

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)  
MERCED IRRIGATION DISTRICT  
ORDER APPROVING TEMPORARY CHANGE  
IN PLACE OF USE AND POINT OF REDIVERSION AND  
TRANSFER OF 20,000 ACRE-FEET OF WATER**

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SOURCE: Merced River

COUNTY: Mariposa and Merced

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ORDER APPROVING TEMPORARY CHANGE IN PLACE OF USE AND POINT OF REDIVERSION AND TRANSFER OF 20,000 ACRE-FEET OF WATER BY THE DEPUTY DIRECTOR FOR THE DIVISION OF WATER RIGHTS

**1.0 SUBSTANCE OF PETITION**

On June 17, 2016, the Merced Irrigation District (MID) 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 sections 1725 through 1732. Pursuant to the petition, MID seeks to transfer up to 20,000 acre-feet (af) of water for use upon lands near the boundaries of Merced's authorized place of use. The proposed expanded place of use is entirely located in Merced County, and includes Le Grand-Athlone Water District; Lone Tree Mutual Water Company; East Side Water District; San Luis Canal Company; Chowchilla Water District; and the lands in an area known as Merced's Sphere of Influence Lands (SOI Lands). The parties associated with the expanded place of use are hereafter collectively referred to as "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 20,000 af of stored water under its License 2685 to irrigate land that is currently not included as a place of use. MID is petitioning to increase the place of use and point of rediversion covered by License 2685 (Application 1224) in order to supply previously stored surface water for use on Transferees' land.

A portion of the expanded place of use includes the SOI lands, the majority of which have historically received surface water from MID during years that MID's Board of Directors determines water is available under MID's pre-1914 appropriative right claims provided that adequate natural flow is available from the Merced River. In 2007 and 2011, MID petitioned and received approval from the Division for a temporary water transfer to continue surface water deliveries to SOI Lands. In absence of this transfer, during months when surface water is not available under the pre-1914 appropriative right claims for delivery to the SOI Lands, the individual landowners meet their demands through alternate supplies, such as groundwater. The landowners in the nearby water districts proposed to receive water through this transfer would also meet demands through alternate supplies. In the absence of the proposed temporary change, the 20,000 af of water would remain in storage within Lake McClure.

**1.2 Place of Use Under the Proposed Transfer.** The Transferees' Lands (as shown on a map submitted with the petition titled *Merced Irrigation District - Proposed Addition to Place of Use and Point of Rediversion* dated June 17, 2016) is proposed to be temporarily added to the place of use of License 2685. The proposed place of use includes Le Grand-Athlone Water District, Lone Tree Mutual Water Company, East Side Water District, San Luis Canal Company, Chowchilla Water District, and the SOI Lands located within Merced County. The proposed addition to the place of use is 157,049 acres.

**1.3 Point of Rediversion Under the Proposed Transfer.** For conveyance to San Luis Canal Company, water will be conveyed through MID's existing facilities to Bear Creek, diverted into the Eastside Canal, and delivered into the Turner Island Canal via siphons running under the Eastside Bypass. To facilitate deliveries to San Luis Canal Company, MID proposes adding the Eastside Canal at Bear Creek, as an additional point of rediversion, as identified on the map submitted with the petition titled *Merced Irrigation District - Proposed Addition to Place of Use and Point of Rediversion*, dated June 17, 2016 and described below.

**Proposed Additional Point of Rediversion:**

Eastside Canal at Bear Creek

North 1,915,317 feet, East 6,498,149 feet, California Coordinate System Zone 3, NAD 83, being within the SE ¼ of NW ¼ of Section 12, T8S, R11E, MDB&M.

**1.4 Water Available for Transfer.** MID proposes to deliver previously stored surface water in Lake McClure to the Districts for distribution to participating Transferees. The quantity of surface water proposed to be released by MID for delivery to the Transferees will be made available by releases of up to 20,000 af from reservoir storage. Releases of previously stored surface water involve the delivery of water to Transferees. The release of stored water would be increased as compared with the condition absent the proposed temporary transfer. Refill of the reservoir normally occurs during a later period of high runoff.

