

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

DIVISION OF WATER RIGHTS

In the Matter of Specified License and Permits¹ of

THE STATE WATER PROJECT AND THE CENTRAL VALLEY PROJECT

**ORDER APPROVING A CHANGE IN THE PLACE OF USE OF
PERMITS OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION IN RESPONSE TO DROUGHT CONDITIONS AND DENYING
CHANGE IN PLACE OF USE OF LICENSE 1986**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 INTRODUCTION

Due to the historic drought conditions experienced in California in 2012 through 2014 and continuing in 2015, on March 25, 2015, 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 16482 and Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 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 maximum total transfer quantity requested is up to 335,560 acre-feet (af).

The changes requested will temporarily consolidate the authorized places of use of the SWP and CVP (hereinafter jointly referred to as the Projects) thereby allowing DWR and Reclamation to more effectively and efficiently utilize the operational flexibility of the combined Projects to supply water south of Banks and Jones (Delta Pumps). The requested changes will facilitate the delivery of available Project supplies south of the Sacramento-San Joaquin Delta (Delta) and maximize the beneficial use of available supplies within areas experiencing critical water supply shortages this year. Approval of the petition will not increase the quantity or alter the timing of diversions from the Delta or San Joaquin River.

The petition requests the temporary changes become effective on May 1, 2015 and remain in effect for one year from the date of approval. The total transfer quantity consists of many transfers/exchanges detailed in Section 3.3 below.

¹ The petition was filed for Permit 16482 (Application 17512) of the Department of Water Resources' State Water Project and License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 (Applications 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9368, 13370, 13371, 15374, 15375, 15376, 15764, 16767, 16768, 17374 and 17376, respectively) of the United States Bureau of Reclamation's Central Valley Project.

2.0 CALIFORNIA'S ONGOING DROUGHT CONDITIONS

2.1 Governor's Proclamations of a Drought State of Emergency

On January 17, 2014, Governor Edmund G. Brown Jr. issued a Drought Emergency Proclamation based on California's record dry conditions. The January Proclamation indicated that the State's water supplies dipped to alarming levels as evidenced by the snowpack was approximately 20 percent of the normal average for January²; the SWP and CVP reservoirs had very low water levels for January; California's major river systems, including the Sacramento and San Joaquin rivers, had significantly reduced surface water flow; and groundwater levels throughout the State had dropped significantly.

The 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. With the 2014 Proclamation, the Governor directed the State Water Board to in part expedite processing of water transfers including to immediately consider petitions requesting consolidation of the places of use of the Projects. As indicated in the Proclamation, this will streamline water transfers and exchanges between water users within the area of the Projects.

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), Section 13247 of the California Water Code is suspended. California Water Code Section 13247 requires that 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 Water 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. The 30-day comment period provided in section 1726(f) of the Water Code, relevant to temporary water transfers, is also suspended for actions taken pursuant to directive 2, but the Water Board will provide for a 15-day comment period

On December 22, 2014, Governor Brown issued Executive Order B-28-14 which extended the waiver of Water Code section 13247 in paragraph 9 of the January 2014 Proclamation, and paragraph 19 of the April 2014 Proclamation, through May 31, 2016.

Calendar year 2014 was California's driest year on record. Water year 2014 ranked as the third driest on record in terms of statewide precipitation, with the three-year period of water years 2012-2014 ranking as the driest consecutive three-year period on record in terms of statewide precipitation. California is now entering its fourth straight year of below-average rainfall including very low snowmelt runoff resulting in significantly low reservoir levels throughout the State at the beginning of this water

²

As of March 26, 2014, the northern Sierra snow water content was estimated at 13 percent of average for that date and the statewide percent of average April 1 measurement was estimated at 13 percent when snowpack is normally at its peak. As of March 24, 2015, the northern Sierra snow water content was estimated at 8 percent of average for that date and the statewide percent of average April 1 measurement was estimated at 9 percent when snowpack is normally at its peak. On April 1, 2015, the northern Sierra snow water content was estimated at 5 percent of the historical average, the lowest since 1950.

year. The low initial storage and historically dry conditions experienced to date have resulted in significant reductions in water supplies in California and will likely lead to critical water shortages in 2015.

