

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

DIVISION OF WATER RIGHTS

In the Matter of Specified License and Permits of

**THE STATE WATER PROJECT AND
THE CENTRAL VALLEY PROJECT**

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

SOURCE: Sacramento – San Joaquin Delta

COUNTIES: Alameda, Contra Costa, Fresno, Kern, Kings, Los Angeles, Merced, San Joaquin, Santa Clara, Stanislaus

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 INTRODUCTION

On May 8, 2020, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) (hereinafter jointly referred to as Petitioners) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change under Water Code Section 1725, et seq. With the petition, DWR requests a one-year modification of Permit 16479 and Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 to temporarily change the authorized place of use of: (1) the DWR permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones); and (2) the Reclamation license and permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks). The Petitioners use the term “downstream” to identify that portion of the SWP and CVP that is served by water diverted from the Jones and Banks Pumping Plants. These areas are served via a system of canals and holding reservoirs that is within the Petitioners’ control. These areas are not within the downstream water supply as defined in Water Code section 1725. The maximum total exchange quantity requested is up to 400,675 acre-feet (af).

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

The temporary changes would become effective on July 16, 2020, and would remain in effect for one year from the date of approval. The total exchange quantity consists of the exchanges detailed in Section 2.3 below. The SWP and CVP license and permits subject to the proposed changes are listed in the table below.

SWP Water Rights Subject to Temporary Change

Application Number	Permit (P) Number	Description
14443	P16479	Oroville Project

CVP Water Rights Subject to Temporary Change

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

On July 15, 2019, the State Water Board approved a similar petition filed by the same Petitioners to exchange up to 436,720 af of water to primarily the same buyers. As of June 18, 2020, 26,849 af of water have been exchanged.

2.0 SUBSTANCE OF TEMPORARY CHANGE PETITION

2.1 Existing Place of Use of Petitioners Water Rights

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

2.2 Place of Use under the Proposed Temporary Change Petition

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

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

2.3 Exchanges Proposed

The Petition identifies the following possible exchanges and corresponding justification for each. On July 9, 2020, DWR and Reclamation submitted a memorandum with information regarding the use of water in the absence of the proposed exchanges, which has been incorporated into the descriptions of each exchange. All exchanges covered by this Petition will occur south of the Delta and the total amount of water exchanged will not exceed 400,675 af. Note that for exchanges associated with a groundwater bank, the quantities listed below already account for banking losses (i.e., groundwater bank losses already have been subtracted from the quantity to be delivered pursuant to respective groundwater banking agreements). Banking loss is 10 percent in the Semitropic Water Storage District's (Semitropic) groundwater bank, 10 percent in Arvin-Edison Water Storage District's (Arvin-Edison) groundwater bank, and 11 percent in Rosedale-Rio Bravo Water Storage District's (Rosedale) groundwater bank.

Santa Clara Valley Water District

Santa Clara Valley Water District (Valley Water) contracts for water supplies from both SWP and CVP. DWR delivers SWP water to Valley Water through the South Bay Aqueduct (SBA) and Reclamation delivers CVP water to Valley Water from the San Luis Reservoir through the San Felipe Division. Valley Water has previously banked CVP water in the Semitropic's groundwater bank. Petitioners request the approval of up to 75,000 af of exchanges including: (1) exchange of up to 50,000 af of SWP and CVP water to address potential operational and maintenance issues in the San Felipe Division and SBA and (2) exchange of up to 25,000 af of banked CVP water with SWP water.

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

The SBA has experienced many unplanned outages over the last several years due to aging infrastructure that resulted in Valley Water being reliant on CVP deliveries to meet its demands. Valley Water anticipates unplanned shutdowns on the SBA may limit SWP deliveries to its service area. With the approval of the Petition, Reclamation will export and deliver CVP water through the San Felipe Division to help Valley Water maintain its operational flexibility when there are reductions in SWP deliveries from the SBA. DWR will return an equal amount of SWP water to Reclamation for use within the CVP service area south of these facilities.

Valley Water has previously banked CVP water in Semitropic. With the approval of the Petition, Semitropic will extract up to 25,000 af of Valley Water's banked CVP water from the aquifer and either (a) pump the stored water into the California Aqueduct through Semitropic's turn-in facilities for delivery to the SWP service area south of Semitropic, or (b) use Valley Water's previously stored water within Semitropic's own service area. In exchange, DWR will deliver an equal amount of SWP water to Valley Water through either the SBA and/or the San Felipe Division from San Luis Reservoir. The proposed exchange would not increase the total amount of CVP or SWP water allocated to Valley Water by DWR or Reclamation.

Valley Water's demand exceeds its 70 percent CVP allocation. Absent the Petition, Valley Water's CVP supplies would be banked in Semitropic if storage capacity is available or another groundwater bank that has capacity. DWR anticipates that the demand among south-of-Delta SWP contractors will exceed the 20 percent allocation. The SWP water to be exchanged would be supplied to other SWP contractors within existing allocations. Valley Water's demand also exceeds its 20 percent SWP allocation. Absent the exchange, DWR could enter into a Warren Act contract with

Reclamation to supply SWP water through Pacheco Tunnel directly. Alternatively, the unused SWP supplies could be banked in Semitropic's groundwater bank if storage capacity were available or another groundwater bank has capacity.

It is anticipated that the demand among CVP contractors will exceed their respective 70 percent allocations. The CVP water to be exchanged would be supplied to other south-of-Delta CVP contractors within their existing allocations. Absent the exchanges, Semitropic would not be able to return Valley Water's CVP water directly and Valley Water's CVP supplies would be returned via CVP to CVP exchanges under other existing CVP programs.

