Use San Luis Canal. In return, an equivalent amount of Westlands' CVP water stored in the Semitropic's groundwater bank will be delivered to Kern County WA to use in their service area.

Westlands' demand exceeds its zero percent CVP allocation. Absent the exchanges, Westlands' CVP supplies stored in Semitropic would be returned via CVP to CVP exchanges under existing programs. Semitropic's demand exceeds its 5 percent SWP allocation. Semitropic would retain its SWP water for use within its service area.

*Kern County WA – Tulare Irrigation District – Lindsay-Strathmore Irrigation District – SJRRP Recaptured Water Exchange*

This exchange will provide operational flexibility by delivering Kaweah River water located on the eastside of the San Joaquin Valley to water users on the eastside of the San Joaquin Valley (Friant Division contractors, Tulare Irrigation District, and Lindsay-Strathmore Irrigation District [Lindsay-Strathmore]), and delivering San Joaquin River Restoration Program (SJRRP) Recaptured water<sup>2</sup> to water users on the westside of the San Joaquin Valley (Belridge, Berrenda Mesa, and Lost Hills – members of the Kern County WA that are outside of the CVP place of use).

Westside Mutual Water Company (Westside Mutual) holds lands within several CVP contract service areas and one of its members (Wuchumna Water Company) holds a pre-1914 water right for Kaweah River water and makes water available for transfer through a combination of land fallowing and groundwater substitution. Belridge, Berrenda Mesa, and Lost Hills will purchase Kaweah River water from Westside Mutual. Tulare Irrigation District (Tulare ID) and Lindsay-Strathmore are CVP Friant Unit contractors that have SJRRP Recaptured water stored in San Luis Reservoir.

Reclamation will make up to 3,000 af of SJRRP Recaptured water available at O'Neill Forebay for DWR to deliver to Kern County WA.

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<sup>2</sup> SJRRP Recaptured water is water from Millerton Lake on the San Joaquin River that is part of Reclamation's San Joaquin River Restoration Program; it can be used for a transfer or exchange. For further information, see the State Water Board's October 21, 2013 Order that incorporated the SJRRP into Reclamation's water rights.

In return, Westside Mutual will deliver an equivalent amount of Kaweah River water to Tulare ID and Lindsay-Strathmore. Since this exchange involves pre-1914 water, it does not require State Water Board approval.

Westside Mutual's demand exceeds its 5 percent SWP allocation. Absent this exchange, Westside Mutual would retain the Kaweah River water for consumptive use or exchange with other entities. Tulare ID and Lindsay-Strathmore would retain their SJRRP Recaptured water in San Luis Reservoir for use via a future exchange.

*Kern County WA – Arvin-Edison Water Storage District SJRRP Recaptured Water Exchange*

Westside Mutual holds lands in Kern County WA, that are within the SWP place of use but outside the CVP place of use. Arvin-Edison is a CVP contractor with SJRRP Recaptured water stored in San Luis Reservoir. Arvin-Edison and Kern County WA propose an exchange of Project supplies to more efficiently manage their available water supplies and allow for additional flexibility.

Reclamation will make up to 10,000 af of Arvin-Edison's SJRRP Recaptured water available at the O'Neill Forebay for DWR's delivery to Kern County WA. In return, DWR will make available an equivalent amount of SWP water at the O'Neill Forebay for Reclamation to deliver to Arvin-Edison.

Absent the exchange, Kern County WA would use the SWP water at a later time. Arvin-Edison would seek to exchange SJRRP Recaptured water with another party.

*Kern County WA – Westlands Water District Exchange of Banked CVP Water in the Kern Water Bank*

DWR will make up to 2,600 af of Kern County WA's SWP water available at O'Neill Forebay for Reclamation to deliver to Westlands. In exchange, the CVP water stored in the Kern Water Bank by Westlands will be used by Kern County WA.

Absent this exchange, Kern County WA will retain its SWP water for use within its service area and Westlands will seek supplemental water supplies or an exchange with another CVP contractor to effect return of the banked CVP water.

*Kern County WA – Exchange of Banked CVP Water in the Rosedale Groundwater Bank*

Rosedale-Rio Bravo Water Storage District (Rosedale) is a member unit of Kern County WA that receives SWP water. It operates a groundwater bank inside both the CVP and SWP place of use that stores CVP water, SWP water, and local water for its banking partners. Three of the banking partners want to recover water stored in Rosedale: Santa Clarita Valley Water Agency (Santa Clarita) will recover up to 8,000 af of



previously stored SWP and Kern River water; Coachella Valley Water District (Coachella) will recover up to 4,000 af of previously stored Kern River water; and Irvine Ranch Water District (Irvine Ranch) will recover up to 8,000 af of previously stored SWP and Kern River water.