## **2.0 BACKGROUND**

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

#### Original Water Rights under License 2685

License 2685 was issued to MID on August 11, 1944, pursuant to Application 1224. 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. License 2685 also allows the diversion from the Merced River to storage of 266,400 af per annum (afa) 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 North Side Canal and Crocker-Huffman Diversion Dam for the Main Canal. Water rediverted through the North Side Canal and the Main Canal is used for irrigation and domestic purposes on 164,395 gross acres within the boundaries of MID.

#### Modified Water Rights under License 2685

Effective February 16, 1995, License 2685 was modified from its original conditions 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 Mariposa Town Planning Area. Storage under License 2685 is reduced in the amount of water diverted to the Mariposa Town Planning Area, up to 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 Mariposa Town Planning Area 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 downstream of New Exchequer Dam is 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.

### **3.0 PUBLIC NOTICE AND COMMENT ON THE PROPOSED TRANSFER**

Public notice of the petition for temporary change was provided June 27, 2016 on the Division's internet site and via regular mail and email to interested parties and by publication in the Merced Sun-Star and Fresno Bee on June 27 2016. Timely comments regarding the proposed temporary change were submitted by U.S. Bureau of Reclamation (Reclamation), California Department of Fish and Wildlife, Michael Gibson, Colleen Manak, John Baptista, Mary Ann Cardoza, 4-S Ranch Partners LLC, Greenhouse Ranch Properties, and Anthony Roggero. These comments are briefly summarized below followed by State Water Board responses.

**3.1 Comments from Reclamation.** Reclamation states that a refill agreement is necessary in order for the proposed temporary change to not adversely impact the water rights or operations of the CVP. Reclamation requests the Petitioner enter into a reservoir refill agreement containing conditions, criteria and procedures that ensure that CVP operations and water rights are not adversely impacted by future refill following the release of transfer water. The agreement protects CVP 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, respectively) for New Melones Reservoir pertaining to the San Joaquin River and Sacramento-San Joaquin Delta Estuary. The agreement will also protect Reclamation's water right Permits 11315, 11316, 11967, 11969, 11971, 11973, 12364, 12721, 12722, 12723, 12727, 12860, and 15149 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 5626, 9363, 9364, 15764, 9368, and 21542) and operations for the Jones Pumping Plant.

State Water Board Response: The transfer consists of water currently stored in Lake McClure. Refill criteria developed in coordination with 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 Central Valley Project (CVP). The refill criteria provide for an accounting of refill of Lake McClure resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta is subject to repayment to Reclamation according to a schedule agreed to by MID and Reclamation. This Order requires MID to comply with the refill criteria.

### **3.2 Comments from California Department of Fish and Wildlife (CDFW).**

CDFW provided comments during the public notice period on July 13, met with MID on August 2, MID responded to CDFW on August 3, and CDFW provided follow-up comments on August 5. CDFW July 13 and August 5 comments were regarding 1) insufficient consultation time, 2) insufficient instream flows; 3) 303(d) listing for temperature; 4) reservoir management and possible inability to meet instream flow requirements; and 5) take of federally endangered species.

State Water Board Response:

- 1) Water Code Section 1726 (c) requires as part of the petition to the State Water Board, that the petitioner must provide a copy of the petition to CDFW prior to submittal. The petition was submitted to the State Water Board on June 17, 2016 and MID stated in their submittal it had contacted CDFW on that same date ahead of petition submittal. While it appears a copy was provided ahead of petition submittal and thus the requirements of the Water Code were met, MID is encouraged for future transfer petitions to provide CDFW with a copy further in advance.

- 2) CDFW raises concerns about current conditions of the Merced River, specifically that there are insufficient salmonid flows. While not calling out a specific harm to fisheries from the proposed transfer, they state that for the transfer to result in a benefit to fisheries, the transfer needs to be at an appropriate time of year such as spring and fall.

The scope of the requested change is a transfer involving release of 20,000 af that in absence of the transfer would remain in storage. Merced River flows above Crocker-Huffman Diversion Dam will increase during the period when water is released for the proposed transfer with MID indicating no change in flows downstream of Crocker-Huffman Diversion Dam absent the proposed transfer. The downstream flows will be diverted into MID's Main Canal and Northside Canal for delivery to the Transferees.