Oak Flat Water District-Del Puerto Water District Exchange

Oak Flat Water District (Oak Flat), a SWP contractor, and Del Puerto Water District (Del Puerto), a CVP contractor, are adjacent districts located north of the San Luis Reservoir in San Joaquin, Stanislaus, and Merced counties. The Petition proposes that DWR deliver up to 1,000 af of SWP water to lands within Oak Flat and receive a like amount of CVP water at the O'Neill Forebay and/or Reclamation will deliver up to 1,000 af of CVP supplies to lands within Del Puerto and receive a like amount of SWP water at the O'Neill Forebay. This exchange will facilitate the delivery of CVP water to Oak Flat and SWP water to Del Puerto for the purposes of efficiently delivering water to landowners with contractual access to both supplies of water. Additionally, a portion of the lands within Del Puerto adjacent to Oak Flat are more efficiently served from Oak Flat's turnouts on the California Aqueduct by gravity flow to reduce energy consumption. With the approval of the Petition, DWR will deliver up to 500 af of SWP water to Del Puerto through Oak Flat's turnouts on the California Aqueduct to Oak Flat's distribution system. Reclamation will return an equal amount of CVP water to DWR at the O'Neill Forebay for use within the SWP service area south of the O'Neill Forebay.

Del Puerto and Oak Flat's demands exceed their 20 percent CVP and SWP allocations. Absent the exchanges, Del Puerto's CVP water would be consumptively used within Del Puerto's service area, banked, or transferred to other CVP contractors under the Accelerated Water Transfer Program. Oak Flat's SWP water would be consumptively used with Oak Flat's service area.

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

Kern-Tulare Water District (Kern-Tulare) is within Kern County and has a contract for CVP water through the Cross Valley Canal (CVC). DWR will deliver up to 53,300 af of Kern County Water Agency's (Kern County WA) SWP water to Kern-Tulare within the SWP place of use during the 2020 summer months. With the approval of the Petition, Reclamation will return the same amount of Kern-Tulare's CVP water in later 2020

and/or early 2021 to the CVC or other points of delivery as approved to Kern County WA's member units.

Kern-Tulare and Kern County WA's demands exceed their 20 percent CVP and SWP allocations. Absent the exchange, Kern-Tulare would use its CVP water at a later time and Kern County WA would use its SWP water within its service area.

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

Westlands Water District (Westlands), a CVP contractor outside of the SWP place of use, has stored CVP water in Semitropic's groundwater bank. Poso Creek LLC and Harris Farms Inc. own lands in both Westlands and Kern County WA. DWR proposes to make available up to 17,000 af of Kern County WA's SWP water at O'Neill Forebay for Reclamation. Reclamation will then deliver up to 7,000 af to Westlands for delivery to lands of Poso Creek LLC's and Harris Farms Inc's (up to 5,000 af for Poso Creek LLC and up to 2,000 af for Harris Farms) through the Joint-Use San Luis Canal; up to 5,000 af to San Luis Water District (San Luis) for delivery to lands of Poso Creek LLC; and up to 5,000 af to Panoche Water District for delivery to lands of Poso Creek LLC. In return, an equivalent amount of Westlands' CVP water stored in the Semitropic's groundwater bank will be delivered to Kern County WA to use in their service area.

Westlands' demand exceeds its 20 percent CVP allocation. Absent the exchanges, Westlands' CVP supplies stored in Semitropic would be returned via CVP to CVP exchanges under existing programs. Semitropic's demand exceeds its 20 percent SWP allocation. Semitropic would retain its SWP water for use within its service area.

Kern County WA – Rosedale Groundwater Bank

Rosedale is a member unit of Kern County WA that receives SWP water. It operates a groundwater bank inside both the CVP and SWP place of use that stores CVP water, SWP water, and local water for its banking partners. Three of the banking partners want to recover water stored in Rosedale: Santa Clarita Valley Water Agency (Santa Clarita) will recover up to 3,000 af of previously stored Kern River water; Coachella Valley Water District (Coachella) will recover up to 5,000 af of previously stored Kern River water; and Irvine Ranch Water District (Irvine Ranch) will recover up to 2,000 af of previously stored SWP water.

With the approval of the Petition, Santa Clarita, Coachella, and Irvine Ranch will transfer up to 10,000 af of their water stored in Rosedale's groundwater bank to Rosedale's CVP banking partners (Kern-Tulare, Delano-Earlimart Irrigation District (Delano-Earlimart ID), and Arvin-Edison). In return, Reclamation will deliver an equivalent amount of CVP water from the CVP banking partners to DWR at the O'Neill Forebay for delivery to Santa Clarita, Coachella, and Irvine Ranch. Absent the exchange, Rosedale banked SWP water would be conveyed to the California Aqueduct from the CVC for

delivery to the Santa Clarita, Coachella and Irvine Ranch. Kern-Tulare's, Delano-Earlimart ID's and Arvin-Edison's demands exceed their respective CVP allocations. Absent the petition, Kern-Tulare's, Delano-Earlimart ID's and Arvin-Edison's CVP water would be conveyed to the CVC from the California Aqueduct for direct use.

Kern County WA – San Joaquin River Exchange Contractors Water Authority

In 2017 and 2019, the San Joaquin River Exchange Contractors Water Authority (SJRECWA) and Rosedale entered into an unbalanced exchange program. SJRECWA delivered 23,522 af of its CVP water in 2017 and 7,500 af of its CVP in 2019 to lands within Rosedale service area in the CVP place of use for banking and direct use. Rosedale will forego up to 5,375 af of its SWP water and DWR will make this water available at the O'Neill Forebay for Reclamation to deliver to the SJRECWA service area. Absent this exchange, Rosedale would either bank its SWP water or use it in its service area. For the SJRECWA, this exchange will not result in additional return flows to the San Joaquin River. They will use the exchange water to irrigate their lands that otherwise would have been irrigated by groundwater, resulting in the same amount of return flows with or without the exchange.