It is presumed that the Santa Clarita, Coachella, and Irvine Ranch water demands will exceed their 5 percent SWP allocation. With the approval of the Petition, Santa Clarita, Coachella, and Irvine Ranch will transfer up to 20,000 af of their water stored in Rosedale's groundwater bank to Rosedale's CVP banking partners (Kern-Tulare, Delano-Earlimart Irrigation District (Delano-Earlimart ID), Arvin-Edison, and/or the San Joaquin River Exchange Contractors Water Authority (SJRECWA or Exchange Contractors)). In return, Reclamation will deliver an equivalent amount of CVP SJRRP Recaptured water or CVP Delta (Exchange Contractors) water<sup>3</sup> from the CVP banking partners to DWR at the O'Neill Forebay for delivery to Santa Clarita, Coachella, and Irvine Ranch. Absent the exchange, Rosedale's banked SWP water would be conveyed from the CVC to the California Aqueduct for delivery to Santa Clarita, Coachella and Irvine Ranch. Kern-Tulare's, Delano-Earlimart ID's, Arvin-Edison's, and/or Exchange Contractors' demands exceed their respective CVP allocations. Absent the exchange, Kern-Tulare's, Delano-Earlimart ID's and Arvin-Edison's CVP SJRRP Recaptured water would be banked or transferred. Exchange Contractors' water would be conveyed through the Delta-Mendota Canal and Mendota Pool for delivery to the Exchange Contractors, or the Exchange Contractors would continue its consumptive use reduction actions and facilitate a different exchange.

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<sup>3</sup> Prior to construction of the Central Valley Project, water right holders near Fresno diverted irrigation water from the San Joaquin and North Fork Kings Rivers. The Central Valley Project involved construction of dams in the Central Valley along the Sacramento, American and San Joaquin Rivers. When Friant Dam (north of Fresno) was constructed, downstream water rights holders formed a group called the SJRECWA (Exchange Contractors) and agreed to "exchange" where they receive their pre-1914 appropriative and riparian water from the San Joaquin and Kings Rivers for guaranteed deliveries of "substitute" water from the Sacramento River by means of the Delta-Mendota Canal and other facilities of the U.S. Bureau of Reclamation (Reclamation). This water is referred to as CVP (Exchange Contractors) water or Exchange Contractors' Settlement water. The Exchange Contractors also agreed not to exercise their San Joaquin and Kings River water rights if guaranteed water deliveries continued through the Delta-Mendota Canal and other facilities of Reclamation. In the event that Reclamation is unable to make its contracted deliveries of substitute water to the Exchange Contractors, the Exchange Contractors have reserved the right to receive their water from the San Joaquin River to satisfy their historic rights.

*Kern County WA – San Joaquin River Exchange Contractors Water Authority –  
Rosedale Unbalanced Exchange Program*

In 2017 and 2019, SJRECWA and Rosedale entered into an unbalanced (2:1) exchange program. The Exchange Contractors delivered 23,522 af of its CVP water in 2017 and 7,500 af of its CVP water in 2019 to lands within Rosedale's service area in the CVP place of use for banking and direct use. Rosedale will forego up to 3,485 af of its SWP water and DWR will make this water available at the O'Neill Forebay for Reclamation to deliver to the Exchange Contractors and/or the Exchange Contractors' partners throughout the CVP place of use. Absent this exchange, Rosedale would either bank its SWP water or use it in its service area. This exchange will not result in additional return flows to the San Joaquin River. The Exchange Contractors have reduced consumptive use to make exchange water available and may also use the return water to irrigate their lands that otherwise would have been irrigated by groundwater, resulting in less or the same amount of return flows, with or without the exchange.

*Kern County WA – Kern-Tulare Water District Exchange of Banked CVP Water in the  
West Kern and Rosedale Groundwater Banks; Facilitation of a non-Project Transfer to  
Westlands Water District*

Kern-Tulare, a CVP contractor outside of the SWP place of use, has stored CVP water in the West Kern and Rosedale Groundwater Banks. Both Banks are member units of Kern County WA within the SWP place of use. Westlands, a CVP contractor, has acquired 3,000 af of CVP Friant water and/or pre-1914 Kings River water from Fresno Irrigation District (Fresno ID), but this water cannot be directly conveyed to Westlands. To facilitate this transfer and the return of banked water, a three-way exchange is proposed. Fresno ID will make its pre-1914 Kings River water available for transfer through groundwater substitution.

Reclamation will deliver 3,000 af of CVP Friant water and/or Kings River water from Fresno ID to Kern-Tulare, who can physically take delivery of the water through the Friant-Kern Canal. Since this is a CVP to CVP delivery, it does not require State Water Board approval.

With this approval, DWR will deliver 3,000 af of Kern County WA's SWP water to Westlands, and Kern County WA will use 3,000 af of Kern-Tulare's banked CVP water within its service area.

Absent the exchange, Kern County WA's SWP water would be conveyed from the California Aqueduct for delivery to its service area. Kern-Tulare's previously banked CVP water would be recovered and conveyed to the Friant-Kern Canal from the CVC for Kern-Tulare's in-district use. Westlands would not receive water from Fresno ID. Fresno ID would consumptively use its CVP and Kings River water, transfer the Kings River water, or exchange the water with another entity.