On April 1, 2015, the Governor issued Executive Order B-29-15 to save water, increase enforcement of water laws, streamline government response to the drought, and invest in new water. It references that the orders and provisions of the January 17, 2014 Proclamation and April 25, 2014 Proclamation are still in effect, unless otherwise modified. The provisions of the January and April 2014 Proclamations relating to streamlining approval of water transfers are still in effect.

2.2 Notices of Potential and Actual Curtailment

On January 23 and April 2, 2015, the State Water Board issued statewide public notices of potential curtailment of post-1914 water rights. The direct diversion and collection of water to storage under the license and permits held by DWR and Reclamation could be subject to the curtailment notices. However, releases of water collected to storage prior to issuance of the curtailment notices are not subject to curtailment.

On April 23, 2015, the State Water Board issued a curtailment notice for all post-1914 water rights in the San Joaquin River watershed. DWR's Permit 16482 (Application 17512) and Reclamation's License 1986 (Application 23) and Permits 11885, 11886 and 11887 (Applications 234,1465 and 5638) have been curtailed. While DWR Permit 16482 and Reclamation Permits 11885, 11886 and 11887 involve both storage and direct diversion, License 1986 only covers direct diversion of water.

2.3 2015 Temporary Urgency Change Petition

On January 23, 2015, DWR and Reclamation jointly filed a Temporary Urgency Change Petition (TUCP), pursuant to California Water Code Section 1435 et seq., to temporarily modify the water right license and permit terms and conditions for the State Water Project (SWP) and Central Valley Project (CVP) specified in State Water Board Decision D-1641 (D-1641) requiring compliance with Delta water quality objectives in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta) in response to drought conditions. The State Water Board issued an Order approving portions of the TUCP on February 3, 2015. That Order was modified on March 5 and April 6, 2015.

2.4 Drought Impacts to SWP and CVP Operations

Due to the continued dry conditions, on February 27, 2015, DWR announced that SWP contractors would only be allocated 20 percent of their contracted SWP amounts in 2015. DWR has also indicated that if there is no improvement in hydrology over the course of this year, the SWP allocation will not be increased, which would represent the largest allocation deficiency for municipal and industrial SWP contractors on record.

Reclamation began water year 2015 with 3.1 million af of carryover storage in six key CVP reservoirs, which was 26 percent of capacity and 47 percent of the 15-year average for October 1. Since that time, however, the State has seen several significant rain events but also continued to experience extended periods of very dry weather. January 2015 was the driest January in recorded history for northern California. On February 27, 2015, Reclamation announced its water supply allocations for 2015. Agricultural water service contractors south-of-Delta were allocated zero percent of their contract supply of 1.946 million af; and municipal and industrial water service contractors south-of-Delta were allocated 25 percent of their contracted amounts or enough water to meet their public health and safety needs, whichever is greater. Friant contractors were allocated zero percent of class 1 and class 2 contracted supplies in 2015. San Joaquin River Exchange and Settlement Contractors, whose CVP water supply allocation is subject to pre-established Shasta Reservoir inflow criteria, were allocated 75 percent of their contract supply of 875,000 af. Wildlife refuges (Level 2) north- and south-of-Delta, which also have allocations subject to pre-established Shasta Reservoir inflow criteria, were allocated 75 percent of their contract supply of 422,000 af. Reclamation will evaluate allocations each month.

In addition to annual hydrology conditions, the ability of DWR and Reclamation to deliver Project water south of the Delta is affected by operational restrictions which limit diversions from the Delta. The operational restrictions include those contained in State Water Board Decision 1641 (D-1641) as well as the current biological opinions issued for the protection of Delta smelt and anadromous fishes and marine mammal species. Operational limitations restrict Project exports through June, impacting the ability of the Projects to capture excess spring flows and move water from upstream storage to contractors south of the Delta.

