

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF LICENSE 2685 (APPLICATION 1224)  
OF THE MERCED IRRIGATION DISTRICT**

**PETITION FOR TEMPORARY CHANGE  
IN PLACE OF USE INVOLVING THE TRANSFER  
OF UP TO 45,000 ACRE-FEET OF WATER**

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**SOURCE:** Merced River

**COUNTIES:** Mariposa and Merced

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**BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:**

**1.0 SUBSTANCE OF PETITION**

On March 27, 2020, the Merced Irrigation District (MID or Licensee) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a Petition for Temporary Change pursuant to Water Code section 1725 et seq. Pursuant to the petition, MID proposes to transfer up to 45,000 acre-feet (af) of water from July through September 2020 to the following agencies: Santa Clara Valley Water District, Belridge Water Storage District, Berrenda Mesa Water District, Dudley Ridge Water District, Lost Hills Water District, and Wheeler Ridge-Maricopa Water Storage District, (collectively "Transferees"). Temporary changes under Water Code section 1725 may be effective for a period of up to one year.

**1.1 Description of the Transfer**

MID proposes to transfer up to 45,000 af of stored water to irrigate land that is currently not included as a place of use under License 2685. Of that quantity, up to 15,000 af is proposed for use within the Santa Clara Valley Water District; the remaining quantity of up to 30,000 af is proposed for use within Belridge Water Storage District, Berrenda Mesa Water District, Dudley Ridge Water District, Lost Hills Water District, and Wheeler Ridge-Maricopa Water Storage District. MID is petitioning to increase the place of use covered by License 2685 in order to supply previously stored surface water to the Transferees. To facilitate this transfer, MID is requesting the following temporary changes to its License 2685: (1) the addition of the State Water Project's (SWP)

Harvey O. Banks Pumping Plant (Banks Pumping Plant) and San Luis Reservoir as additional points of rediversion; and (2) the addition of a portion of the service area of the SWP as an additional place of use.

In the absence of the proposed temporary change, the 45,000 af of water would remain in storage within Lake McClure pursuant to MID's License 2685.

## **1.2 Reservoir Reoperation**

The transfer involves water currently stored in Lake McClure. Refill criteria developed in coordination with Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) are required to ensure that future refill of the reservoir space made available in Lake McClure from this transfer does not adversely impact the SWP or the Central Valley Project (CVP). Pursuant to the criteria, any refill occurring during balanced conditions in the Sacramento-San Joaquin Delta Estuary<sup>1</sup> (Delta) is subject to repayment of water to DWR and Reclamation according to a schedule agreed to by MID, DWR, and Reclamation.

## **2.0 BACKGROUND**

### **2.1 Substance of MID's License**

#### Water Rights License 2685

License 2685 was issued to MID on August 11, 1944, pursuant to Application 1224, which has a priority date of March 26, 1919. License 2685 allows the direct diversion of 1,500 cubic feet per second (cfs) of water from the Merced River from about March 1 through about October 31 of each year and throughout the remainder of the year for domestic purposes. License 2685 also allows the diversion from the Merced River to storage of 266,400 af per annum (afa) in Lake McClure from about October 1 of each year to about July 1 of the succeeding year.

The point of diversion is at the New Exchequer Dam on Lake McClure. There are also two points of rediversion downstream of New Exchequer Dam – Merced Falls Diversion Dam for the Northside Canal and Crocker-Huffman Diversion Dam for the Main Canal. Water rediverted through the Northside Canal and the Main Canal is used for irrigation

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<sup>1</sup> The Delta is considered to be in balanced conditions when the SWP and CVP agree that releases from the upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta Requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

and domestic purposes on 164,395 gross acres within the boundaries of MID, and municipal purposes on 1,900 acres within the Mariposa Town Planning Area (MTPA). Effective February 16, 1995, License 2685 was modified to allow the direct diversion of 5,000 afa of water from the Merced River at a rate not to exceed 7 cfs from November 1 of each year to February 29 of the following year for municipal use in the MTPA. Storage under License 2685 is reduced by the amount of water diverted to the MTPA, up to a maximum of 1,667 afa. Combined maximum direct diversion and storage under License 2685 cannot exceed 345,440 afa. The point of diversion for the water delivered to the MTPA is located approximately 40 miles upstream of New Exchequer Dam.