Kern County WA – Tulare Irrigation District

Belridge Water Storage District (Belridge), Berrenda Mesa Water District (Berrenda Mesa), and Lost Hills Water District (Lost Hills) are member units of Kern County WA that are outside the CVP place of use. Belridge, Berrenda Mesa, and Lost Hills will purchase Kaweah River water from the Westside Mutual Water Company (Westside Mutual). Tulare Irrigation District (Tulare ID) is a CVP Friant Unit contractor that has Friant Recaptured Recirculation CVP water stored in San Luis Reservoir. The Petitioners propose that Reclamation make up to 2,000 af of CVP water available at San Luis Reservoir for DWR to deliver to Kern County WA. Kern County WA will then deliver up to 667 af to Belridge, up to 666 af to Berrenda Mesa, and up to 666 af to Lost Hills. In return, Westside Mutual will deliver an equivalent amount of Kaweah River water to Tulare ID.

Absent the exchange, Westside Mutual would retain the Kaweah River water for sale to other entities. Tulare ID's demand exceeds its CVP allocation; absent the exchange, Tulare ID would retain its CVP water for use in its service area.

Kern County WA – Arvin-Edison

Members of Westside Mutual have lands in Belridge, Berrenda Mesa, and Lost Hills (member units of Kern County WA) in Kern County that receive SWP water and are outside the CVP place of use. Petitioners propose that Reclamation make up to 20,000 af of Arvin-Edison's CVP supplies available at the O'Neill Forebay for delivery by DWR to Belridge (up to 6,667 af), Berrenda Mesa (up to 6,667 af), and Lost Hills (up to

6,666 af). In return, DWR will make available an equivalent amount of SWP water at the O'Neill Forebay for Reclamation to deliver to Arvin-Edison.

Belridge, Berrenda Mesa, and Lost Hills' demand exceeds their 20 percent SWP allocation. Absent the exchange, Belridge, Berrenda Mesa, and Lost Hills would use SWP water at a later time; Arvin-Edison would consumptively use its CVP water within its service area, bank it, or transfer it under the CVP's Accelerated Water Transfer Program.

Arvin-Edison – Metropolitan Water District Program

Metropolitan Water District (Metropolitan) is a SWP contractor. Arvin-Edison is a CVP contractor within both the CVP and SWP place of use. Petitioners propose to expand the CVP place of use to include Metropolitan, which would allow Arvin-Edison to exchange up to 150,000 af of CVP water supplies (CVP Delta, San Luis Reservoir, or Friant) with Metropolitan's SWP water.

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

- 1) Arvin-Edison's CVP Friant water (including other CVP Friant water acquired by Arvin-Edison) would be conveyed either: (1) from the Friant-Kern Canal through Arvin-Edison's distribution system connected to the California Aqueduct at Milepost 227 (Reach 14C), or (2) from the Friant-Kern Canal through the CVC to the California Aqueduct, or;
- 2) Reclamation will make Arvin-Edison's CVP Delta/San Luis Reservoir water (including other CVP acquired by Arvin-Edison) available at the 1) California Aqueduct Tupman turnout with a Arvin-Edison/Fresno County CVP conveyance contract and through the California Aqueduct to Metropolitan or 2) O'Neill Forebay for DWR to deliver through the California Aqueduct to Metropolitan.

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

Arvin-Edison's CVP water to Metropolitan, Metropolitan will then transfer an equivalent amount of its stored SWP water in the groundwater bank to Arvin-Edison for Arvin-Edison's use.

Petitioners also propose that Metropolitan take delivery of Arvin-Edison's CVP water and later returns SWP water from Delta/San Luis Reservoir to reduce the energy usage associated with Arvin- Edison's underground storage and subsequent withdrawal of CVP supplies.

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

Absent the exchanges, Arvin-Edison would extract Metropolitan's banked SWP supplies and return them directly at a return rate limited to 170 cfs. Arvin-Edison would consumptively use its CVP water within its service area, bank it, or transfer it under the CVP's Accelerated Water Transfer Program. Absent the exchange, Arvin-Edison would seek to reschedule CVP supplies in CVP reservoirs, transfer, exchange, or bank with other approved banking programs subject to storage capacity. Metropolitan only assists Arvin-Edison with regulation of Arvin-Edison's CVP supplies when San Luis Reservoir is full.

Byron Bethany Irrigation District – Musco Olive Products Inc.

Byron Bethany Irrigation District (BBID) is a CVP contractor. Musco Olive Products Inc. (Musco) has a water service contract with BBID and is within the CVP place of use. Pursuant to this contract, BBID is to provide up to 650 af per year of CVP water to Musco. BBID and Reclamation are physically unable to convey CVP water to Musco without construction of additional temporary or permanent infrastructure. Musco is located near Reach 2A on the California Aqueduct (north of the O'Neill Forebay). DWR will deliver up to 650 af of SWP water to Musco for BBID. Reclamation will return an equal amount of CVP water to DWR at the O'Neill Forebay for use within the SWP service area south of the O'Neill Forebay.

BBID's demand exceeds its 20 percent CVP allocation. Absent the exchange, BBID would provide the CVP water it cannot deliver to Musco to its other irrigation customers within its service area, bank it, or transfer it under the CVP's Accelerated Water Transfer Program.

Tulare Lake Basin Water Storage District – Westlands/San Luis/Pleasant Valley Water District

Westlands and San Luis are CVP contractors; a portion of the Pleasant Valley Water District (Pleasant Valley) is in the CVP place of use. Growers within Westlands, San Luis, and Pleasant Valley would execute an agreement with J.G. Boswell Company (Boswell), a local landowner within Tulare Lake Basin Water Storage District (TLBWSD), for the purchase of up to 65,000 af of Boswell's pre-1914 Kings River water. TLBWSD proposes to facilitate the transfer of its SWP water to Westlands, San Luis, and Pleasant Valley in exchange for up to 65,000 af of Boswell's pre-1914 Kings River water. TLBWSD's SWP water would be conveyed through the California Aqueduct and delivered to the growers within Westlands, San Luis, and Pleasant Valley that are within the CVP place of use.

