

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF PERMITS 1267 AND 2492 (APPLICATIONS 1651 AND 2778)
PETITIONS FOR TEMPORARY CHANGE INVOLVING THE TRANSFER
OF UP TO 10,001 ACRE-FEET OF WATER
FROM SOUTH FEATHER WATER & POWER AGENCY
TO CAWELO WATER DISTRICT**

SOURCE: Lost Creek and South Fork Feather River

COUNTIES: Butte and Plumas

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On May 8, 2020, South Feather Water & Power Agency (SFWPA or Petitioner) filed with the State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division), two petitions for temporary change under Water Code Section 1725, et seq. SFWPA has requested to transfer up to a total of 10,001 acre-feet (af) of water (up to 5,000 af under water right Permit 1267 (Application 1651) and up to 5,001 af under water right Permit 2492 (Application 2778)) to Cawelo Water District (Cawelo WD). The temporary changes approved pursuant to Water Code section 1725 under these petitions may be effective until November 30, 2020.

1.1 Description of the Transfer

SFWPA proposes to transfer up to 10,001 af of water under Permits 1267 and 2492 to Cawelo WD. To facilitate the transfer, SFWPA proposes to release 5,000 af of water currently stored in Little Grass Valley Reservoir under Permit 1267 on the South Fork Feather River and 5,001 af of water currently stored in Sly Creek Reservoir under Permit 2492. Water would be delivered for use in the Cawelo WD service area via releases from Lake Oroville to the Feather River thence the Sacramento River thence the San Francisco Bay/Sacramento-San Joaquin Delta for re-diversion at the State Water Project (SWP) Banks Pumping Plant and/or the Barker Slough Pumping Plant, and/or at the Central Valley Project (CVP) Jones Pumping Plant. In the absence of this transfer, the subject 10,001 af of water would remain in storage within Little Grass Valley Reservoir and Sly Creek Reservoir.

1.2 Reservoir Reoperation

The transfer involves water currently stored in Little Grass Valley Reservoir and Sly Creek Reservoir. Refill criteria developed in conjunction with the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) are required to ensure that the future refill of the reservoir space made available in Little Grass Valley Reservoir and Sly Creek Reservoir from this transfer does not adversely impact the SWP or the CVP. The refill criteria provide for an accounting of refill of Little Grass Valley Reservoir and Sly Creek Reservoir resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta¹ is subject to repayment to DWR and Reclamation, according to a schedule agreed to by SFWPA, DWR, and Reclamation.

2.0 BACKGROUND

2.1 Substance of SFWPA's Permits

Permit 1267, which has a priority date of February 2, 1920, authorizes the diversion to storage of up to 109,012 af of water per annum from the South Fork Feather River from October 1 of each year to July 1 of the succeeding year. Permit 1267 also authorizes the direct diversion from the South Fork Feather River of up to 200 cubic feet per second (cfs) from April 1 to July 1 of each year. The point of diversion to storage under Permit 1267 is located at the Little Grass Valley Dam. Points of re-diversion include the South Fork Diversion Dam, Sly Creek Storage Dam, Lost Creek Storage Dam, Forbestown Diversion Dam, and Ponderosa Dam. The water is used for domestic, municipal, industrial, and irrigation purposes within the authorized place of use, and for recreational purposes within Little Grass Valley Reservoir, Sly Creek Reservoir, Lost Creek Storage Dam, and Ponderosa Reservoir.

Permit 2492, which has a priority date of March 6, 1922, authorizes the diversion to storage of up to 25,000 af of water per annum from Lost Creek between October 1 of each year to June 1 of the succeeding year. Permit 2492 also authorizes the direct diversion from Lost Creek of up to 50 cfs between April 1 and June 1 of each year. The point of diversion to storage under Permit 2492 is located at the Sly Creek Storage Dam and the points of re-diversion are located at the Lost Creek Storage Dam, Ponderosa Dam, and Forbestown Diversion Dam. The water is used for domestic, municipal, industrial, and irrigation purposes within the authorized place of use, and for recreational purposes within Sly Creek Reservoir, Lost Creek Storage Dam, and Ponderosa Reservoir.

¹ The Delta is referred to as in Balanced Condition when the CVP and the SWP are being operated to meet water quality and flow requirements in the Delta.

2.2 Proposed Temporary Changes

To facilitate the transfer, the proposed transfer would include the following changes to SFWPA's Permits 1267 and 2494: (1) add the State Water Project's (SWP) Banks Pumping Plant and Barker Slough Pumping Plant as additional points of diversion, (2) add the CVP's Jones Pumping Plant and the San Luis Reservoir as additional points of diversion, and (3) add the service areas of Cawelo WD as an additional place of use.

3.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TEMPORARY CHANGE

On May 18, 2020, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. In addition, on May 18, 2020, SFWPA noticed the project via publication in Plumas News and mailed the notice to interested parties. On May 21, 2020, SFWPA noticed the project via publication in the Oroville Mercury-Register newspaper. Timely comments regarding the proposed temporary changes were submitted by Reclamation, DWR, Mr. Richard Morat, the Central Delta Water Agency (CDWA), and the California Department of Fish and Wildlife (CDFW). These comments and responses prepared by SFWPA and the State Water Board are briefly summarized below.