In general adding flows to a waterbody is typically considered neutral or beneficial to fisheries, though there may be situations where that is not the case such as if the water added has a water quality issue or if the added flows will raise streamflow to levels higher than ideal for fisheries life stage present. No evidence has been provided that either a water quality or fisheries impact will occur due to the higher flows. MID has indicated that it will continue to meet all of its required minimum instream flow requirements and pulse flows.

On August 5, 2016 CDFW requested that MID use some of the stored water, instead of for transfers to the Transferees, to develop a spring pulse flow regime in consultation with CDFW prior to transfer. The State Water Board acknowledges that there is a current 303(d) listing of the lower Merced River as impaired due to high water temperature during critical life stages for Chinook salmon and steelhead. However, since the transfer will add flows to a portion of the Merced River, and since the reduced storage due to the transfer is small compared to the overall storage of the reservoir, a spring pulse flow is not included as a condition of this transfer approval. Per Water Code section 1727 (e) the State Water Board shall not place conditions on a temporary change to avoid or mitigate impacts that are not caused by the temporary change.

- 3) CDFW state current water operations have contributed to the 303(d) listing of the lower Merced River. The transfer will increase flows to a portion of the Merced River, and the exact anticipated temperature of the released water is not known. MID stated in its August 3<sup>rd</sup> submittal that these increased flows will support incrementally lower water temperatures in the Merced River near Crocker-Huffman Dam. This statement indicates the impacts of river temperature due specifically to the transfer may be localized. CDFW did not provide justification indicating why they believe the increased flows from the transfer may raise temperatures and possibly contribute to the 303(d) list impairment. There does not appear to be sufficient evidence of a possible increase in temperature to warrant conditioning in the Order.
- 4) In their July 13 letter, CDFW raised concerns that the transfer would preclude MID from fully meeting its required instream flows such as the minimum instream flows pursuant to License 2685, the Federal Energy Regulatory Commission (FERC) License (2179-043), and the Davis-Grunsky Contract. In their August 5 letter, CDFW acknowledges that MID has met their minimum instream flow requirements.

MID is required to meet these commitments with or without the transfer, and it has provided supplemental information to support their assertion that they will have sufficient supply to do so. Further discussion is provided in Section 4.3 of this Order. Due to additional inflow to Lake McClure as compared to previous years, MID intends to maintain storage in Lake McClure well above the 115,000 af minimum pool. In MID's August 3<sup>rd</sup> reply, it further indicates that leading up to the 2017 irrigation season, MID does not intend to request any additional temporary regulatory changes to minimum storage requirements.

- 5) CDFW recommends MID consultation with the National Marine Fisheries Service (NMFS) due to a potential "take" of federally listed anadromous fish species due to the transfer. MID believes that the transfer will not result in a take and consultation is not necessary because flows in the Merced River downstream of the Crocker-Huffman Diversion Dam will not change and the transfer will add flows to the Merced River from Lake McClure to MID's Main Canal and Northside Canal. This

Order contains a term, as has been included for past MID transfers approved by the State Water Board, that states the 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 or the federal Endangered Species Act. 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.

### **3.3 Comments from Michael Gibson, Colleen Manak, John Baptista.**

Michael Gibson does not support the transfer. He expressed that since there is still a drought and Lake McClure is less than 60 percent full that all the water in the reservoir will likely be needed by senior water right holders along the Merced River in the coming years as the drought continues.

Ms. Manak and Mr. Baptista expressed that the land along the Merced River in Stevinson has been farmed by their respective families for a long time and that the State Water Board should not curtail water deliveries to farmers along the Merced River with historic rights when there is scarce supply of water to irrigate crops. Mr. Baptista indicated his land has been solely irrigated by the Merced River for over one hundred years. He urged the State Water Board to provide water rights holders along the Merced River the water they need to produce a crop.

#### State Water Board Response:

The water to be transferred would be stored in Lake McClure under MID’s License 2685 in the absence of the transfer and would therefore be unavailable to downstream users under either their appropriative or riparian water rights. A downstream water right (whether it’s a senior appropriative right or a riparian right) is not entitled to benefit from water previously lawfully stored under another’s right. The senior right holders cannot rely on MID’s previously stored water in future years to supply their senior rights.