TLBWSD's demand exceeds its 20 percent SWP allocation. Absent the exchange, TLBWSD would use its SWP water within its service area and J.G. Boswell would retain its Kings River water for use.

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 VA Cemetery is located near Reach 2B on the California Aqueduct. Absent construction of new or temporary infrastructure, Reclamation is unable to directly convey CVP water to the VA Cemetery when the use of Joint Points of Diversion (JPOD) operations authorized under Revised Water Right Decision 1641 (D-1641) or the Delta-Mendota Canal/California Aqueduct Intertie are not available. DWR would 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.

Reclamation is mandated by Congress to provide water service to the VA Cemetery. Absent the exchange, Reclamation would seek to use Banks directly as approved by the State Water Board in 1993, explore other exchange options and seek water rights changes as needed, or explore the feasibility of installing infrastructure to serve the cemetery directly. The SWP water to be exchanged would be supplied to other SWP contractors within their existing allocations.

Potential Additional Exchanges

The above exchanges include the specific exchanges requested as of the date of the Petition. However, the Petitioners anticipate that additional exchanges may be developed. The Petitioners request that any Order approving this Petition include the approval of potential future projects that meet certain specific criteria. In order to allow the State Water Board to make the findings required by Water Code Section 1725, the

Petitioners have indicated that any project not specifically detailed in the exchanges listed above would be conducted in accordance with the following criteria:

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

Additional Information Submitted by Petitioners

On July 9, 2020, DWR and Reclamation submitted a memorandum regarding the use of water in the absence of the proposed exchanges, as requested by the State Water Board. The response included both general information, which is summarized below, and information specific to each exchange, which has been incorporated into the description of each proposed exchange above.

Petitioners stated that Project allocations are based on the annual water supply available to SWP and CVP contractors. These allocations are focused on the ability to meet summer irrigation demands while meeting regulatory requirements and accounting for upstream storage and hydrologic conditions. Petitioners also stated that the Delta

Pumps are operated at their maximum allowable rates and that this rate is always insufficient to meet peak summer irrigation demand. This is addressed by operating San Luis Reservoir to augment Delta pumping to meet these demands. SWP has 21 south-of-Delta contractors that have contract amounts totaling 4,056,205 af, while the CVP has contracts with 43 entities south-of-Delta that total 2,988,521 af. This year, the SWP and CVP irrigation allocation is 20 percent and the CVP municipal and industrial allocation is 70 percent. This amounts to 1.4 million af of deliveries for contract year 2020 for CVP contractors and total deliveries of 811,241 af for SWP contractors, which is below the amounts requested by the contractors.

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

Petitioners stated Reclamation has an approved five-year accelerated water transfer program for all of the CVP contractors included in this Petition except Valley Water. The Accelerated Water Transfer Program allows unused allocations to be transferred to other CVP contractors within the same basin. This program was analyzed in an Environmental Assessment titled "South-of-Delta Accelerated Water Transfer and Exchange Program Contract Years 2016- 2020".

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

The Petitioners conclude by stating that the exchange volumes proposed in the Petition amount to 13 percent of allocated supplies this year, if the full exchange amounts are implemented, and that the exchange volumes are approximately two percent of the established CVP demand south of the Delta. The water proposed to be exchanged

would be consumptively used with or without the approval of the Petition due to the extent and locations of existing demand, a shortage of CVP supplies, and existing approved programs.

3.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code Section 1725, Petitioners have applied for temporary changes involving an exchange of water. The State Water Board shall approve temporary changes involving the exchange of water under Water Code Section 1725 et seq. if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed changes would not injure any legal user of the water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed changes, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed changes would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b).)

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

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

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

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

5.0 PUBLIC NOTICE AND COMMENTS

On May 17, 2020, a 30-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 Fresno Bee. Comment letters were received on May 26, 2020 and June 17, 2020, from Richard Morat and Central Delta Water Agency (CDWA)¹, respectively.

5.1 Comments by Richard Morat

Mr. Morat stated that the Projects, with the proposed exchanges, will divert and export more water from surface flows through operational changes. He also stated that with the proposed exchanges, flows from the Sacramento Basin to the Delta will come from different sources and in different timing. He has concerns for aquatic resources in the Sacramento-San Joaquin Delta. He indicated that there should be a with- and without-transfer analysis of fishery impacts prior to any future approvals.

Mr. Morat indicated a concern over potential operational changes that could affect Reclamation's compliance with Water Right Order 90-5 for water temperature management on the upper Sacramento River. He also commented that there should be a cap of no more than 10 percent above the approved amount of up to 400,675 af for any additional transfers/exchanges.

Petitioners' Response:

Petitioners stated that the purpose of the Petition is to consolidate places of use of the CVP and SWP south of the Delta; therefore, there will be no additional pumping from the Delta as a result of the proposed change, and no impact to upstream operations of the CVP, which includes no effects on Reclamation's ability to comply with Water Right Order 90-5. Petitioners stated that the proposed change would not result in a change in flow or water quality conditions in the Delta. They stated that the water to be exchanged under the Petition will only involve already-contracted and allocated water supplies south of the Delta Pumps, water currently stored in San Luis Reservoir, or previously stored in groundwater banking facilities south of the Delta. They also stated that the proposed exchanges are conducted south of the Delta and will not affect the pumping schedule or the amount of SWP or CVP water diverted at Banks or Jones. Petitioners concluded that therefore, there will be no change in flow or water quality conditions that could cause fishery impacts in the Delta.

¹ In its comments, CDWA stated that it was "unaware" of water right holders having been provided notice of the proposed transfer under the procedure set forth in Water Code section 1726, subdivision (d), and requested that the timeline for processing the proposed transfer be adjusted to provide additional notice. However, CDWA did not name any water right holder(s) who will be affected by the transfer but did not receive notice. Given this lack of specific information provided by CDWA and the other forms of public notice, the State Water Board declines to adjust the timeline of the proposed transfer.

