

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 11118 (APPLICATION 14804)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 10,000 ACRE-FEET OF WATER  
FROM SOUTH SUTTER WATER DISTRICT  
TO FIVE STATE WATER CONTRACTOR AGENCIES**

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SOURCE: Bear River

COUNTIES: Placer and Yuba

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On May 23, 2014, South Sutter Water District (District) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change involving a Water Transfer pursuant to Water Code section 1725 et seq. The District has requested to transfer up to 10,000 acre-feet (af) of water from the Bear River beginning July 1, 2014 and ending September 30, 2014. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

**1.1 Description of the Transfer**

The District proposes to transfer up to 10,000 af of previously stored water from Camp Far West Reservoir (Reservoir) and Camp Far West Diversion Dam (Diversion Dam) on the Bear River to five State Water Contractor Agencies: County of Kings, Dudley Ridge Water District, Kern County Water Agency, Oak Flat Water District, and Napa County Flood Control and Water Conservation District (State Water Contractor Agencies). From July 1, 2014 through September 30, 2014, the District proposes to release up to 10,000 af of water currently stored in the Reservoir and the Diversion Dam into the Bear River tributary to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta. The water would be available for rediversion at the State Water Project's Banks Pumping Plant, Barker Slough Pumping Plant, and/or San Luis Reservoir for use within the service area of the participating State Water Contractor Agencies.

**2.0 BACKGROUND**

License 11118 (Application 14804) authorizes the diversion to storage of up to 58,370 af of water per year from the Bear River between October 1 of each year to June 30 of the succeeding year. License 11118 also authorizes the direct diversion of up to 330 cubic feet per second (cfs) from the Bear River between May 1 and September 1 of each year. The Diversion Dam (located about one mile downstream of the Reservoir) is an authorized point of direct diversion and rediversion to storage.

Water diverted under License 11118 is used for irrigation and domestic purposes within the authorized place of use, as well as incidental power generation. The authorized place of use under License 11118 is a net 59,000 acres within a gross area of 65,796 acres within the District, 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside its boundaries served under

contract), and a power generation plant located on the District's conveyance canal.

In order to protect fish resources downstream of the Diversion Dam, the District is required to bypass 25 cfs between April 1 and June 30 of each year and 10 cfs between July 1 of each year to March 31 of the succeeding year.

The District, along with other parties within the Bear River watershed, has entered into the Bear River Agreement with the Department of Water Resources (DWR) to meet the Bear River watershed's responsibilities for Bay-Delta flow objectives. This Bear River Agreement requires the District to make up to 4,400 af of water available to DWR during dry and critically dry water years. The District's petition states that the water intended for transfer is in addition to the water made available to DWR pursuant to the Bear River Agreement.

## **2.1 OCAP Biological Opinions**

The operations of the Banks Pumping Plant are governed by Biological Opinions issued by the United States Fish and Wildlife Service (USFWS) and the National Marine Fishery Services (NMFS) for the long-term operations of the Central Valley Project (CVP) and the State Water Project (SWP) (referred to as OCAP BOs). The Biological Opinions were issued in 2008 (USFWS) and 2009 (NMFS) and are based on CALSIM modeling of SWP and CVP operations. The modeling includes up to 600,000 af of water transfers during the period of July 1 through September 30 of each year. Additionally, the Reasonable and Prudent Alternatives contained in the BOs do not include export restrictions during the July 1 through September 30 period. The total amount of additional pumping due to all water transfer (including the subject transfer) in 2014 is less than the 600,000 af assumed in the modeling performed for the BOs. Accordingly, additional pumping at the Banks Pumping Plant associated with the subject transfer between July 1 and September 30, 2014, is in conformance with the OCAP BOs. This Order limits the proposed transfer to the period from July 1 through September 30, 2014.

## **2.2 Governor's 2014 Proclamations of a Drought State of Emergency**

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Proclamation of a Drought State of Emergency (January Proclamation). The January Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction.