MID indicated it does not have agreements with Mr. Gibson, Ms. Manak or Mr. Baptista to provide surface water to their existing points of diversion along the Merced River or for delivery through MID’s existing conveyance system for use upon the lands that may receive water from those existing points of diversion.

MID indicated that releases would be the same with or without the transfer, except during the period of releases for the proposed transfer when flows would increase from Lake McClure to MID’s Main and Northside Canals. These additional releases of previously stored water would not adversely affect flows downstream of the canals. As indicated in the Petition, the proposed releases would be in addition to MID’s existing downstream requirements and commitments,

### **3.4 Comments from Mary Ann Cardoza.** Ms. Cardoza stated that the proposed transfer would injure other legal users of water and that water should be conserved for instream beneficial uses.

#### State Water Board Response:

Ms. Cardoza owns water right License 6421 (Application 16895), which allows her to divert up to 0.15 cfs from the Merced River from April 1 to September 1 of each year for irrigation purposes, and her property is also riparian to the river. Ms. Cardoza does not identify any specific other legal users of water that would be injured. The water to be transferred would be stored under MID’s License 2685 in the absence of the transfer and, therefore would be unavailable to downstream users under either their licensed appropriative or riparian water rights.

MID indicated that the transfer amount would be in addition to its existing downstream requirements and commitments. In addition, MID does not have an agreement with Ms. Cardoza to provide surface water to the existing point of diversion along the Merced River, or for delivery through MID’s existing conveyance system for use upon the lands that may receive water from this existing point of diversion.

MID has indicated that its releases would be the same with and without the transfer, except for during the period of release from the proposed transfer when the flows in the Merced River would increase

from Lake McClure to MID's Main and Northside Canals. The additional releases of previously stored water for the proposed transfer would not adversely affect flows downstream of those canals. As indicated in the Petition, the proposed releases would be in addition to MID's existing downstream requirements and commitments. The transferred water would be used for irrigation purposes within Merced County.

**3.5 Comments from 4-S Ranch Partners LLC.** 4-S Ranch Partners states the following: 1) The petition does not demonstrate lack of injury to legal users of water; 2) The petition does not contain sufficient information and disclosure; 3) The petition reflects a failure to consult; 4) The petition fails to demonstrate easements and access to conveyance facilities; and 5) The petition is unclear and contradictory with regards to place of use, point of diversion, and a refill agreement.

State Water Board Response:

- 1) The water to be transferred would be stored under MID's License 2685 in the absence of the transfer and, therefore would be unavailable to downstream users under either their riparian or appropriative water rights. MID has indicated it will execute refill criteria per an agreement with Reclamation following completion of the water transfer.

In regards to water quality, MID will be releasing additional water previously stored in Lake McClure for diversions into its Main and Northside Canals for delivery to the proposed new users. MID has indicated that the surface water made available under the proposed water transfer will be of the same quality as other diversions and deliveries by MID. MID indicated it is not aware of any water quality issues that may adversely impact other water users. MID has also indicated it will continue to meet its downstream flow requirements during and following the proposed water transfer.

- 2) The transfer petition contains the required information for evaluation of the petition by the State Water Board. It is unknown at this time what quantity and flow of water will be delivered to each proposed new user.
- 3) Per Water Code section 1726, the petitioner submitted a copy of the petition to CDFW and the counties of Merced and Mariposa on June 17, 2016.
- 4) MID has indicated it will obtain the necessary authorization for conveyance of the proposed transfer water through facilities located on 4-S Ranch property and will not provide transfer water through said facilities until such required authorization is in place.
- 5) The petition and accompanying map clearly identify the proposed additional places of use and point of diversion. A portion of the proposed additional places of use is within MID's sphere of influence. Lands identified in the petition that are not located within MID's sphere of influence include portions of East Side Water District, Lone Tree Mutual Water Company, Chowchilla Water District, and San Luis Canal Company which are added as proposed additional places of use per the petition. With regards to refill, as a condition of this Order, MID will be required to execute a refill agreement with Reclamation. MID indicated in the petition that it is willing to accept refill criteria.