Petitioners stated that any additional exchanges will fall within the requested amounts in the petition of 400,675 af and the Board's approval of the petition. If additional exchange requests are approved, the currently identified exchange amounts will be adjusted downward so that the total approved amount of 400,675 af will not change. Also, any additional exchanges must meet the same requirements as the actions identified in the Petition.

State Water Board Response:

The State Water Board has conditioned this Order to ensure that the proposed changes would not result in additional pumping from the Delta. There may be a shift in timing of deliveries subsequent to the Delta pumping, but the timing of Delta exports should not change as a result of the proposed change. Absent the exchanges, the water would be consumptively used or stored by the Projects. The Petitioners have provided information for each exchange explaining how the water to be exchanged would have been diverted and either used or stored in the absence of the proposed exchange that has been incorporated into the exchange descriptions provided in section 2.3. The information describes how the CVP and SWP contractors would use their allocations locally absent the exchanges, or store the water in available groundwater banks. The information also describes how the entities would rely on alternate transfer mechanisms from existing CVP programs or would rely on existing groundwater banking programs to store the water in the absence of the change.

As conditioned in this Order, the proposed change would not result in a change in the quantity or timing of diversions from the Delta or any associated impacts to aquatic resources in the Delta or substantial changes to the quantity or quality of return flows to the Delta. The Order is conditioned to require Petitioners to provide monthly reporting of exchanges, with amounts of each exchange by participating CVP and SWP contractors throughout the approval period. The Order is also conditioned such that (1) no additional pumping from the Delta is allowed; and (2) the Petitioners must comply with D-1641 and all applicable Water Right Orders, Biological Opinions, Incidental Take Permits, and court orders. The State Water Board's responses to CDWA are also responsive to issues raised by Mr. Morat, including his request for an analysis of fishery impacts with- and without-transfer.

Finally, the Order is also conditioned to prohibit any additional exchanges to exceed the authorized total amount of 400,675 af, and that any additional exchange proposals be submitted to the Deputy Director of Water Rights for review.

5.2 Comments by CDWA

Comments were received on June 17, 2020 from Nomellini, Grilli & McDaniel on behalf of CDWA.

Comment 1 – Without-Transfer Operating Conditions vs. With-Transfer Operating Conditions

CDWA stated the State Water Board should evaluate the Petition per Water Code section 1727, the potential impacts to fish, wildlife, or other legal users of water, caused by the proposed exchanges. CDWA stated that “Historical deliveries are an improper baseline for assessing the potential harms that may result as a function of the requested transfer/exchange.” CDWA stated that the Petition lacks any data, description, or underlying assumptions regarding streamflow, water quality, timing of diversions or use, return flows, or effects on legal users of water. CDWA also stated the Petition lacks a clear baseline for determining that water to be exchanged constitutes “real water”. CDWA stated the Petitioners should “provide a proper description of Without-Transfer Operating Conditions and this petition should thereafter be re-noticed to afford other legal users of water an opportunity to meaningfully evaluate the transfer/exchanges’ potential impacts on them, as well as fish and wildlife and instream uses.”

Petitioners Response:

The Petitioners provided a master response as well as specific responses to each of the items raised by CDWA. The master response stated the exchanges/transfers are not traditional transfers where water goes from a willing seller to a willing buyer through a “one-way” transfer. They are exchanges where CVP water is exchanged for an equivalent amount of SWP water. The “real water” determinations described by CDWA apply to one-way water transfers involving sellers and buyers to ensure the net addition of water to the downstream system. The Petitioners indicate that the Projects are not a transferor and do not pump or provide additional water to south-of-Delta exchange parties. Petitioners state that the water to be exchanged would have been diverted from the Delta under DWR’s Permit and Reclamation’s water rights regardless of the current Petition. Further detail of the water use in the absence of the exchanges was provided in a memorandum submitted by DWR and Reclamation on July 9, 2020, that has been incorporated into the description of the exchanges provided in section 2.3.

State Water Board Response:

The State Water Board agrees with the Petitioners that the actions requested under the Petition are more accurately described as exchanges than transfers and that water is not made available by a reduction in consumptive use by a seller for the purpose of providing to a buyer. The Petitioners have provided, and the State Water Board has reviewed, information demonstrating that the water would be consumptively used or stored in the absence of the exchanges. As conditioned, the proposed exchanges will only occur south of the Delta and there will be no change in the amount of SWP or CVP water diverted at Banks or Jones. Therefore, there will be no associated change in flow or water quality conditions in the Delta. All water exported at Banks and Jones is also required to be pumped consistent with the applicable regulatory restrictions governing SWP and CVP operations. There will be no increase in either SWP or CVP allocations

as a result of the proposed exchanges. There could be some shift in the timing of *deliveries* of SWP and CVP allocated supplies south of the Delta; however, this will not significantly affect streamflow, and will not affect the timing of *exports* from the Delta. No measurable effects on fish, wildlife or other instream beneficial uses were noted from previous similar exchanges.

Comment 2 – Lack of an Adequate Demonstration that the Transferred Water is Surplus to the Delta and Areas of Origin

CDWA stated that Water Code section 11460 (the Watershed Protection Act) and section 12204 (the Delta Protection Act of 1959) “expressly prohibit the export of water that is not surplus to the needs of the Delta or areas where the water originates.” CDWA further commented that the Petition did not demonstrate that water proposed to be transferred was truly surplus and would not be needed to meet requirements in the Delta such as State Water Board D-1641. Commenter also stated that Petitioner should demonstrate that the proposed transfer would not injure water right holders subject to Term 91.²

Petitioners Response:

The Petitioners did not respond directly to this comment, but their master response stated that the water to be exchanged involves south-of-Delta CVP and SWP water supplies that are already contracted or allocated to the exchange parties, currently stored in San Luis Reservoir, or previously stored in groundwater banking facilities. The master response also stated that the water to be exchanged is not being made available by groundwater substitution or reservoir release in excess of what would be released annually under normal operation. Petitioners also stated that the exchanges will comply with D-1641, current BOs, and the ITP.