3.0 SUBSTANCE OF TEMPORARY CHANGE PETITION

3.1 Existing Place of Use of DWR and Reclamation 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).

3.2 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 16482; and 2) the temporary addition of the SWP service area downstream of Banks to Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364. These temporary additions would be for the purpose of completing the transfers/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.

3.3 Transfers/Exchanges Proposed

The petition includes the following transfers/exchanges:

a. Santa Clara Valley Water District

Santa Clara Valley Water District (SCVWD) contracts for a water supply from both the SWP and CVP. The SWP water is delivered through the South Bay Aqueduct (SBA) and the CVP water is delivered from San Luis Reservoir through the San Felipe Division. In 2015 and 2016, there are several operational and maintenance issues that may require the delivery of the SCVWD's CVP or SWP supplies through an exchange. Also in 2015 and 2016, to better utilize its limited drought year supplies, SCVWD may need to recover previously stored CVP water from Semitropic Water Storage District (SWSD) by exchange. Up to 135,000 af of the SCVWD's CVP, SWP, and/or previously stored CVP supplies may be subject to these alternative conveyance approaches. The need for this flexibility is described in more detail below:

- Based on historic operating conditions, total storage in San Luis Reservoir may drop to levels that result in operational and/or water quality problems. When this occurs, SCVWD's pumping capacity through the San Felipe Division can be limited, potentially impacting the ability to meet SCVWD demands. In addition, low water levels can result in reduced water quality causing water treatment problems which could result in severe reductions in the quantity of CVP supplies conveyed through the San Felipe Division, as well as increased water treatment costs. Another issue is the aging infrastructure in the San Felipe Division, which could result in both planned and unplanned facility shutdowns for maintenance and repair. In addition to San Luis Reservoir water level issues and potential infrastructure repairs, the following may limit SCVWD's ability to receive water through the San Felipe Division and therefore, may require delivery of SCVWD's CVP

water through an exchange with the SWP; (1) work at Pacheco Pumping Plant, currently scheduled for November and December 2015; (2) work on SCVWD facilities, currently scheduled for January and February 2016. In addition, an exchange of CVP and SWP supplies in O'Neill Forebay will facilitate withdrawal of SCVWD's previously banked supplies from the SWSD groundwater bank. Given the current drought, SCVWD may also need to move CVP water through the SBA by exchange in order to balance its operations if there is insufficient SWP water moving through the SBA. Reclamation and DWR are therefore requesting approval to exchange CVP and SWP water to allow SCVWD's CVP water to be pumped at Jones and delivered to DWR at O'Neill Forebay for use within the SWP service area south of O'Neill, and in exchange, an equal amount of SWP water would be pumped at Banks and delivered through the SBA. The proposed exchange would not increase the total amount of CVP or SWP water allocated to SCVWD by DWR or Reclamation.

- Planned and unplanned shutdowns on the SBA as well as within SCVWD's service area may prevent deliveries of SWP water through the SBA. Critical maintenance on the SBA is scheduled to take place in October 2015, limiting SCVWD's ability to receive water through the SBA during this time. Work at one of SCVWD's water treatment plants, currently scheduled for fall 2015 and winter 2016, may also limit SCVWD's ability to utilize SWP supplies from the SBA. In addition, SCVWD's aging infrastructure may require unplanned shutdowns that limit the ability to receive SWP water through the SBA. Given the current drought, SCVWD may also need to move SWP water the San Felipe Division by exchange in order to balance its operations if there is insufficient CVP water moving through the San Felipe Division. Reclamation and DWR are requesting an exchange of CVP and SWP water to allow the delivery of SCVWD's SWP through an exchange with the CVP. SWP water would be pumped at Banks and delivered to the CVP at O'Neill Forebay for use within the CVP service area south of O'Neill Forebay. In exchange, an equal amount of CVP water would be pumped at Jones and delivered to SCVWD through the San Felipe Division. The proposed exchange would not increase the total amount of CVP or SWP water allocated to SCVWD by DWR or Reclamation.
- SCVWD has previously banked CVP water supplies in the SWSD groundwater bank. Recovery of the stored CVP water must be accomplished by exchange. In order to return the previously stored CVP water to SCVWD, SWSD will pump the water into the California Aqueduct and deliver that water to DWR for use within the SWP service area south of SWSD's turn-in facilities. In exchange, an equal amount of SWP water would be delivered to SCVWD through either the SBA and/or the San Felipe Division from San Luis Reservoir.