*Kern County WA – Pixley Irrigation District and Lower Tule River Irrigation District - Tulare Irrigation District, Porterville Irrigation District, and Saucelito Irrigation District*

Homer, LLC (Homer) owns farmland in Kern County WA and in these CVP contractors' service areas: Pixley Irrigation District (Pixley), Lower Tule River Irrigation District (Lower Tule), Tulare Irrigation District (Tulare), Porterville Irrigation District (Porterville), and Saucelito Irrigation District (Saucelito). Homer receives Kaweah River water in the CVP place of use under the Wutchumna Water Company's pre-1914 water right and proposes to make water available for transfer through a combination of land fallowing and groundwater substitution.

Porterville has previously banked CVP water in a private banking facility within Porterville. Porterville and Saucelito also receive pre-1914 Tule River water. Porterville anticipates meeting its irrigation demand with its allocated CVP supplies.

Homer proposes to transfer Kaweah River water, received under Wutchumna Water Company's pre-1914 water right, to Tulare, Porterville, and Saucelito. In exchange, Tulare, Porterville, and Saucelito will transfer/make available an equivalent amount of pre-1914 Tule River and CVP Friant water to Pixley and Lower Tule. Pre-1914 water transfers/exchanges do not require State Water Board approval.

With this approval, Reclamation will make available up to 20,000 af of Pixley and Lower Tule's CVP CVC water at O'Neill Forebay for DWR to deliver to Kern County WA.

Pixley and Lower Tule receive CVP Friant water and CVC water. Absent this proposed exchange, Pixley and Lower Tule would exchange their CVC water with other CVP contractors. Kern County WA would consumptively use their SWP water. Tulare, Porterville, and Saucelito would consumptively use their Tule River and/or CVP water supplies or leave those supplies in existing storage reservoirs.

*Arvin-Edison – Metropolitan Water District Program*

Metropolitan Water District (Metropolitan) is a SWP contractor. Arvin-Edison is a CVP contractor within both the CVP and SWP place of use. Petitioners propose to expand the CVP place of use to include Metropolitan, which would allow Arvin-Edison to exchange up to 120,000 af of CVP water supplies (SJRRP Recaptured and Friant) with Metropolitan's SWP water.

The following conveyance mechanisms would take place for Metropolitan to receive Arvin-Edison's CVP water:

- 1) Arvin-Edison's CVP Friant water (including other CVP Friant water acquired by Arvin-Edison) would be conveyed either: (a) from the Friant-Kern Canal through Arvin-Edison's distribution system connected to the California

Aqueduct at Milepost 227 (Reach 14C), or (b) from the Friant-Kern Canal through the CVC to the California Aqueduct, or;

- 2) Reclamation will make Arvin-Edison's CVP SJRRP Recaptured water (including other CVP water acquired by Arvin-Edison) available at the O'Neill Forebay for DWR to deliver through the California Aqueduct to Metropolitan.

Currently, depending on annual SWP allocations, Metropolitan stores a portion of its SWP supply in Arvin-Edison's groundwater banking facilities, which are located within Arvin-Edison's service area. When requested by Metropolitan, Arvin-Edison is obligated to return Metropolitan's previously banked SWP water to Metropolitan. Absent this proposed exchange, Arvin-Edison would return previously banked SWP water through groundwater extraction and deliver the water to Metropolitan through the California Aqueduct. To increase the flexibility of returning water to Metropolitan, Petitioners propose that Arvin-Edison exchange Metropolitan's previously banked water with their CVP water supplies. Arvin-Edison would use Metropolitan's previously banked SWP water within its service area. Reclamation will deliver Arvin-Edison's CVP water supplies to Metropolitan to use in their service area in lieu of Arvin-Edison physically extracting and delivering Metropolitan's previously stored SWP water. Upon delivery of Arvin-Edison's CVP water to Metropolitan, Metropolitan will then transfer an equivalent amount of its stored SWP water in the groundwater bank to Arvin-Edison for Arvin-Edison's use.

Petitioners also propose that Metropolitan take delivery of Arvin-Edison's CVP water and later return SWP water from San Luis Reservoir to reduce the energy usage associated with Arvin-Edison's underground storage and subsequent withdrawal of CVP supplies. Petitioners also propose to exchange Arvin-Edison's Friant Division Supply with Metropolitan to effectuate delivery of water to meet Exchange Contractor demands that would otherwise be delivered from Millerton Lake on the San Joaquin River.

Finally, to reduce the risk of spill and subsequent potential loss of water supplies, Arvin-Edison proposes to exchange their CVP water with Metropolitan's SWP water. Metropolitan would assist Arvin-Edison in regulating the available CVP supplies. Metropolitan would return a lesser amount (i.e., two af for every three af received). In the absence of the exchange with Metropolitan, Arvin-Edison would deliver the available CVP contract supplies to groundwater banking programs within the Arvin-Edison service area or other areas that are within the CVP place of use.