**3.6 Comments from Greenhouse Ranch Property.** Greenhouse Ranch Property (GRP) opposes any transfer of water through GRP without the proper license, easement, or permission. They are willing to work with MID to reach an agreement regarding utilizing GRP land to facilitate the water transfer. They request additional information regarding the timing, quantities and flow rates of diversions to the various transferees prior to entering into an agreement.

State Water Board Response:

MID has indicated it will coordinate with GRP to obtain an agreement to access their property to convey the transfer water through the Bear Creek Canal passing through GRP's property. MID also indicated it will not provide transfer water through said facility until such required authorization is in place and that the requested information will be provided with the agreement.

**3.7 Comments from Anthony Roggero.** Mr. Roggero was concerned that the proposed transfer would adversely impact the quantities of water for delivery to him from MID pursuant to MID's existing commitment to provide surface water to growers within the former El Nido Irrigation District. Mr. Roggero requested up to 560 af of surface irrigation water for the 2016 irrigation season.

State Water Board Response:

MID indicated to Mr. Roggero via letter on July 27, 2016 that it will continue to meet its commitments to provide surface water to its growers, including those within the former El Nido Irrigation District, consistent with Resolution No. 35-91 adopted by MID on December 17, 1991.

#### **4.0 REQUIRED FINDINGS OF FACT**

**4.1 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 20,000 af of water proposed for transfer would remain in storage in Lake McClure and this quantity would be pumped at individual groundwater wells for use within the SOI Lands and alternate sources used by the other Transferees. Under License 2685, MID can both directly divert and collect water to storage. MID will 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.

**4.2 No Injury to Other Legal Users of Water.** Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code §1727, subd. (b)(1).) 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.

In regards to water quality, MID will be releasing additional water previously stored in Lake McClure for diversions into its Main and Northside Canals for delivery to the proposed new users. MID has indicated that the surface water made available under the proposed water transfer will be of the same quality as other diversions and deliveries by MID. MID indicated it is not aware of any water quality issues that may adversely impact other water users.

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.

**4.3 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).)

MID provided CDFW with a copy of the petition ahead of petition submittal to the State Water Board per Water Code Section 1726 (c). CDFW provided comments during the public notice period on July 13, met with MID on August 2, MID responded to CDFW on August 3, and CDFW provided follow-up comments on August 5, as discussed in Section 3.2 of this Order.

The overall impact of this transfer will be to temporarily increase 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 transfers result in an incremental increase in instream flows between the Petitioner'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. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures.

Some concerns raised by CDFW, relating to current instream flows and 303(d) listings for temperature, appear focused on the current operations of MID and the existing conditions of the Merced River and do not specifically explain why the transfer will result in an unreasonable affect on fish, wildlife, or other instream beneficially uses. Per Water Code section 1727 (e) the State Water Board shall not place conditions on a temporary change to avoid or mitigate impacts that are not caused by the temporary change.

This 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 Federal Energy Regulatory Commission (FERC) License (2179-043), and the Davis-Grunsky Contract. MID is required to meet these commitments with or without the transfer, and it has provided supplemental information to support their assertion that they will have sufficient supply to do so.

Lake McClure is currently at 47 percent storage capacity (469,000 af as of August 19) which is well above the minimum pool of 115,000 af. Minimum pool is a lowest level of reservoir capacity safe for maintaining fish and aquatic life or for some other designated beneficial purpose such as recreation. The State of California is still in drought conditions, and there is uncertainty as to if dry year conditions will persist through the next rainy season. On August 15, MID provided supplemental analysis forecasting likely available water supplies and demands in certain water year scenarios. The documentation shows the potential Lake McClure storage curves under 50% and 90% exceedance forecasts, and several spreadsheets of reservoir volume and associated data for the operation of New Exchequer Dam. Exceedance forecasts are the probability that reservoir inflows will be greater than a given forecasted value (50% or 90%). A 90% exceedance storage forecast translates to the forecast of dry conditions.