License 2685 was further amended effective June 20, 2003 to include an additional point of rediversion and modify the place of use resulting from MID's consolidation with the El Nido Irrigation District. The new point of rediversion is located approximately 24 miles downstream of New Exchequer Dam on Duck Slough. Water rediverted through Duck Slough is used for irrigation purposes on 9,418.6 acres within the boundaries of El Nido Irrigation District.

## **2.2 Proposed Temporary Changes**

In order to facilitate the transfer, the following would be added to License 2685 (Application 1224): 1) Banks Pumping Plant via the Clifton Court Forebay as a point of rediversion, located within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 20, T1S, R4E, MDB&M; 2) San Luis Reservoir as a point of rediversion, located within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 15, T10S, R8E, MDB&M. A portion of the service area of the SWP would be temporarily added to the place of use of License 2685 to facilitate the temporary water transfer to the participating Transferees. This portion of the service area of the SWP is shown on Maps 1878-2 and 1878-3 on file with the Division under Application 5630.

## **2.3 Water Available for Transfer**

MID proposes to deliver previously stored surface water to the Transferees. The quantity of surface water proposed to be delivered by MID to the Transferees will be made available by releases of up to 45,000 af from water currently stored in Lake McClure. This transfer of previously stored surface water will involve the delivery of water to Transferees and refill of the reservoir, which normally occurs during periods of high runoff. Under the proposed transfer, releases of stored water would be increased compared to conditions in the absence of the proposed temporary transfer.

### **3.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TEMPORARY CHANGE**

On April 6, 2020, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on April 6, 2020, MID noticed the project via publication in the Merced Sun-Star newspaper and mailed the notice via first class mail to interested parties. Timely comments regarding the proposed temporary change were submitted by Reclamation, DWR, Mr. Richard Morat, Mr. Anthony M. Roggero, the California Department of Fish and Wildlife (CDFW), and the California Sportfishing Protection Alliance (CSPA). These comments and the State Water Board's response are briefly summarized below.

#### **3.1 Comments of the U.S. Bureau of Reclamation and Department of Water Resources**

Reclamation and DWR provided similar comments during the public notice period on April 17, 2020 and May 4, 2020, respectively. Reclamation and DWR state that a refill agreement is necessary in order for the proposed temporary change to not have an adverse impact on the water rights or operations of the CVP and SWP. Reclamation and DWR request that MID enter into a reservoir refill agreement containing conditions, criteria, and procedures that ensure that CVP and SWP operations and water rights are not adversely impacted by future refill following the release of transfer water. The agreement must protect CVP and SWP water rights and operations from injury regarding Reclamation's ability to meet all applicable water quality standards cited in Permits 16597, 20245, and 16600 (Applications 14858A, 14858B, and 19304) for New Melones Reservoir pertaining to the San Joaquin River and the Delta. The agreement will also protect Reclamation's water right Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722, 12723, 12727, 12860, and 15149 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 17376, 5626, 9363, 9364, 9368, 15764, and 21542) and operations for the Jones Pumping Plant, including Reclamation's ability to meet San Joaquin River flow and Old and Middle River flow requirements of the Biological Opinions issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service for the long-term operations of the CVP and SWP.

#### State Water Board Response:

As stated in Section 1.2 of this Order, refill criteria are needed to ensure that the refill of Lake McClure resulting from the proposed temporary change does not adversely impact operations and/or water rights of the SWP or CVP. The transfer is conditioned that MID is subject to a refill criteria agreement with DWR and Reclamation ensuring that future refill of any storage space in Lake McClure created by the transfer will not reduce the amount of water that DWR, Reclamation, or other water users, could divert under their water rights. This Order requires MID to comply with the refill criteria.