Absent the exchange, Arvin-Edison would extract Metropolitan's banked SWP supplies and return them directly at a return rate limited to 170 cfs. Arvin-Edison would consumptively use its CVP water within its service area, bank it, or transfer it under the CVP's Accelerated Water Transfer Program<sup>4</sup>. Absent the exchange, Arvin-Edison

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<sup>4</sup> The CVP's Accelerated Water Transfer Program involves annual water transfers and/or exchanges by water contractors in the same geographical area in order to meet

would seek to reschedule CVP supplies in CVP reservoirs, transfer, exchange, or bank with other approved banking programs subject to storage capacity. Metropolitan only assists Arvin-Edison with regulation of Arvin-Edison's CVP supplies when San Luis Reservoir is full.

### *Potential Additional Exchanges*

The above exchanges include the specific exchanges requested as of the date of the Petition. However, the Petitioners anticipate that additional exchanges may be developed. The Petitioners request that any Order approving this Petition include the approval of potential future projects that meet certain specific criteria. In order to allow the State Water Board to make the findings required by Water Code Section 1725, the Petitioners have indicated that any project not specifically detailed in the exchanges listed above would be conducted in accordance with the following criteria:

1. The exchange would not result in any increase in the amount of water diverted from the Delta. The water to be exchanged would be part of any available Project allocations, water currently stored in San Luis Reservoir, or previously placed in groundwater storage south of the Delta.
2. The water to be exchanged would have been consumptively used or stored in the absence of the exchange.
3. The total quantity of water delivered to SWP or CVP contractors as a result of the exchange will not exceed historic average deliveries.
4. The exchange will not result in a net loss of San Joaquin River or Sacramento River flow.
5. The exchange will not result in an increase in saline drainage to the San Joaquin River.
6. Prior to initiating any exchange not specifically listed above, DWR or Reclamation will provide the State Water Board with a description of the proposed exchange for review and approval consistent with this Order.
7. DWR and Reclamation will develop, in coordination with State Water Board staff, a reporting plan that will account for all water exchanged under the provisions of any order approving the Petition. The reporting plan will include the parties to the exchange, how much water was to be exchanged,

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agricultural demands, municipal or industrial demands, or other water requirements, pursuant to Section 3405(a) of the Central Valley Project Improvement Act. No additional environmental analysis would be needed. For additional information, see: [https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=48244](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=48244)

how the water was made available, locations where groundwater levels or percolation to groundwater may be affected, and the facilities required to affect the exchange.

#### *Additional Information Submitted by Petitioners*

On July 9, 2020, DWR and Reclamation submitted a memorandum regarding the use of water in the absence of the proposed exchanges, as requested by the State Water Board during its review of a similar petition in 2020. The response included both general information, which is summarized below, and information specific to each 2020 exchange. This information is still pertinent, with incorporation of the updated information provided in the current petition, and applicable information has been updated for this transfer year.

Petitioners stated that Project allocations are based on the annual water supply available to SWP and CVP contractors. These allocations are focused on the ability to meet summer irrigation demands while meeting regulatory requirements and accounting for upstream storage and hydrologic conditions. Petitioners also stated that the Delta Pumps are operated at their maximum allowable rates and that this rate is always insufficient to meet peak summer irrigation demand. This is addressed by operating San Luis Reservoir to augment Delta pumping to meet these demands. SWP has 21 south-of-Delta contractors that have contract amounts totaling 4,056,205 af, while the CVP has contracts with 43 entities south-of-Delta that total 2,988,521 af. For contract year 2022, which ends in either December of 2022 or February 2023 depending on the contract, the SWP allocation is 5 percent, the CVP irrigation allocation is zero percent and the CVP municipal and industrial allocation is based on public health and safety needs. This amounts to 214,968 af<sup>5</sup> of deliveries for contract year 2022 for CVP contractors and total deliveries of 202,812 af for SWP contractors, which are below the amounts requested by the contractors.

The Petitioners also stated that JPOD was approved in 2001 as a means for Reclamation to use the Banks pumping plant to supply entities, such as a water agency or irrigation district. However, JPOD is subject to capacity availability in the California Aqueduct. The proposed exchanges are an alternative pathway under Reclamation's water rights to deliver water. This alternative pathway of relying on exchanges applies to Valley Water. The Petitioners also describe exchanges as a way to return surface water banked in groundwater banks. Absent exchanges, groundwater bank operators would be simultaneously withdrawing banked surface water and conveying it through Project facilities to their clients while receiving their own Project supplies to irrigate. With an exchange, surface water can be delivered to another entity and previously banked groundwater can remain in place for use within the groundwater bank service area. The banked surface water must ultimately be used according to the purpose and

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<sup>5</sup> 53,331 af of the deliveries is for the South of Delta contractors and the remainder is for the Friant contractors.

place of its originating water rights; this Petition addresses circumstances where the groundwater banker is in one place of use and the client is in another.