The added flexibility provided by the proposed exchanges will allow SCVWD to manage operational and maintenance uncertainties on both the San Felipe Division and the SBA, and allow SCVWD to recover previously stored CVP water from SWSD by exchange. Approval of the petition will allow the continued delivery of water to SCVWD and provide operational flexibility, thus minimizing negative impacts to the economy of the SCVWD service area, water levels within the region's groundwater basin, and local environmental resources.

b. Oak Flat Water District/Del Puerto Water District Exchange

Oak Flat Water District (OFWD), a SWP contractor, and Del Puerto Water District (DPWD), a CVP contractor, are adjacent districts located north of San Luis Reservoir in San Joaquin, Stanislaus and Merced Counties. The districts share common landowners. Landowners with water supplies from both projects have requested the ability to optimize the application of available supplies on their combined properties.

The proposed exchange would allow the delivery of up to 1,000 af of the landowners' CVP supplies through SWP turnouts on the California Aqueduct to lands within DPWD, delivery of a portion of their CVP supply to lands within OFWD and delivery of a portion of their SWP

supplies through CVP turnouts on the Delta Mendota Canal to lands within DPWD. The proposed exchanges would result in no increase in total SWP or CVP allocations to either district.

In addition to the exchange above, OFWD and DPWD propose an even exchange to allow the delivery of up to 2,000 af of DPWD's CVP water. A portion of the lands within DPWD adjacent to OFWD are more efficiently served from OFWD's turnouts on the California Aqueduct. DPWD proposes to deliver a portion of its CVP supply to the lands adjacent to OFWD through an even exchange with the SWP. Up to 2,000 af of SWP water will be delivered through the OFWD turnouts on the California Aqueduct. An equal amount of CVP water will be delivered to the SWP at O'Neill Forebay. The exchange will not result in any increase in pumping from the Delta by either the SWP or CVP. There will be no increase in total deliveries to DPWD.

c. Kern County Water Agency-Kern Tulare Water District Exchange

Kern County Water Agency (KCWA) is a SWP contractor with numerous member units within Kern County. Kern Tulare Water District (KTWD) is a CVP contractor located in Kern County with a contract for CVP water through the Cross Valley Canal (CVC). Due to limited capacity at Jones, conveyance of CVP-CVC water through SWP facilities is often required to affect deliveries to the CVC contractors. DWR and Reclamation have an agreement to pump CVC water at Banks for delivery to the CVC when operational capacity is available. As a result of projected hydrologic conditions and anticipated operational restrictions, it is possible there will be no ability to move CVC water through Jones or Banks until fall 2015. In order to assist KTWD in meeting peak irrigation demands this summer, KCWA is willing to provide up to 10,660 af of its SWP water to KTWD through the summer months. In exchange, KTWD is willing to provide an equivalent amount of CVP-CVC water to KCWA in the fall for delivery to KCWA member units. KTWD is within the SWP place of use; however several of the KCWA member units to receive the fall CVP water are outside the CVP place of use. The exchange will not result in an increase in allocations to either district.

d. Arvin-Edison WSD/Metropolitan Water District Program

Groundwater Banking:

Metropolitan Water District of Southern California (MWDSC) stores a portion of its SWP supply in the Arvin-Edison Water Storage District (AEWSD, a CVP contractor) groundwater banking facilities depending on annual allocations. When requested, AEWSD is obligated to return previously banked SWP water to MWDSC. In the absence of this proposed exchange, previously banked SWP water can only be recovered from AEWSD banking facilities through groundwater extraction. The expansion of the CVP place of use will allow AEWSD the option and flexibility to return MWDSC's banked water through an exchange of its available CVP Delta/San Luis Reservoir, or Friant surface supplies (CVP water supplies). The exchange will allow AEWSD greater flexibility in the scheduling and use of its CVP supplies as well as a reduction in energy and costs associated with the groundwater extraction. The ability for AEWSD to return surface water through exchange would enhance the water quantity, water quality, and timing of water returned to MWDSC. CVP water supplied to MWDSC by AEWSD in lieu of extraction to recover previously stored SWP water will result in a balanced exchange or bucket-for-bucket (one-for-one) reduction of MWDSC's groundwater banking account with AEWSD. The exchange will occur only to the extent MWDSC has a positive bank account. Upon return of water to MWDSC, an equivalent amount of MWDSC's previously banked SWP water would transfer to AEWSD.

Regulation Program:

Additionally, the requested change to a consolidated place of use would allow AEWSD to deliver CVP water supplies to MWDSC first and receive back SWP water supplies in exchange

at a later time. This program better facilitates the use of AEWSD CVP water supplies that have a limited opportunity for use under current CVP operations. AEWSD is interested in utilizing MWDSC's ability to take delivery of and use or store AEWSD's CVP water supplies and return SWP water supplies to AEWSD at a future time in order to enhance AEWSD's ability to match supply to grower demands. The ability to regulate water in this manner reduces the need to directly recharge and subsequently extract supplemental groundwater. This exchange mechanism would also be on a balanced exchange or bucket-for-bucket (one-for-one) basis.

Carryover Program:

In the event that hydrologic conditions are such that AEWSD believes that there may be limited availability to carry over 2015 CVP water supplies in CVP reservoirs, AEWSD CVP water supplies would be delivered to MWDSC to reduce risk of spill and subsequent potential loss of water supplies. The CVP water will be delivered to MWDSC by exchange in San Luis Reservoir or directly into the California Aqueduct via the Friant Kern Canal and AEWSD facilities. MWD is willing to provide water management services to assist in regulating the available contract supplies.

MWDSC would receive AEWSD water prior to spill and at a later time, return a lesser amount (return 2 af for every 3 af regulated) to AEWSD. The unbalanced nature of the exchange reflects the compensation to MWDSC for their water management services, which would protect the water from spilling. In the absence of the exchange with MWDSC, AEWSD would attempt to avoid spilling the water by delivering the available CVP contract supplies to groundwater banking programs within the AEWSD service area or other areas that are within the CVP place of use.

The benefits of the above proposed exchanges provide, among other things, offsets to the impacts to AEWSD of the San Joaquin River Restoration Program by increasing AEWSD's ability to efficiently use water supplies and by increasing the opportunities to complete the return of SJRRP releases to AEWSD. In addition, the exchange could result in a reduction in energy and costs associated with groundwater recharge and extraction.

The proposed exchanges would be up to a total of 150,000 af of CVP water supplies for all three programs described above.

CVP Delta supplies will be provided as stated above.

If available, Friant Division CVP water will be provided directly via delivery from the Friant-Kern Canal and AEWSD's distribution system, including its connections to the California Aqueduct at Milepost 227 (Reach 14C) or via its capacity in the Cross Valley Canal to the California Aqueduct at Tupman/Milepost 238 (Reach 12E).

e. Kern County Water Agency to Westlands – Kern River Water

The Kern County Water Agency (KCWA) proposes to deliver up to 25,000 af of its SWP water to lands within Westlands Water District (WWD) to facilitate the delivery of previously stored CVP water in the Semitropic Water Storage District (SWSD). Two landowners, Poso Creek LLC, and Harris Farms Inc., have agricultural operations in both KCWA and WWD and have both a SWP and CVP contract supply. The landowners have banked CVP water in SWSD. The landowners plan to recover up to 25,000 af of their previously stored CVP water. Delivery of the CVP water currently stored in SWSD will be accomplished through exchange. KCWA will deliver up to 25,000 af of SWP water to WWD turnouts on the joint use facilities. An equivalent amount of the landowners' water stored in SWSD will be transferred to KCWA.

KCWA proposes to deliver up to 3,000 af of its SWP water to lands within WWD to facilitate the delivery of previously stored CVP and Lower Kern River water in the Kern Water Bank (KWB).