### **3.2 Comments of Richard Morat**

By letter dated April 22, 2020, Richard Morat commented on the proposed transfer. Mr. Morat requested terms and conditions that better protect public trust resources and that the transfer will not result in an unreasonable effect on fish and wildlife or other instream beneficial uses. Mr. Morat also commented that the transfer should be conditioned for only essential uses in 2020, and that transfer of water that otherwise would have remained in storage be conditioned “such that conservation storage replenishment of the transferred amount be timed and amounts allowed to be conserved scoped to the affected river’s and the estuary’s capacity to reasonably forego those flows.”

#### State Water Board Response:

The State Water Board is responsible for considering public trust resources, and while it does not anticipate any adverse public trust impacts to result from this transfer, the State Water Board is aware of long-standing challenges with regard to management of flows and maintaining habitat conditions that are suitable for protection of fish and wildlife in the Delta and its tributaries. Current outflow and water quality requirements are established by State Water Board Revised Water Right Decision 1641 and applicable Biological Opinions, which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer.

The State Water Board is supportive of transfers to provide water where it is needed. The participating SWP contractors of the Transferees will only be receiving 20 percent of their SWP allocation this year. The temporary change petition seeks to add points of diversion and places of use through September 2020.

The proposed temporary transfer by MID is for water that would have otherwise been diverted and stored pursuant to License 2685. By approving the transfer, additional water will flow down the Merced River to the San Joaquin River and the Delta. Furthermore, requirement of a refill agreement is included as a term in this Order. In light of the above, it is not anticipated that this transfer will result in unreasonable effects on fish and wildlife, other instream beneficial uses, or other public trust resources.

### **3.3 Comments of Anthony M. Roggero**

By letter dated April 29, 2020, Anthony M. Roggero commented on the proposed transfer. Mr. Roggero stated that snow surveys indicate that the water runoff from April to June 2020 from the Sierra Nevada mountain to be seventy percent below normal. Therefore, the 2020 water transfer would further compromise the groundwater levels in an already critically overdrafted groundwater basin. In addition, Mr. Roggero requests that MID be conditioned to provide monetary compensations to its service area water users from revenue generated as a result of the water transfer. By e-mail dated

May 6, 2020, Mr. Roggero further commented on the proposed transfer. Mr. Roggero stated that due to the low storage level of Lake McClure in 2020 compared to 2019, the proposed transfer will cause injury to water users within MID's service area and Sphere of Influence Lands.

State Water Board Response:

The scope of the requested change is a transfer involving the release of 45,000 af of water from Lake McClure, which would have been consumptively used or stored in the absence of the transfer. MID states that it will continue to make available the same surface water supplies to its existing customers with or without the proposed temporary water transfer. In addition, MID is required to release water to meet its other existing downstream commitments and requirements on the Merced River below the inlet to its Main Canal. Therefore, the water transfer is not anticipated to compromise the groundwater levels and/or cause injury to downstream legal users of water.

The State Water Board does not have authority to control commodity prices between buyer(s) and seller(s) and where the revenue proceeds to, and thus is unable to condition MID's transfer to provide monetary compensations.

### **3.4 Comments of California Department of Fish and Wildlife**

CDFW provided comments during the public notice period on April 30, 2020. CDFW comments included the following: 1) MID's consultation with CDFW prior to submittal of the petition to the Division was inadequate; 2) the proposed transfer will create early (false) attraction flow and sub-optimal instream temperature; 3) the Merced River is listed as impaired under section 303(d) of the federal Clean Water Act for temperature and the proposed transfer could exacerbate temperature issues in the river; and 4) MID's recent temporary transfers should be evaluated as long-term transfers pursuant to Water Code section 1435 and be subject to the California Environmental Quality Act (CEQA). By letter dated June 19, 2020, MID responded to CDFW's comments.