State Water Board Response:

The State Water Board disagrees with CDWA’s assertions that the Watershed Protection Act applies to the water that is the subject of the proposed exchanges and that the proposed exchanges would result in the export of non-surplus water from the Delta. Water Code section 11460 applies to DWR and Reclamation. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 754.) Further, CDWA fails to explain how the proposed exchanges would “deprive” the Delta of flows it would receive absent the exchanges (Wat. Code, § 11460) or otherwise would result in diminished flows to the Delta compared to the without-transfer scenario. As discussed

² The State Water Board has included Term 91 in permits and licenses issued after August 16, 1978, that authorize the diversion of water within the Sacramento-San Joaquin River Delta watershed at a rate greater than one cubic foot per second or which authorize the collection to storage within the Delta of more than 100 acre-feet of water per year. There are 115 active water right permits and licenses that include Term 91.

above, the with- and without-exchange scenarios would involve the same amount of exports pumped from the Delta. In any event, the Delta Protection Act provides the State Water Board with discretion to “balance in-Delta needs and export needs,” (*State Water Resources Control Bd. Cases, supra*, 136 Cal.App.4th at pp. 770-771, quotation marks and citation omitted), and therefore does not support CDWA’s comment.

Comment 3 – Lack of an Adequate Analysis and Quantifications of Losses from the Source of the Transferred Water to the Export Pumps and to the Seller’s Place of Use

CDWA stated that injury to legal users of water could occur if there is not an accurate accounting of the conveyance losses that would occur from the source waters to the export pumps that would occur due to approval of the Petition. CDWA also stated similar injuries to other users could occur if losses from the Delta Pumps to the place of use of the water are not analyzed.

Petitioners Response:

Petitioners stated that “the water to be exchanged/transferred only involves available Project allocations, water currently stored in the San Luis Reservoir, or previously stored in groundwater banking facilities south of the Delta.” Petitioners also stated that the Petition does not require accounting of carriage losses through the Delta because they are not transferring water across the Delta.

Petitioners stated “the exchange quantities listed in the Petition are measured at Projects’ turnouts (points of deliveries), which already account for conveyance losses and groundwater banking losses.”

State Water Board Response:

The State Water Board agrees with the Petitioners that the proposed changes would occur south of the Delta Pumps and would not change the amounts diverted or rediverted at the Delta Pumps. Therefore, there will not be a change in carriage water losses in the Delta watershed. Conveyance south of the Delta would be via SWP or CVP facilities with or without the approval and thus conveyance losses would be similar.

Comment 4 – Return Flows

CDWA stated that the Petition is not clear on how the proposed exchanges/transfers will not result in an increase in the saline drainage to the San Joaquin River. CDWA stated that much of the land in the amended places of use is up-gradient from the Delta and thus impaired drainage can potentially get into the San Joaquin River and thence the Delta. CDWA also referenced a scientific journal article titled “Lifetime Chronicles of Selenium Exposure Linked to Deformities in an Imperiled Migratory Fish,” and stated the article indicates transfers contribute to the harms outlined in the article.

Petitioners Response:

Petitioners stated there will be no change in the amount of deliveries in the San Joaquin River watershed and that the same amount of water would have been consumptively used or stored in the absence of the Petition. They stated there would be no change to the amounts of drainage. This conclusion is supported by the memorandum submitted by DWR and Reclamation on July 9, 2020, summarized above in section 2.3. The Petitioners further indicated that the proposed exchanges would be conducted south of the Delta and would not affect pumping from the Delta and that CDWA did not include an analysis of how the subject Petition would cause adverse impacts to fish populations.

State Water Board Response:

Approval of the changes proposed in the Petition would not result in a change in the quantity of return flows. Sections 6.2 and 6.3 of this Order address the State Water Board's consideration of injury to legal users and unreasonable effects on fish, wildlife, or other instream beneficial uses, and conclude that, as conditioned in this Order, the proposed changes will not result in such injury or adverse effects. CDWA also does not describe how the proposed change could change return flows, or how the scientific article demonstrates an impact related to the changes proposed by the Petitioners; the article does not mention transfers or exchanges. Water Code section 1727, subdivision (e), states that the State Water Board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change.

Comment 5 – Temporary vs. Consecutive Year Transfers

CDWA stated that the proposed transfers appear inappropriate under Water Code section 1725 due to the serial and repetitious nature of the transfers.

Petitioners Response:

The Petitioners stated that they work with their contractors to determine when a particular series of actions is likely to be required for multiple years. Accordingly, the Petitioners have submitted a long-term transfer petition for three of the exchanges described in this Petition: (1) delivery of CVP water to Del Puerto, (2) the BBID exchange, and (3) the VA Cemetery exchange. Two other components of the Petition are in the process of developing needed analysis and documentation to transition to a long-term approval: (1) the Valley Water exchange and (2) the Arvin-Edison and Metropolitan exchange. Given the length of time and uncertainty of these petition processes, these actions will continue to be included in annual temporary petitions as needed until long-term petitions are approved.

State Water Board Response:

Similar types of exchanges have occurred for several years, but with some slight variations. This year, the agencies involved in three of the yearly actions have also petitioned for long-term actions with the State Water Board: (1) Del Puerto, (2) BBID, and (3) VA Cemetery. Petitioners also indicate two other actions that will transition to a long-term petition in the future: (1) Valley Water, and (2) Arvin-Edison and Metropolitan. The current submittal of long-term petitions shows the effort towards moving away from the repeated yearly exchanges. Long-term exchanges are subject to the requirements of the California Environmental Quality Act (CEQA).