Paramount Farming Company (Paramount) has agricultural operations in both KCWA and WWD and has both a SWP and CVP contract supply. Paramount has banked CVP and Lower Kern River water supplies in KWB. Paramount plans to recover up to 3,000 af of their previously stored CVP and Lower Kern River water. Delivery of the CVP and Lower Kern River water currently stored in KWB will be accomplished through exchange. KCWA will deliver up to 3,000 af of SWP water to WWD's turnouts on the joint use facilities. An equivalent amount of the Paramount's water stored in KWB will be transferred to KCWA.

KCWA also proposes to provide up to 7,600 af of its SWP water to WWD to facilitate the delivery of Lower Kern River water purchased by WWD from Nickel Family LLC. Up to 7,600 af of Lower Kern River water rights water previously stored in SWSD will be assigned to KCWA. The exchange will be a one-for-one exchange. The KCWA SWP Table A water will be delivered to WWD's turnouts on the joint-use facilities.

f. Department of Veterans Affairs – San Joaquin Valley National Cemetery

The Department of Veterans Affairs – San Joaquin Valley National Cemetery (VA Cemetery) contracts with Reclamation for up to 850 af of CVP supply. The CVP water cannot physically be delivered directly to the VA Cemetery when the use of Joint Point of Operations (JPOD) authorized under D-1641 or the California Aqueduct-Delta Mendota Canal Intertie (Intertie) is not available. The VA Cemetery is located near Reach 2B on the California Aqueduct (north of O'Neill Forebay). The Consolidated Place of Use would allow DWR to deliver up to 850 af of SWP water to the VA Cemetery in exchange for an equivalent amount of CVP water delivered by Reclamation to DWR at O'Neill Forebay.

g. Musco Olive Products Inc.

Byron Bethany Irrigation District (BBID) contracts with Reclamation for a water supply from CVP. BBID provides up to 450 af per year under contract, to Musco Olive Products Inc. (Musco). Musco is not connected to BBID's distribution system. Neither BBID nor the CVP can physically convey CVP water to Musco when the use of JPOD or the Intertie is not available. Musco is located near SWP Reach 2A on the California Aqueduct (north of O'Neill Forebay). The Consolidated Place of Use will allow DWR to deliver up to 450 af of SWP water to Musco for BBID in exchange for an equivalent amount of CVP water delivered by Reclamation to DWR at O'Neill Forebay.

h. Potential Additional Transfers/Exchanges

The above transfers include all the specific transfers requested as of the date of the petition. However, because of the dire water supply conditions, SWP and CVP contractors will need to continue to explore all possible opportunities to retrieve previously stored Project supplies and optimize the delivery (quantity and timing) of their limited supplies from all available sources. The Petitioners anticipate that by the summer of 2015 more needs and opportunities for exchanging SWP and CVP water may be developed. The Petitioners request that any Order approving this petition includes 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 transfers listed above will be conducted in accordance with the following criteria:

1. The transfer or 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 or transferred would have been consumptively used or stored in the absence of the transfer.
3. The total quantity of water delivered to SWP or CVP contractors as a result of the change will not exceed historic average deliveries.
4. The transfer or exchange will not result in the net loss of San Joaquin River or Sacramento River flow.
5. The transfer or exchange will not result in an increase in saline drainage to the San Joaquin River.
6. Prior to initiating any transfer or exchange not specifically listed above, DWR or Reclamation will provide the State Water Board with a description of the proposed transfer or exchange for review and approval.
7. DWR and Reclamation will develop, in coordination with State Water Board staff, a reporting plan that will account for all water transferred or exchanged under the provisions of any order approving the consolidated place of use. The reporting plan will include the parties to the transfer or exchange, how much water was to be transferred, how the water was made available, and the facilities required to affect the transfer.

4.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code Section 1725, DWR and Reclamation have applied for temporary changes involving a transfer/exchange of water. The State Water Board shall approve temporary changes involving the transfer/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 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).

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

DWR and Reclamation filed the petition for a temporary transfer and 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.