State Water Board Response:

- 1) Water Code section 1726, subdivision (c) requires the petitioner provide a copy of the petition to CDFW. In addition, California Code of Regulations, title 23, section 794 requires the petitioner to request consultation with CDFW regarding the potential effects of the proposed transfer on water quality, fish, wildlife, and other instream beneficial uses. The petitioner does not need to request or complete the consultation with CDFW prior to the public notice for temporary change. MID stated in its June 19 response it had provided CDFW with MID's release schedule for the 2020 water transfer. Based on the discussion, CDFW concurred with the release schedule and identified no further comments. MID

indicated that it believes that the information provided in the petition as well as information included in the June 19 response to CDFW's comments include adequate information showing that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. Therefore, MID is conditioned to adhere to the agreed upon release schedule for the 2020 water transfer and coordinate with CDFW for review and approval prior to any deviations from the release schedule.

- 2) CDFW raises concerns about transfer flows on the Merced River during the month of September. CDFW provided September flow data from prior MID water transfers that indicate September release flows resulted in early (false) attraction flows and sub-optimal instream temperatures for fall-run Chinook salmon (*Oncorhynchus tshawytscha*). Thus, returning adult salmonids are subject to thermal stress from sustained sub-optimal temperatures in the Merced River after ramping down of transfer flows. As indicated in MID's release schedule attached to its June 19 response, it will not release water during the month of September for the 2020 water transfer to address the concerns identified by CDFW. To address the concerns of September release flows and as indicated in MID's June 19 submittal, MID's transfer duration shall be conditioned to the period commencing on date of Order issuance through August 31, 2020.
- 3) CDFW states current water operations have contributed to the 303(d) listing for temperature of the lower Merced River. CDFW data showed that ramping down of transfer flows during September cause a substantial rise to instream temperatures in an already stressed system that could adversely impact salmonids. As indicated in MID's release schedule on its June 19 response, MID will not release water during the month of September. Therefore, it will not unreasonably change the overall water temperature in the Merced River.
- 4) CDFW expresses concern that the ongoing, annual temporary water transfers, regardless of the exact recipient, have the potential to affect the same Merced River fish and wildlife resources for each event, and from the perspective of addressing repeated impacts to impaired resources, it would be appropriate for an analysis to address same-year, repeated, and cumulative effects. Thus, CDFW recommends that MID consider a long-term water transfer to address the routine temporary water transfer and be subject to CEQA. Water Code section 1735 et seq. authorize the State Water Board to consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use only for any period in excess of one year and are subject to CEQA. Because the proposed 2020 water transfer is for a one-year duration or less, it does not meet the criteria for a long-term transfer pursuant to Water Code section 1735 and it is not subject to CEQA.

### **3.5 Comments of California Sportfishing Protection Alliance**

CSPA provided comments during the public notice period on April 30, 2020. CSPA indicated that MID's approved fiscal 2021 budget states that Lake McClure is anticipated to be at minimum pool level by the end of the 2020 irrigation season. As such, CSPA is concerned that if water year 2021 is dry or critically dry, MID would not be able to meet its instream flow and minimum pool requirements in Lake McClure for 2021 and may petition for a temporary urgency change in 2021 for a flow variance to reduce its instream flow and minimum pool requirements. Furthermore, CSPA states that transferring water out of a critically overdrafted groundwater basin fails to use local water resources to correct overdraft and may increase groundwater overdraft. CSPA requests that the State Water Board require MID to preserve a minimum of 200,000 af of water in Lake McClure by the end of October 2020, and enforce land fallowing (cropland idling) to offset the loss of 45,000 af of transfer water. By letter dated June 19, 2020, MID responded to CSPA's comments.

#### State Water Board Response:

MID stated in its June 19 response that, based on DWR's Bulletin-120, the 2020 water year is classified as a dry year type. At the time of filing the petition, MID projected that the storage in Lake McClure would be approximately 345,000 af by the end of October 2020. Based on hydrologic conditions that have occurred since the filing of the petition, MID currently projects the quantity of water held in storage at Lake McClure at the end of October 2020 to be approximately 365,600 af, following releases for MID's water supply and instream flow requirements as well as releases for the proposed 2020 water transfer. According to projections in MID's petition, if the entire 45,000 af of water were transferred, it would represent an approximately 11 percent decrease in storage in Lake McClure by the end of October from what storage would be absent the transfer. Therefore, MID indicated that it will maintain storage in Lake McClure well above the minimum pool requirement of 115,000 af, as well as the 200,000 af identified by CSPA prior to the 2021 irrigation season. MID states that it will continue to make available the same surface water supplies to its existing customers with or without the proposed temporary water transfer. In addition, MID is required to release water to meet its other existing downstream commitments and requirements on the Merced River below the inlet to its Main Canal. Releases for the transferees will be in addition to existing downstream requirements.