However, the mere fact that some temporary changes are proposed and approved in multiple years does not transmute those changes into “long-term” changes for which the statutory CEQA exemption in Water Code section 1729 is unavailable. Approval of a temporary change lasts at most one year and must be petitioned for, defended, and approved according to the criteria in Water Code sections 1725 et seq., each and every year the petitioner wishes to operate in accordance with the change. In contrast, a long-term transfer need only be approved once before the transfer can proceed in each subsequent year. The one-year transfer that is the subject of this Petition meets the statutory definition of a “temporary” transfer, and Water Code section 1729 therefore exempts approval of the Petition from CEQA.

Comment 6 – Compliance with Water Code section 1732

Water Code section 1732 states, “The petitioner shall not initiate or increase the use of groundwater to replace surface water transferred pursuant to this article, except in compliance with section 1745.10 and 1745.11.” CDWA stated that the State Water Board should require the Petitioners to demonstrate that the exchanges will not increase the use of groundwater to replace surface water transferred or any such increase in groundwater use is in compliance with Water Code sections 1745.10 and 1745.11.

State Water Board Response:

The actions described as recovery of water from groundwater banks involve extraction of previously stored surface water supplies of either the CVP or SWP. Extraction of this water is better described as withdrawal of surface water stored underground and is not banked groundwater or groundwater extraction. The Petitioners do not propose any increases in groundwater pumping and do not propose to replace surface water diversion with groundwater extractions. Water Code section 1745.10 and 1745.11 do not apply to the proposed actions.

Comment 7 – Monitoring, Measurement/Accounting, and Reporting

CDWA commented that this is the largest transfer before the State Water Board this year and accounts for over 64 percent of the water currently proposed to be transferred/exchanged. CDWA also noted that the Petition lacks detail as to the descriptions of the actions and reiterated concerns over the lack of a description of without-transfer operating conditions. CDWA suggested that the State Water Board require monitoring and reporting of the volume of the exchanges.

State Water Board Response:

On July 9, 2020, Petitioners submitted a memorandum providing additional information regarding the use of water in the absence of the exchanges. Also, the Order is conditioned to require Petitioners to submit monthly reporting of exchanges, with amounts of each exchange by participating SWP or CVP contractors throughout the approval period and a final report within 90 days of completion of the transfer.

Comment 8 – Compliance with Federal Law

CDWA stated that the transfer water cannot be water that would have been stored in the absence of the transfer. It alleges that some of the proposed exchanges appear to be inconsistent with the Central Valley Project Improvement Act (CVPIA).

Petitioners Response:

Petitioners stated:

“The proposed actions of the CVP Contractors are consistent with Federal Law. The Accelerated Water Transfer Program for the South-of-Delta Contractors does not allow source shifting where there are impacts to third parties, as described in the Accelerated Water Transfer Program: “South-of-Delta Accelerated Water Transfer and Exchange Program Contract Years 2016-2020”. However, groundwater banking programs are not considered transfer programs, but fall under CVPIA Sections 3408 (c) (d), and (e). These programs and the means of returning banked water while reducing pumping costs have all been analyzed in accordance with the National Environmental Policy Act.”

State Water Board Response:

The Order is conditioned to require compliance with all existing regulatory requirements and laws applicable to the exchanges.

6.0 REQUIRED FINDINGS OF FACT FOR PROPOSED EXCHANGES/TRANSFERS IN PETITION

The following discussion and findings are applicable to the following exchanges proposed in the Petition: (a) 75,000 af to Valley Water; (b) 1,500 af to Oak Flat-Del Puerto; (c) 107,675 af to various Kern County WA exchanges (d) 150,000 af to Arvin-Edison-Metropolitan; (e) 650 af to BBID-Musco; (f) 65,000 af to TLBWSD-Westlands/San Luis/Pleasant Valley; and (g) 850 af to the VA Cemetery.

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

Before approving a temporary change due to an exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the exchange would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code Section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.”

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

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

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

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

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

6.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water pursuant to Article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the temporary change would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).)

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

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

The exchanges are not expected to result in a measurable change in the quantity or quality of return flows. As conditioned, there will be no increase in either SWP or CVP diversions or allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP supplies that already have been exported from the Delta. Exchanges similar to those proposed above occurred in 2009, 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 consistent with the provisions of Order WR 2009-0033, Order WR 2010-0032-DWR, and the July 6, 2012, July 1, 2013, March 28, 2014, April 27, 2015, May 17, 2016, June 8, 2017, July 2, 2018, and July 15, 2019 State Water Board Orders approving DWR's and Reclamation's

petitions for change to consolidate the authorized places of use of the SWP and CVP. No measurable effects on other legal users of water were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1), that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 will not injure any legal user of the water.

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

Before approving a temporary change in order to facilitate a transfer or exchange of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) In accordance with California Code of Regulations, Title 23, section 794 (c), Petitioners provided California Department of Fish and Wildlife (CDFW) and the applicable Regional Water Quality Control Boards (Regional Boards) with a copy of the Petition. CDFW and the Regional Boards did not respond with any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

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

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

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

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed temporary change of DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 will not unreasonably affect fish, wildlife, or other instream beneficial uses.

7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in Section 4.4.2 of Resolution 2012-0029 and the Deputy Director for Water Rights redelegation of authority dated October 19, 2017.

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore I find as follows regarding DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364, for each of the following exchanges proposed in the Petition: (a) 75,000 af to Valley Water; (b) 1,500 af to Oak Flat-Del Puerto; (c) 107,675 af for various Kern County WA exchanges (d) 150,000 af to Arvin-Edison-Metropolitan; (e) 650 af to BBID-Musco; (f) 65,000 af to TLBWSD-Westlands/San Luis/Pleasant Valley; and (g) 850 af to the VA Cemetery.

I conclude that, based on the available evidence:

1. The proposed exchange involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition filed for temporary change in the place of use, under DWR's Permit 16479 and Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 for exchange of up to 400,675 af of water is approved.