Petitioners stated Reclamation has an approved five-year accelerated water transfer program for all of the CVP contractors included in this Petition except Valley Water. The Accelerated Water Transfer Program allows unused allocations to be transferred to other CVP contractors within the same basin. This program was analyzed in an Environmental Assessment titled "South-of-Delta Accelerated Water Transfer Program Contract Years 2021-2025".

Federal facilities have authority to facilitate groundwater banking of surface water supplies. All south-of-Delta CVP contracts allow groundwater banking of allocated supplies upon approval of the Contracting Officer. Groundwater banks must meet Reclamation guidelines and comply with the National Environmental Policy Act. Approved banks include those in this Petition. These existing programs and groundwater banks have been approved, and thus CVP contractors can immediately access these programs if they are unable to directly apply their CVP water within their service areas. The CVP contractors would rely on these programs absent the approval of this Petition.

The Petitioners conclude by stating that while the exchange volumes proposed in the Petition are larger than allocated supplies this year, this Petition covers half of the next contract year as well. If the full exchange amounts are implemented within the timeframe of the approved order, the exchange volumes are approximately six percent of the established Project demands south of the Delta. The water proposed to be exchanged would be consumptively used with or without the approval of the Petition due to the extent and locations of existing demand, a shortage of Project supplies, and existing approved programs.

### **3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

Pursuant to Water Code section 1725, Petitioners have applied for temporary changes involving an exchange of water. The State Water Board shall approve temporary changes involving the exchange 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 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 changes, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed changes would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b).)

In addition, the proposed changes must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary changes. (*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 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 § 1727, subdivision (b)(2). 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.)

#### **4.0 PUBLIC NOTICE AND COMMENTS**

Governor Newsom’s May 10, 2021 drought proclamation modified noticing requirements and notice duration for temporary transfers of water. Consistent with the Governor’s proclamation, the Division noticed Petitioners’ petition on May 23, 2022, to the Division’s website and via the State Water Board’s electronic subscription mailing list pursuant to modified Water Code section 1726, subdivision (d).

Timely comments on the proposed transfer were received from Central Delta Water Agency (CDWA) and South Delta Water Agency (SDWA). Petitioners provided responses to timely comments by letter to the Division dated June 23, 2022 and July 12, 2022 and are available in the record for the above mentioned license and permits.

#### **4.1 Comments by CDWA**

Comments were received on June 7, 2022 from CDWA.

CDWA urged that no transfer of water for export from the Delta Watershed be allowed unless D-1641 requirements, without temporary urgency changes, are satisfied and that transfers should be subject to adequate evaluation, monitoring, and accounting of diversions.

In addition, CDWA stated that the petition lacks sufficient information to support the findings per Water Code section 1725, et seq. CDWA also noted that similar temporary transfers/exchanges have occurred for the past decade, and that parties to the petition are also parties to additional transfers under review by the State Water Board this year.



CDWA stated that the Petitioners' prior statement (June 2020, in response to comments) about the uncertainty of the long-term transfer process for certain exchanges was a predetermination of the alternatives to be analyzed, not permissible under CEQA. CDWA also indicated there could be drainage impacts caused by the exchanges.

### Petitioners' Response

Regarding information contained in the Petition, the Petitioners state that CDWA's comments lack specificity and the Petitioners believe the Petition has sufficient information to support the State Water Board's findings.

Regarding similar transfers in the past, the Petitioners state that the petitions filed each year are different, contain different amounts and components, and are developed independently. Petitioners also point to recently approved long-term transfer petitions for three components that were included in the temporary exchange petitions requested in 2020. Petitioners also state there is not a prohibition on sequential filings of a temporary transfer and that in 1999, Senate Bill 970 specifically amended the Water Code to repeal the requirement that a petitioner for a temporary transfer exercise due diligence in seeking a long-term change.

The statement from the Petitioners' response in June 2020 regarding the "uncertainty of these petition processes" that annual transfers will continue to be included in the temporary transfer petition is in reference to the uncertainty of how the long-term projects will move forward in the CEQA process, not a predetermination.

The water for the exchanges is expected to be delivered during the regular irrigation season and should not result in a measurable change in quantity or quality of groundwater and return flows.

Finally, regarding the comment that transfer approvals are being piecemealed, the Petitioners point to the limitations that the exchanges will be subject to, as described in the Petition. The Petitioners point to Water Code section 1729, which states temporary transfers are exempt from the requirements of CEQA, and that CDWA appears to be raising issues related to cumulative impact analyses required by CEQA.