Cropland idling includes the idling of land that would have been planted during the transfer period in the absence of the transfer. Cropland idling water transfers make water available by reducing the consumptive use of surface water applied for irrigation. The 2020 water transfer involves water currently stored in Lake McClure, which is made available by reservoir release. MID is not required to enforce land fallowing as the transfer involves reservoir release as opposed to using cropland idling.



#### **4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Water Code section 1729 exempts petitions for temporary changes involving a transfer of water from the requirements of CEQA. The State Water Board will issue a Notice of Exemption for this project following the issuance of this Order.

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

Pursuant to Water Code section 1725, “a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would involve only 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, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” (Wat. Code, §1725.)

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) “The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).

## **6.0 REQUIRED FINDINGS OF FACT**

### **6.1 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.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” The water proposed for transfer is currently stored in Lake McClure pursuant to the terms of License 2685. The petition states that in the absence of the proposed change, the 45,000 af of water proposed for transfer would remain in storage in Lake McClure. Under License 2685, MID can both directly divert and collect water to storage. MID would not provide water by direct diversion under License 2685 to the Transferees.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the proposed transfer involves only an amount of water that would have been stored in the absence of the proposed temporary change.

### **6.2 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 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).)

This Order requires MID to comply with refill criteria to ensure that future refill of the reservoir space made available in Lake McClure from this transfer does not adversely impact the SWP or CVP. MID has indicated it has sufficient supply to continue the same surface water deliveries to its existing customers with or without the proposed temporary water transfer. In addition, MID is required to release water to meet its other existing downstream commitments and requirements below the inlet to its Main Canal; this approval does not change those obligations. Therefore, there will be no downstream change of the streamflow, water quality, timing of diversion, return flows, effects on legal users of water, or change in the purposes of use authorized by License 2685 during the period of the proposed temporary transfer.

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

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

Water Code section 1729 exempts temporary changes involving transfer of water from the requirements of the California Environmental Quality Act (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).)

The overall impact of this transfer will be a temporary increase in flows in a portion of the Merced River. This will correspondingly decrease storage in Lake McClure by the same volume of water. In general, reservoir storage release transfers result in incremental increase in instream flows between MID's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and also does not result in other impacts such as false fish attraction flows to streams not suited for fish rearing. Information suggests that September transfer flows will contribute to false fish attraction flows and/or significant change in instream temperature. Therefore, to avoid unreasonable effects on fish, wildlife, or other instream beneficial uses, the transfer window is reduced from July to August 2020. The transfer will deplete reservoir storage; thus it is appropriate to consider if the transfer would preclude MID from fully meeting its required instream flows such as the minimum instream flows pursuant to License 2685, the FERC License (2179-043), and the Davis-Grunsky Contract. MID is required to meet these commitments with or without the transfer.

Lake McClure is currently at 74 percent capacity - 754,068 af (as of June 21) - which is well above the minimum pool of 115,000 af. The storage in Lake McClure at the end of the irrigation season, October 31, is projected to be approximately 365,600 af with the proposed transfer.

In light of this supplemental information, and in context of the transfer of 45,000 af consisting of a small portion of the overall current storage in Lake McClure, there appears to be no evidence indicating that minimum pool levels will not be maintained during the period of the transfer.

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

## **7.0 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.

## **8.0 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:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not unreasonably affect 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 License 2685 (Application 1224) of Merced Irrigation District (MID or Licensee) for the transfer of 45,000 af of water to the Transferees is approved.

All existing terms and conditions of License 2685 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on date of Order issuance through August 31, 2020.