6.0 PUBLIC NOTICE AND COMMENTS

On April 6, 2015, a 15 day public notice of the petition for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's electronic subscription mailing list; and 4) by publication in the Sacramento Bee and the Stockton Record. The State Water Board received no comments.

7.0 REQUIRED FINDINGS OF FACT

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

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer/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, the temporary change 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 transfers/exchanges proposed within the petition, including any potential future transfers/exchanges meeting the criteria outlined above, involve water that is part of the SWP and/or CVP contractors allocated supplies, was diverted to storage and rediverted from the Delta consistent with all applicable regulatory requirements, has been exported from the basin in which it was developed, and in light of the severe water supply shortages would clearly be consumptively used or stored in the absence of the transfers/exchanges. The requested changes will provide the operational flexibility the Projects need to get available supplies where they are needed most and in the most efficient manner possible. The transfers/exchanges will allow agencies experiencing critical water supply restrictions to recover previously stored water, or optimize the beneficial use of their existing limited water supplies. The water proposed for transfer/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 DWR and Reclamation may be or have been 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.

DWR Permit 16482 and Reclamation License 1986 and Permits 11885, 11886, and 11887 were curtailed on April 23, 2015. While DWR Permit 16482 and Reclamation Permits 11885, 11886 and 11887 involve both storage and direct diversion, Reclamation License 1986 only covers direct diversion of water.

In light of the above, I find in accordance with Water Code Section 1726, subdivision (e) that the water proposed for transfer/exchange of DWR Permit 16482 and Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer under Reclamation License 1986 pursuant to this Order would not be consumptively used 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).)

The changes proposed by DWR and Reclamation will not result in any measurable changes to streamflow, water quality, timing of diversion or use, or return flows. The water to be transferred/exchanged is diverted out of the watershed from which it originates in conformance with the provisions of the respective DWR and Reclamation water right permits governing those diversions. There are no other legal users downstream of the points of diversion that would be affected by the transfers/exchanges.

The quantity and timing of diversions from the Delta will not change, however the delivery rates from San Luis Reservoir may be slightly different. The scheduling of the deliveries will be coordinated between DWR and Reclamation so as not to adversely impact any SWP or CVP contractor deliveries. 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 transfers/exchanges.

The transfers/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 transfers/exchanges. There could be some shift in the timing of deliveries of SWP and CVP supplies. Transfers/exchanges similar to those proposed above were conducted in 2009, 2010, 2012, 2013, and 2014 consistent with the provisions of WR 2009-0033, WR 2010-0032-DWR, and the July 6, 2012, July 1, 2013, and March 28, 2014 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 measureable effects on other legal users of water were noted from those transfers/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 Permit 16482 and Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 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 Section 794 (c), Petitioners provided California Department of Fish and Wildlife (CDFW) and the applicable Regional Water Quality Control Board (Regional Board) with a copy of the petition. CDFW and the Regional Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

There will be no change in the amount of SWP or CVP water diverted at the Banks or Jones Pumping Plants. Therefore, there will be no change in flow or water quality conditions in the Delta. All water exported at the Banks and Jones Pumping Plants is pumped consistent with the applicable regulatory restrictions governing SWP and CVP operations.

The transfers/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 transfers/exchanges. There could be some shift in the timing of deliveries of SWP and CVP allocated supplies south of the Delta; however, this will not significantly affect streamflow.

Transfers/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 transfers/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 Permit 16482 and Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 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.

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 Permit 16482 and Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364:

I conclude that, based on the available evidence:

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 have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I conclude that, based on the available evidence: The proposed transfer under Reclamation License 1986 does not involve water that would have been consumptively used, stored, or conserved pursuant to Water Code section 1011, in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change in the place of use, under DWR Permit 16482 and Reclamation Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 for transfer of up to 335,560 af of water is approved. The petition filed for temporary change in the place of use, under Reclamation License 1986 is denied. All existing terms and conditions of License 1986 remain in effect.