MID graphed data and projections covering the time period from October 1, 2015 to April 1, 2017. The 50% and 90% exceedance curves of reservoir volume in Lake McClure considered downstream discharges, required flows and evaporation. The main source of data for the analysis was the 2016 California Nevada River Forecast Center (CNRFC) inflow forecast. The Lake McClure projected end of season October 2016 storage forecast is 327,000 af. This transfer allows approval for up to one year, so the release of water for transfer may occur at any time in the next year. It is most likely to occur at a time of traditional irrigation (summer or fall). The 50% exceedance forecast estimated

storage projection on April 1, 2017 is 413,000 af and the 90% exceedance forecast estimated storage projection on April 1, 2017 is 309,000 af. MID indicated it makes its allocation decisions to its landowners based on the April 1 storage projections, and there was too much uncertainty to project daily operations, allocations, and storage beyond April 1, 2017. MID did project monthly averages of storage through July 2017.

The 50% exceedance forecast projected January through July 2017 inflow to Lake McClure is estimated to be 726,000 af, or approximately 80% of average for this time period. This is slightly less than the measured inflow of approximately 776,000 af during the same time frame in 2016. Although this inflow forecast is less than 2016, the storage in Lake McClure is projected to be greater at the end of 2016 as compared to 2015. Therefore, the storage entering the 2017 irrigation season is estimated to be greater than that in 2016. Considering this, MID stated it could operate and provide deliveries similar to 2016. The 90% exceedance forecast projected January through July 2017 inflow to Lake McClure is estimated to be 265,000 af, or approximately 29% of average for this time period. With these given storage projections, which can include much drier conditions, MID predicts it can meet its license and permit conditions and maintain storage at or above the minimum pool of 115,000 af.

In light of this supplemental information, and in context of the transfer of 20,000 acre feet consisting of a small portion of the overall 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, and with the term added below, 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.

## **5.0 STATE WATER BOARD 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.

## **6.0 GOVERNOR'S PROCLAMATIONS OF A DROUGHT STATE OF EMERGENCY**

This Order is consistent with the January 17, 2014 Proclamation of a Drought State of Emergency (Proclamation) issued by Governor Edmund G. Brown Jr. and 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 State Water Board and DWR are 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. This Order is also consistent with the April 25, 2014, Proclamation of a Continued State of Emergency (April Proclamation) directing the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers.

## **7.0 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 temporary change will not injure any legal user of the water.
2. The proposed temporary change will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored 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 and point of rediversion under License 2685 (Application 1224) of MID (Licensee) for the transfer of 20,000 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 the date of this Order and continuing for one year.
2. Only water previously stored in Lake McClure may be transferred. Water shall not be provided to the Transferees by direct diversion.
3. The place of use under License 2685 is temporarily expanded to include the Transferees' Lands as follows: Irrigation of a net area of 157,049 acres as shown on a map titled *Merced Irrigation District – Proposed Addition to Place of Use and Point of Rediversion* dated June 17, 2016, filed with the Division.
4. The point of rediversion under License 2685 is temporarily amended to include Eastside Canal at Bear Creek, North 1,915,317 feet, East 6,498,149 feet, California Coordinate System Zone 3, NAD 83, being within the SE ¼ of NW ¼ of Section 12, T8S, R11E, MDB&M, as shown on a map titled *Merced Irrigation District – Proposed Addition to Place of use and Point of Rediversion* dated June 17, 2016, filed with the Division.
5. Refill criteria shall be developed for the 2016 water transfer between MID and the Transferees by October 15, 2016, subject to approval by Reclamation. 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. At the conclusion of refilling water in Lake McClure for the water released pursuant to this Order, if a refill impact has accrued, MID is required to release that amount of water to Reclamation on a schedule agreed to between MID, and Reclamation.
6. Within 90 days of completion of the transfer the Licensee 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 quantity of water (in af) delivered to the Transferees' Lands pursuant to Condition 2 of this Order; and
  - b. The daily average rate of water that is released from Lake McClure pursuant to this Order.
7. Licensee shall provide a report to the Deputy Director for Water Rights by September 1, 2017 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. If reservoir refill or releases for refill impacts are not complete by September 1, 2017, subsequent reports shall be submitted by September 1 of each year until completion.
8. MID shall comply with the License 2685 instream flow requirements at all times while transferring water pursuant to this Order.
9. 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.

10. 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.
11. The Deputy Director for Water Rights 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:

*Leslie F. Grober, Deputy Director  
Division of Water Rights*

Dated: AUG 23 2016