### State Water Board Response

The State Water Board has conditioned this Order to ensure that the proposed changes would not result in additional pumping from the Delta. There may be a shift in timing of deliveries subsequent to the Delta pumping, but the timing of Delta exports should not

change as a result of the proposed change<sup>6</sup>. Absent the exchanges, the water would be consumptively used or stored by the Projects. The Petitioners have provided information for each exchange explaining how the water to be exchanged would be diverted and either used or stored in the absence of the proposed exchange, and that information has been incorporated into the exchange descriptions provided in section 2.5. The information describes how the CVP and SWP contractors would use their allocations locally absent the exchanges or store the water in available groundwater banks. The information also describes how the entities would rely on alternate transfer mechanisms from existing CVP programs or would rely on existing groundwater banking programs to store the water in the absence of the change.

The State Water Board evaluates transfers, whether temporary or long-term on an individual basis in order to make the findings per Water Code sections 1725 or 1735, respectively. Regarding predetermination of CEQA alternatives to be analyzed, the subject petition is exempt from CEQA pursuant to Water Code section 1729.

As conditioned in this Order, the proposed change would not result in a change in the quantity or timing of diversions from the Delta or any associated impacts to aquatic resources in the Delta or substantial changes to the quantity or quality of return flows to the Delta. The Order is conditioned to require Petitioners to provide monthly reporting of exchanges, with amounts of each exchange by participating CVP and SWP contractors throughout the approval period. The Order is also conditioned such that: (1) no additional pumping from the Delta is allowed; and (2) the Petitioners must comply with D-1641 and all applicable Water Right Orders, Biological Opinions, Incidental Take Permits, and court orders.

Regarding serial transfers, the State Water Board agrees with the Petitioners' response that there is not a limitation on multiple temporary transfers by the same right holders. The mere fact that some temporary changes are proposed and approved in multiple years does not transmute those changes into "long-term" changes. Approval of a temporary change lasts at most one year and must be petitioned for, defended, and approved according to the criteria in Water Code sections 1725 et seq., each and every year the petitioner wishes to operate in accordance with the change. In contrast, a long-term transfer need only be approved once before the transfer can proceed in each subsequent year. The one-year transfer that is the subject of this Petition meets the statutory definition of a "temporary" transfer, and Water Code section 1729 therefore exempts approval of the Petition from CEQA.

CDWA also attached its comments (Attachments A and B) on petitions submitted by Reclamation and DWR in 2021 and 2020. The State Water Board addressed those comments in Orders dated July 14, 2021 and July 15, 2020. To the extent CDWA's

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<sup>6</sup> See "Additional Information Submitted by Petitioners" on pages 14 and 15 of this Order for further discussion on why there will not be additional pumping from the Delta due to this Order.

2021 and 2020 comments remain applicable to the transfers or exchanges proposed in the Petition, the State Water Board hereby incorporates by reference the comment responses contained in the July 14, 2021 and July 15, 2020 Orders. Finally, the State Water Board agrees with the Petitioners' response that issues related to piecemealing are not applicable; as already stated, each transfer or exchange is independently evaluated and conditions of approval included to ensure the findings required by the Water Code can be made and supported.

#### **4.2 Comments by SDWA**

Comments were received on May 24, 2022 from SDWA.

SDWA urged that no transfer of water for export from the Delta Watershed be allowed unless State Water Board Decision 1641 (D-1641) requirements, specifically southern Delta water quality requirements, are met. SDWA suggested that water should be released from San Luis Reservoir into the Delta and re-exported to meet salinity standards and that New Melones water should not be used for this purpose.

#### Petitioners' Response

Reclamation stated that its analysis indicated the proposed exchanges will not result in any measurable changes in streamflow, water quality, timing of diversion or use, or return flows; therefore, there will be no effect on the southern Delta Water Quality Objectives for the protection of Agricultural Beneficial Uses per D-1641.

#### State Water Board Response

The water for the exchanges is already stored south of the Delta. Per Water Code section 1727 (e), the State Water Board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change.

### **5.0 POTENTIAL CURTAILMENT**

During any period in 2022 that Petitioners' rights under applicable license and permits are curtailed, Petitioners will be required to cease all diversions in accordance with the curtailment order, including any diversions for temporary transfer. A condition is therefore included in this Order that the transfer shall be consistent with curtailment requirements should the State Water Board curtail Petitioners' rights under applicable license and permits. Only storage releases would be permitted during a period of water unavailability that affects Petitioners' water rights.

## **6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Petitioners filed the Petition for a temporary change under Water Code section 1725 et seq. Water Code Section 1729 exempts temporary changes involving a transfer or exchange of water from the requirements of CEQA (Pub. Resources Code, § 21000 et seq.). The State Water Board will file a Notice of Exemption.

## **7.0 REQUIRED FINDINGS OF FACT FOR PROPOSED EXCHANGES/TRANSFERS IN PETITION**

The following discussion and findings are applicable to the following exchanges proposed in the Petition: (a) 125,000 af to Valley Water; (b) 148,385 af to various Kern County WA exchanges; and (c) 120,000 af to Arvin-Edison-Metropolitan.

### **7.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to an 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 exchange 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.) 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.”