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

1. The exchanges of water are limited to the period beginning on July 16, 2020 and ending July 15, 2021.
2. The place of use under DWR's Permit 16479 is temporarily expanded to include portions of the CVP service area shown on the map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use*, Map 214-202-83.
3. The place of use under Reclamation's License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 is temporarily expanded to include portions of the SWP service area as shown on the map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use*, Map 214-202-84.
4. Water exchanged pursuant to this Order shall be limited to a maximum quantity of 400,675 af as follows: (a) 75,000 af to Valley Water; (b) 1,500 af to Oak Flat-Del Puerto; (c) 107,675 af to various Kern County WA exchanges; (d) 150,000 af to Arvin-Edison-Metropolitan; (e) 650 af to BBID-Musco; (f) 65,000 af to TLBWSD-Westlands/San Luis/Pleasant Valley; and (g) 850 af to the VA Cemetery.
5. This approval is limited to the exchanges described in this Order and only those additional south-of-Delta exchanges that meet the criteria set forth in this Order and which receive prior State Water Board approval. This approval does not extend to any exchanges under DWR's or Reclamation's water rights in excess of the total of 400,675 af authorized under this Order. The exchanges identified in this Order and any future exchanges are limited as follows: 1) The exchanges shall not result in any increase in the amount of water diverted from the Delta or in an increase in Project contract allocations; 2) The water to be exchanged shall be part of available Project allocations, water currently stored in San Luis Reservoir, or previously placed in groundwater storage south of the Delta; 3) The water to be exchanged must be water that would have been consumptively used or stored in the absence of the transfer; 4) The total quantity of water delivered to SWP or CVP contractors as a result of the change shall not exceed historic average deliveries; 5) The transfer or exchange shall not result in the net loss of San Joaquin River or Sacramento River flow or Delta outflow; and 6) The transfer or exchange shall not result in an increase in saline drainage to the San Joaquin River or the Delta.

If a south-of-Delta exchange is not specifically identified and described in this Order, the exchange may occur only after the Deputy Director of Water Rights determines that the exchange will be implemented in accordance with the conditions of this Order. Requests should be addressed to the Deputy Director of Water Rights. Petitioners should anticipate a determination on the requests no sooner than five (5) full business days after submittal. Requests should be submitted on the form entitled "Petition for Change Involving Water Transfers" available on the Division's

website. Petitioners should annotate “Request per Consolidated Place of Use Order” at the top of the form. The request shall include a description of the amounts to be exchanged, how the exchange will be in compliance with each condition listed in this Order, and how the total exchange amount of 400,675 af by this Order will not be exceeded with the additional exchanges.

6. If, at any time prior to or during the period of the transfer, the State Water Board issues a notice of water unavailability applicable to the water rights involved in the exchange, only water collected to storage prior to issuance of the notice of water unavailability may be exchanged.
7. Diversion of water at the Delta Pumps is conditioned upon compliance by the operators with the objectives currently required of Petitioners set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives applicable to the water rights involved in this petition. In addition, this transfer is conditioned on compliance with the various requirements for use of Stage 1 Joint Points of Diversion (JPOD) by Petitioners under D-1641. Diversion of water is also conditioned upon compliance by Petitioners with all applicable water right license and permit requirements, federal and California Endangered Species Act requirements (ESA), including applicable Biological Opinions (BOs), Incidental Take Permits (ITP), court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
8. Diversion of water at the Delta Pumps is also conditioned upon compliance with applicable State Water Board Orders establishing temporary or interim operating conditions during the transfer period, unless the State Water Board has specifically exempted conveyance of exchange water from the order.
9. The exchange period authorized in Condition 1 of this Order is further limited to the period allowed pursuant to any applicable BO, ITP, or federal or State ESA requirements related to transfers at the Delta Pumps. Petitioners shall provide documentation of the diversion period allowed pursuant to the BO, ITP, or federal or State ESA requirements prior to exchange of water. Such documentation may include an electronic link to any transfer BOs, ITPs, or other federal or State ESA consultations, informal consultations, opinions, or other documents issued by the California Department of Fish and Wildlife, National Marine Fisheries Service, or U.S. Fish and Wildlife Service.
10. By the 25th day of each month following approval of this Order, the Petitioners shall electronically submit a monthly report detailing the amounts transferred or exchanged in the previous month. Data used to generate the report shall be provided electronically in a comma-separated values (.csv) file format and shall be compatible with an open data portal platform related to Assembly Bill 1755. All water transferred/exchanged shall also be documented and accounted for by each

purpose of use. The report shall document, listed by specific exchange, the dates of the exchanges that have occurred, the amount exchanged between each project (CVP or SWP), gains or losses in groundwater banks, and the remaining quantity authorized to be exchanged. The report shall also include documentation that the water exchanged did not result in any increase in water diverted to SWP and CVP facilities from the source waters of DWR's permit and Reclamation's license and permits beyond the quantities that would otherwise have been diverted absent the transfer.

11. Within 90 days of the completion of the transfer, the Petitioners shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. Data used to generate the report shall be provided electronically in a comma-separated values (.csv) file format and shall be compatible with an open data portal platform related to Assembly Bill 1755. The report shall include the monthly and total amounts of water delivered under the transfer to Valley Water; Oak Flat-Del Puerto; participating Kern County WA exchanges; Arvin-Edison-Metropolitan; BBID-Musco; TLBWSD-Westlands/San Luis/Pleasant Valley; the VA Cemetery; and any other entities receiving transfer water in accordance with Condition 5 for the period covered by this exchange. This report shall include SWP and CVP deliveries, other water transfers, and any other amount of Delta water each user received.
12. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this temporary change order, including method of use and quantity of water diverted, are subject to the continuing authority of the State Water Board to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

13. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California ESA (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any action authorized under this Order, the Petitioners shall first obtain authorization for an incidental take permit prior to undertaking that action. Petitioners shall be responsible for meeting all applicable California ESA and federal ESA requirements for the temporary change authorized under this Order.

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

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: JUL 15 2020