The January Proclamation refers to the Governor's Executive Order B-21-13 (Executive Order), issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The Executive Order directs the State Water Board and DWR to expedite processing of water transfers (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency (April Proclamation). The Governor reiterates direction to DWR and the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers. If necessary, DWR will request that the State Water Board consider changes to water right permits to enable such voluntary movements of water. The April Proclamation also states that for actions taken pursuant to Directive 2 (water transfers), Water Code section 13247 is suspended. Water Code section 13247 requires state offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

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

### **2.3 State Water Board Curtailment Actions**

On May 27, 2014, the State Water Board issued curtailment notices for those diverting water in the Sacramento, San Joaquin, and Russian River watersheds with post-1914 water rights. The District is located within the Sacramento River watershed and has been notified to curtail its diversions. The 10,000 af proposed for the transfer will be from the Reservoir where water was diverted and placed into storage prior to notification of curtailment. Curtailment actions from the State Water Board will not impact the proposed transfer.

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

On May 30, 2014, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, on May 31, 2014, the District noticed the project via publication in the Sacramento Bee newspaper and mailed the notice via first class mail to interested parties.

#### **3.1 Comments of Richard Morat**

On June 5, 2014, Richard Morat submitted comments on the proposed transfer stating the following:

1. Fish salvage operations at the Banks Pumping Plant are ineffective. Therefore, increase in diversion (i.e. exports) at Banks as a result of the proposed transfer will result in large numbers of fish mortalities.
2. The timing of the transfer from the Barker Slough pumping Plant needs to be carefully considered and scheduled.
3. For transfer involving release of reservoir storage and subsequent reservoir re-operation, it is possible that storage replenishment could occur in a harmful manner.
4. Cumulative adverse impacts to public trust aquatic resources as a result of the transfer are being ignored and are accumulating to substantial levels.
5. The Order should include a term that would ensure no carryover of transferred water remains in San Luis Reservoir after one year from approval of the transfer

#### **3.2 Comments of Reclamation**

On June 13, 2014, Reclamation submitted comments on the proposed transfer requesting that the Order approving the transfer be conditioned to include that:

1. The District has agreed to refill criteria specified in a refill agreement, and that the transfer is subject to the refill agreement, and
2. The transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

The District responded to Reclamation to provide additional information to clarify the proposed change. Reclamation withdrew their request for a refill agreement per email dated June 30, 2014.

### **3.3 State Water Board Response to Comments**

In evaluating and processing a transfer petition, the State Water Board is required to make findings pursuant to Water Code section 1727. This section of the Water Code directs the Board to approve a temporary change if it determines that a preponderance of the evidence shows both of the following: (1) the proposed temporary change would not injure any legal user of 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; and (2) the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. The District has the burden of establishing that a proposed temporary change would comply with the items listed above. The State Water Board has considered the comments and has reviewed the information in the record in evaluating the proposed transfer.

#### Response to Richard Morat:

State Water Board addresses Mr. Morat's comments 1, 3, and 4 with response letter "Comments on 2014 Temporary Transfers of Water" on file with Application 14804, incorporated by reference. Comment 2 does not specifically state any concerns related to fish, wildlife, or other instream beneficial uses as a result of the transfer utilizing the Barker Slough Pumping Plant. Regarding comment 5, operation of San Luis Reservoir and use of the transferred water is subject to the operation of the San Luis Reservoir per SWP and CVP operators.

#### Response to Reclamation:

As requested by Reclamation, comment 2 will be included as a condition in this Order.

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

Water Code section 1729 exempts petitions for temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act. The State Water Board will issue a Notice of Exemption for this project.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed change 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 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 independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code section 1727 evaluation.

### **5.0 REQUIRED FINDINGS OF FACT**

#### **5.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to a transfer or exchange of water, the State Water Board must find that the change will only involve the amount of water that would have been consumptively used, stored, or conserved by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011 (Wat. Code, §§ 1725, 1726.). Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion".

To provide water for the transfer, the District proposes to forgo distribution of up to 10,000 af of water stored at the Reservoir which the District anticipates would have either stayed in storage or would have been consumptively used by the District's customers during July, August and September 2014. Customers within the District's service area utilize stored surface water provided by the District to meet irrigation requirements. When additional water is necessary above the amount of water received from the District, the District's customers meet those needs with groundwater pumping.