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

1. The transfers/exchanges of water are limited to the period commencing on May 1, 2015, and continuing for one year from the date of approval.
2. The place of use under DWR Permit 16482 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 Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 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 transferred/exchanged pursuant to this Order shall be limited to 335,560 af within the following locations: (a) 135,000 af to SCVWD; (b) 3,000 af to OFWD and DPWD; (c) 10,660 af to KCWA and KTWD; (d) 150,000 af to AEWS and MWDC; (e) 35,600 af to KCWA and WWD; (f) 850 af to the VA Cemetery; and (g) 450 af to Musco. Although the transfer limits water service as noted herein, the one-for-one repayment of exchanged transfer water is not limited to service areas (a) through (g), but may occur within the more general service areas shown on Maps 214-202-83 and 214-202-84.
5. This approval is limited to the transfers/exchanges identified and described in this Order and as specified in Condition 4 and, upon approval, additional south-of-Delta transfers/exchanges that meet the criteria set forth in this Order. This approval does not extend to any transfers/exchanges under DWR's or Reclamation's water rights in excess of the total of 335,560 af authorized under this Order. Criteria for additional transfers/exchanges include: 1) The transfer or exchange would not result in any increase in the amount of water diverted from the Delta; 2) 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; 3) The water to be exchanged or transferred 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 will not exceed historic average deliveries; 5) The transfer or exchange will not result in the net loss of San Joaquin River or Sacramento River flow; 6) The transfer or exchange will not result in an increase in saline drainage to the San Joaquin River.

If a south-of-Delta transfer/exchange is not specifically identified and described in this Order, the transfer/exchange may occur only after the Deputy Director of Water Rights determines that the transfer/exchange will be implemented in accordance with the conditions of this Order. Requests for the Deputy Director of Water Rights approval of these transfers/exchanges will only be accepted on Mondays and must be received by 4:00 p.m. Petitioners should anticipate a determination on the requests no sooner than the Friday of the same week at 12:00 noon. 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.

6. If at any time prior to, or during the period of the transfer, the State Water Board issues a notice curtailing the use of water pursuant to the water right involved in the transfer, only water collected to storage prior to issuance of the curtailment notice may be transferred.
7. DWR and Reclamation shall not increase their allocation of water to the transfer/exchange parties beyond the quantities authorized by existing contract for purposes of this transfer/exchange.
8. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
9. Diversion of water at the Delta Pumps 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 State Water Board 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 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation, as amended by the documents cited in Condition 10. Diversion of water is also subject to compliance by DWR and Reclamation with all applicable Biological Opinions (BOs) and court Orders and any other conditions imposed by other regulatory agencies applicable to these operations.
10. Diversion of water at the Delta Pumps 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.
11. The transfer period authorized above is further limited to the period allowed pursuant to any applicable BO or Endangered Species Act (ESA) consultations (or informal consultations) related to transfers at the Delta Pumps. Petitioners shall provide documentation of the diversion period allowed pursuant to the BOs or consultations prior to transfer of water. Such documentation may include an electronic link to any transfer BOs or ESA consultations, informal ESA consultations, opinions, or other documents issued by CDFW, National Marine Fisheries Service or U.S. Fish and Wildlife Service.
12. Within 90 days of the completion of the transfer, the Petitioners shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
 - a. The monthly and total volumes of transfer water delivered to SCVWD, OFWD, DPWD, KCWA, KTWD, AEWS, MWDSC, WWD, the VA Cemetery, Musco and any entities receiving transfer water in accordance with Condition 5.
 - b. The monthly and total amounts of Delta and delivered water to SCVWD, OFWD, DPWD, KCWA, KTWD, AEWS, MWDSC, WWD, the VA Cemetery, Musco and any entities receiving transfer water in accordance with Condition 5 for the period covered by this transfer. This total shall include SWP and CVP deliveries, other water transfers, and any other amount of Delta water each location received.
 - c. Documentation that the water transferred/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.
13. 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 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.

14. 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 act authorized under this transfer, the Petitioners shall obtain authorization for an incidental take permit prior to construction or operation. Petitioners shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.

15. I reserve 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:
JOHN O'HAGAN FOR

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: APR 27 2015