According to the Petition and the additional information provided by the Petitioners, and as conditioned, the temporary changes proposed will not result in the diversion of additional water from the Delta or the delivery of more water to any individual water supplier or user than has been delivered historically. The exchanges proposed by the Petition, including any potential future exchanges meeting the criteria outlined above, involve water that is part of the SWP or CVP contractors allocated supplies, and would be consumptively used or stored in the absence of the exchanges. Additionally, for each exchange described, the Petitioners have represented to the State Water Board that there are no operational constraints to divert and use the exchanged water in the existing place of use in the absence of the Petition.

The exchanges are expected to allow agencies experiencing water supply restrictions to recover previously stored water or to optimize the beneficial use of their existing limited water supplies. The water proposed for exchange consists of either:

- a) Water stored pursuant to the specified permits of the CVP and SWP; or

- b) Water directly diverted pursuant to the specified license and permits of the CVP and SWP for use outside of the Delta watershed, and thus removed from use in the downstream water supply.

The direct diversion and collection of water to storage under the license and permits held by Petitioners may be subject to curtailment notices during the term of this transfer order. However, releases of water collected to storage prior to issuance of the curtailment notices are not subject to curtailment.

In light of the above, I find in accordance with Water Code Section 1726, subdivision (e), that the water proposed for exchange under DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 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 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 temporary change 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).)

As conditioned, the changes approved in this Order will not result in any measurable changes to streamflow, water quality, timing of diversion or use, or return flows. The water to be exchanged is diverted out of the watershed from which it originates in conformance with the provisions of the respective water right license or permit(s) governing those diversions. There are no other legal users downstream of the points of diversion that would be affected by the exchanges.

The quantity and timing of diversions from the Delta will not change, however the delivery rates from San Luis Reservoir may differ. The scheduling of the deliveries will be coordinated between Petitioners so as not to adversely impact any SWP or CVP contractor deliveries. The Petitioners indicate that adequate capacity in the California Aqueduct and in the Delta-Mendota Canal is available and will not be adversely impacted as a result of the exchanges.

The exchanges are not expected to result in a measurable change in the quantity or quality of return flows. As conditioned, there will be no increase in either SWP or CVP diversions or allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP supplies that already have been

exported from the Delta. Exchanges similar to those proposed above occurred in 2009, 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, and 2021 consistent with the provisions of Order WR 2009-0033, Order WR 2010-0032-DWR, and the July 6, 2012, July 1, 2013, March 28, 2014, April 27, 2015, May 17, 2016, June 8, 2017, July 2, 2018, July 15, 2019, July 15, 2020, and July 14, 2021. State Water Board Orders approving DWR's and Reclamation's petitions for change to consolidate the authorized places of use of the SWP and CVP. No measurable effects on other legal users of water were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1), that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 will not injure any legal user of the 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 or exchange 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).) In accordance with California Code of Regulations, Title 23, section 794 (c), Petitioners provided California Department of Fish and Wildlife (CDFW) and the Central Valley Water Board with a copy of the Petition. CDFW and the Central Valley Water Board did not respond with any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

As conditioned, there will be no change in the amount of SWP or CVP water diverted at Banks or Jones. Therefore, no associated change in flow or water quality conditions in the Delta should result from the changes proposed in the Petition. All water exported at Banks and Jones is required to be pumped consistent with the applicable regulatory restrictions and court orders governing SWP and CVP operations.

The exchanges will not result in a measurable change in quantity or quality of return flows. There will be no increase in either SWP or CVP allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP allocated supplies that already have been exported south of the Delta; however, this will not significantly affect streamflow.

Exchanges similar to those proposed above have been implemented in previous years by both DWR and Reclamation. No measurable effects on fish, wildlife or other instream beneficial uses were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727,

11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 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 and the Deputy Director for Water Rights redelegation of authority dated June 6, 2022.

## **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 regarding DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364, for each of the following exchanges proposed in the Petition: (a) 125,000 af to Valley Water; (b) 148,385 af for various Kern County WA exchanges; and (c) 120,000 af to Arvin-Edison-Metropolitan;

I conclude that, based on the available evidence:

1. The proposed exchange 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 not injure any legal user of the water.
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 in the place of use, under DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 for exchange of up to 393,385 af of water is approved.

All existing terms and conditions of DWR's and Reclamation's subject license and permits remain in effect, except as temporarily amended by the following provisions:

1. The exchanges of water are limited to the period beginning on the date of this Order and continuing for up to one year.
2. The place of use under DWR's Permit 16479 is temporarily expanded to include portions of the CVP service area shown on the map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use*, Map 214-202-83.
3. The place of use under Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 is temporarily expanded to include portions of the SWP service area as shown on the map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use*, Map 214-202-84.
4. Water exchanged pursuant to this Order shall be limited to a maximum quantity of 393,385 af as follows: (a) 125,000 af to Valley Water; (b) 148,385 af to various Kern County WA exchanges; and (c) 120,000 af to Arvin-Edison-Metropolitan.
5. This approval is limited to the exchanges described in this Order and only those additional south-of-Delta exchanges that meet the criteria set forth in this Order and which receive prior State Water Board approval. This approval does not extend to any exchanges under DWR's or Reclamation's water rights in excess of the total of 393,385 af authorized under this Order. The exchanges identified in this Order and any future exchanges are limited as follows: 1) the exchanges shall not result in any increase in the amount of water diverted from the Delta or in an increase in Project contract allocations; 2) the water to be exchanged shall be part of available Project allocations, water currently stored in San Luis Reservoir, or previously placed in groundwater storage south of the Delta; 3) the water to be exchanged must be water that would have been consumptively used or stored in the absence of the transfer; 4) the total quantity of water delivered to SWP or CVP contractors as a result of the change shall not exceed historic average deliveries; 5) the transfer or exchange shall not result in the net loss of San Joaquin River or Sacramento River flow or



Delta outflow; and 6) the transfer or exchange shall not result in an increase in saline drainage to the San Joaquin River or the Delta.

If a south-of-Delta exchange is not specifically identified and described in this Order, the exchange may occur only after the Deputy Director of Water Rights determines that the exchange will be implemented in accordance with the conditions of this Order. Requests should be addressed to the Deputy Director of Water Rights. Petitioners should anticipate a determination on the requests no sooner than ten (10) full business days after submittal. Requests should be submitted on the form entitled "Petition for Change Involving Water Transfers" available on the Division's website. Petitioners should annotate "Request per Consolidated Place of Use Order" at the top of the form. The request shall include a description of the amounts to be exchanged, how the exchange will be in compliance with each condition listed in this Order, and how the total exchange amount of 393,385 af by this Order will not be exceeded with the additional exchanges.

6. If, at any time prior to or during the period of the transfer, the State Water Board curtails the water rights involved in the exchanges, only water collected to storage prior to the curtailment may be exchanged.
7. Diversion of water at the Delta Pumps is conditioned upon compliance by the operators with the objectives currently required of Petitioners set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641 or as modified through approval of temporary change petitions applicable to the water rights involved in this petition. In addition, this transfer is conditioned on compliance with the various requirements for use of Stage 1 Joint Points of Diversion (JPOD) by Petitioners under D-1641. Diversion of water is also conditioned upon compliance by Petitioners with all applicable water right license and permit requirements, federal and California 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.
8. Diversion of water at the Delta Pumps is also conditioned upon compliance with applicable State Water Board Orders establishing temporary or interim operating conditions during the transfer period, unless the State Water Board has specifically exempted conveyance of exchange water from the order.
9. The exchange period authorized in Condition 1 of this Order is further limited to the period allowed pursuant to any applicable BO, ITP, or federal or State ESA requirements related to transfers at the Delta Pumps. Petitioners shall provide documentation of the diversion period allowed pursuant to the BO, ITP, or federal or State ESA requirements prior to exchange of water. Such documentation may include an electronic link to any transfer BOs, ITPs, or other federal or State ESA consultations, informal consultations, opinions, or other documents issued by the

California Department of Fish and Wildlife, National Marine Fisheries Service, or U.S. Fish and Wildlife Service.

10. By the 25<sup>th</sup> day of each month following approval of this Order, the Petitioners shall electronically submit a monthly report detailing the amounts transferred or exchanged in the previous month. Data used to generate the report shall be provided electronically in a comma-separated values (.csv) file format and shall be compatible with an open data portal platform related to Assembly Bill 1755. All water transferred/exchanged shall also be documented and accounted for by each purpose of use. The report shall document, listed by specific exchange, the dates of the exchanges that have occurred, the amount exchanged between each project (CVP or SWP), gains or losses in groundwater banks, and the remaining quantity authorized to be exchanged. The report shall also include documentation that the water exchanged did not result in any increase in water diverted to SWP and CVP facilities from the source waters of DWR's permit and Reclamation's license and permits beyond the quantities that would otherwise have been diverted absent the transfer.
11. Within 90 days of the completion of the transfer, the Petitioners shall provide to the Deputy Director for Water Rights one or more tables describing the transfer authorized by this Order. Data used to generate the table(s) shall be provided electronically in a comma-separated values (.csv) file format and shall be compatible with an open data portal platform related to Assembly Bill 1755. The table(s) shall include the monthly and total amounts of water delivered under the transfer to Valley Water; participating Kern County WA exchanges; and Arvin-Edison-Metropolitan; and any other entities receiving transfer water in accordance with Condition 5 for the period covered by this exchange. The table(s) shall include SWP and CVP deliveries, other water transfers, and any other amount of Delta water each user received.
12. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board 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.
13. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California ESA (Fish & G. Code, §§ 2050-2097) or the

federal ESA (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any action authorized under this Order, the Petitioners shall first obtain authorization for an incidental take permit prior to undertaking that action. Petitioners shall be responsible for meeting all applicable California ESA and federal ESA requirements for the temporary change authorized under this Order.

14. The State Water Board reserves authority to supervise the exchange and use of water under this Order and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: July 22, 2022