2. Only water previously stored in Lake McClure may be transferred. Water shall not be provided to the Transferees by direct diversion.
3. MID shall adhere to the 2020 water transfer release schedule attached to MID's June 19, 2020 response to the California Department of Fish and Wildlife's (CDFW) comments, and coordinate with CDFW for review and approval prior to any deviations from the release schedule. Revisions to the release schedule shall be submitted to the Deputy Director for Water Rights within five (5) days of approval by CDFW.
4. The following points of rediversion are temporarily added to License 2685:

Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay located as follows:

California Coordinate System of 1983 (CCS83), Zone 3, North 2,126,440 feet and East 6,256,456 feet, being within NW ¼ of SE ¼ of projected Section 20, T1S, R4E, MDB&M, and

San Luis Reservoir located as follows:

CCS83, Zone 3, North 1,845,103 feet and East 6,393,569 feet being within the SW ¼ of SE ¼ of projected Section 15, T10S, R8E, MDB&M.

5. The place of use under License 2685 is temporarily expanded to include the service areas of Santa Clara Valley Water District, Belridge Water Storage District, Berrenda Mesa Water District, Dudley Ridge Water District, Lost Hills Water District, and Wheeler Ridge-Maricopa Water Storage District, which are within a portion of the service area of the State Water Project (SWP) (as shown on Maps 1878-2 and 1878-3 on file with the Division under Application 5630).
6. Rediversion of water at Banks Pumping Plant and San Luis Reservoir is subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) set forth in Tables 1, 2, and 3 on pages 181-187 of Revised Water Right Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641. 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.

Rediversion of water at the Banks Pumping Plant and San Luis Reservoir is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.

7. During the period of the transfer, MID shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by MID.
8. Water may not be transferred through Banks Pumping Plant and San Luis Reservoir until MID has executed a refill criteria agreement for the 2020 water transfer between DWR, Reclamation, and MID. Documentation that acceptable refill criteria have been agreed to by DWR, Reclamation, and MID shall be submitted to the Deputy Director for Water Rights within 15 days of the date of execution of the agreement. The refill criteria shall govern the conditions under which refill of the water released pursuant to this Order occurs, including the conditions under which refill impacts may accrue and how MID shall rectify any impacts. At the conclusion of refilling water in Lake McClure for the water released pursuant to this Order, if a refill impact has occurred, MID shall release the amount of water identified in the refill criteria to DWR and Reclamation in a manner and on a schedule agreed to between MID, DWR, and Reclamation. Any release required pursuant to this paragraph shall be conducted in a manner that does not injure any legal user of water and does not unreasonably affect fish, wildlife, or other instream beneficial uses.
9. Within 90 days of completion of the transfer, the Licensee shall provide to the Deputy Director for Water Rights, and the Deputy Director for DWR, SWP a report describing the transfer authorized by this Order. The report shall include the following information:
  - a. The average daily release rates and corresponding volume of water released from Lake McClure as a result of this transfer (reported on a daily basis); and
  - b. The daily average rate of water diverted and daily volume of water diverted at the points of rediversion at the Banks Pumping Plant and San Luis Reservoir pursuant to this Order.
10. Licensee shall provide a report to the Deputy Director for Water Rights, and the Deputy Director for DWR, SWP by April 1, 2021 describing its refill of the transferred amount of water pursuant to this Order. For periods of refill or refill impacts, including any releases made by the Licensee to address a refill impact, the report shall include the daily values for these periods. The report shall be referred to as the "2020 water transfer" and be included in the Licensee's annual report as an attachment. If reservoir refill or releases for refill impacts are not complete by April 1, 2021, subsequent reports shall be attached to Licensee's annual report and be submitted by April 1 of each year until completion of refill. This report shall include a discussion of any measures and/or methods taken to ensure that releases

made to satisfy and be consistent with the refill criteria pursuant to Condition 8 were conducted in a manner that did not injure any legal user of water and did not unreasonably affect fish, wildlife, or other instream beneficial uses.

11. MID shall comply with the License 2685 instream flow requirements at all times while transferring water pursuant to this Order.
12. 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 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 the 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 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 any 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.
14. The State Water Board reserves jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: JUN 29 2020