Absent the proposed change, the District would either retain the water in storage or release the water proposed for transfer from the Reservoir for redirection at the Diversion Dam into the Main Canal for consumptive use within the District's place of use during the months of July, August and September.

## **5.2 No Injury to Other Legal Users of the Water**

Before approving a temporary change due to a transfer or exchange of water, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the 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)).

The State Water Board solicited input from DWR on June 6, 2014. DWR responded stating that the proposed transfer would be treated similar to the District's previous transfer in 2010. Water proposed for the transfer consists of surface water released from the Diversion Dam, made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. DWR has determined that 6% of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 94% of the surface water released from the Diversion Dam as a result of this transfer.

This Order also includes terms and conditions to ensure that other legal users of water are not injured by the potential water level and water quality impacts in southern Delta channels associated with the addition of the Banks Pumping Plant and the Barker Slough Pumping Plant as points of redirection to License 11118.

The District adopted the South Sutter Water District Groundwater Management Plan (Plan) in 1995 and was subsequently updated in 2009. The Plan has been effective in implementing conjunctive use of surface water and groundwater within the District.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed temporary change will not injure any legal users of water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10, subdivision (a). That section requires groundwater use associated with a groundwater substitution transfer to be in conformance with the approved groundwater management plan for the affected area.

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

Before approving a temporary change due to 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)). The State Water Board solicited input from the California Department of Fish and Wildlife (CDFW) on May 28, 2014. No comments were received from CDFW regarding the proposed transfer.

The Order limits the transfer period from July 1 through September 30, 2014 to ensure conformance with the OCAP BOs. Rediversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court

orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation.

Rediversion of water at the Barker Slough Pumping Plant is subject to compliance by the pumping plant operators with all applicable biological opinions and court decisions, and any other conditions imposed by other regulatory agencies applicable to these operations.

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.

## **6.0 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 2010-0029.

## **7.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code sections 1725 and 1745.10, and therefore I find as follows:

I conclude that, based on the available evidence:

1. The temporary change involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The temporary change will not injure any legal user of the water.
3. The temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
4. The temporary change is consistent with a groundwater management plan.

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change for the transfer of up to 10,000 af of water under License 11118 is approved.

All existing terms and conditions of License 11118 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing July 1, 2014 and continuing through September 30, 2014.
2. The District shall release water from Camp Far West Reservoir and Camp Far West Diversion Dam on the same pattern as otherwise would have been delivered to landowners absent the transfer. The amount of water transferred pursuant to this Order shall not exceed 94% of the rate of additional release from Camp Far West Diversion Dam for the transfer.

3. The place of use under License 11118 is temporarily amended to include the service areas of the State Water Project (as shown on Map 1878-2 & 3 on file with Application 5629). Water transferred pursuant to this Order shall only be delivered to County of Kings, Dudley Ridge Water District, Kern County Water Agency, Oak Flat Water District, and Napa County Flood Control and Water Conservation District.
4. The following points of rediversion shall be temporarily added to License 11118. The water diverted at these facilities is limited to the quantities made available as transfer water, as specified above:
  - a. Banks Pumping Plant via the Clifton Court Forebay – being within the NW¼ of SE¼ of projected Section 20, T1S, R4E, MDB&M.
  - b. Barker Slough Pump Plant – being within the NE ¼ of SW ¼ of projected Section 18, T5N, R2E, MDB&M.
  - c. San Luis Reservoir – being within the SW ¼ of SE ¼ of projected Section 15, T10S, R8E, MDB&M.
5. Municipal and industrial are temporarily added as purposes of use under License 11118.
6. Rediversion of water at Banks Pumping Plant is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641, or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Order item 9. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
7. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
8. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
9. This Order does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a “take” will result from any act authorized under this Order, right holder shall obtain any authorization for an incidental take prior to commencing the transfer of water. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

10. 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:

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: JUL 7 2014