3.1 Comments of Richard Morat

By letter dated May 28, 2020, Richard Morat commented on the proposed transfer. Mr. Morat requested conditions be included in any order approving the transfer that better protect public trust resources so as to not result in unreasonable effects on fish and wildlife or other instream beneficial uses. Mr. Morat also commented that the transfer should be conditioned for only essential uses in 2020, and that transfer of water that otherwise would have remained in storage be conditioned "such that conservation storage replenishment of the transferred amount be timed and amounts allowed to be conserved scoped to the affected river's and the estuary's capacity to reasonably forego those flows."

SFWPA Response:

SFWPA indicated that the refill criteria contained in the refill agreement enclosed with the petitions would address the potential impacts raised by Mr. Morat. SFWPA also indicated all water transferred would be delivered and conveyed in accordance with all legal requirements, thus ensuring no environmental harm and addressing the policy issues raised by Mr. Morat.

State Water Board Response:

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

The State Water Board is supportive of transfers to provide water where it is needed. Given the recent dry winter it can be assumed that additional water is needed by Cawelo WD.

The proposed temporary transfer by SFWPA is for water that would have otherwise remained in storage pursuant to Permits 1267 and 2492. By approving the transfer, additional water will flow in the Feather River to the Sacramento River and the Sacramento-San Joaquin Bay Delta. The transfer is conditioned such that SFWPA is subject to a refill criteria agreement with Reclamation and DWR, ensuring that future refill of storage space in Little Grass Valley Reservoir and Sly Creek Reservoir created by the transfer will not reduce the amount of water that Reclamation, DWR, or other water users, could divert under their water rights. This Order requires SFWPA to comply with the refill criteria, which would be conducted within, and be consistent with, the existing regulatory framework governing Delta exports. In light of the above discussion, it is not anticipated that this transfer will result in unreasonable effect on fish and wildlife, other instream beneficial uses, or other public trust resources.

3.2 Comments of Reclamation

By letter dated June 8, 2020, Reclamation commented on SFWPA's proposed water transfer. Reclamation requested that the Order approving the proposed transfer includes the following conditions to protect Reclamation's water rights and operations for the Jones Pumping Plant.

- The transfer is subject to the refill criteria specified in a refill agreement between SFWPA, Reclamation, and DWR.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
- Execution of a Warren Act contract is required for SFWPA to use the Jones Pumping Plant.

SFWPA Response:

SFWPA indicated that they do not object to the conditions proposed by Reclamation. SFWPA also agreed to obtain a Warren Act contract if one is legally required to convey the transfer water to the buyers.

State Water Board Response:

This Order includes a condition requiring SFWPA to obtain a reservoir refill agreement with Reclamation and DWR prior to initiating the transfer. This Order also includes a condition that requires SFWPA to obtain a Warren Act contract with Reclamation if SFWPA uses the Jones Pumping Plant for water delivery under the transfer. Further, this Order includes conditions requiring that the transfer take place only during balanced conditions in the Delta.

3.3 Comments of CDFW

By letter dated June 10, 2020, CDFW provided comments on SFWPA's proposed water transfer, citing concerns about the potential direct and cumulative adverse impacts from changes in the quantity, timing, temperature, and duration of water transfers on the sensitive resident fisheries within the South Fork Feather River. CDFW is particularly concerned about the potential impacts of hydropower operations to foothill yellow-legged frog (FYLF), a California Endangered Species Act candidate, and other aquatic species, due to changes in streamflow and temperature. CDFW states that the South Fork Diversion Dam, the Forbestown Diversion Dam, and the Lost Creek Dam reaches support populations of FYLF and the proposed transfer has the potential to significantly impact FYLF during vulnerable life stages.

CDFW indicated that FYLF breeding in the Sierra Nevada system typically occurs between late April and early July after winter runoff has subsided and water temperatures increase. Rates of embryonic development and length of tadpole period are both highly temperature dependent. Tadpole rearing sites require some level of protection from unpredictable scouring flows and appropriate ramp down rates to prevent desiccation after egg mass oviposition.

CDFW stated that SFWPA has not provided detailed information on the facilities and river reaches that will be used for the transfer. It is unclear where, how, and when the water will be moved through the system, either through tunnels or through Lost Creek and/or the South Fork Feather River, and it is unclear what the flow schedule will be and what ramping rates will be used through the transfer. These operation details are important to understand potential impacts on species including FYLF.

To mitigate for these potential impacts, CDFW requested that the proposed flow schedule and ramping rates be developed in consultation with CDFW and SFWPA.

CDFW also requested that SFWPA conduct monitoring to ensure that the transfer does not impact aquatic and terrestrial species, including sensitive species of concern such as FYLF.

SFWPA Response:

SFWPA responded that CDFW's comments are similar to its comments to SFWPA's 2015 water transfer. SFWPA indicated that CDFW fails to understand the conveyance of the transfer water through SFWPA's hydroelectric power project. SFWPA stated that the 5,000 af proposed from Little Grass Valley Reservoir would be conveyed via the South Fork Feather River to the South Fork Diversion Dam and through the South Fork Diversion Tunnel to Sly Creek Reservoir. The 5,000 af proposed from Little Grass Valley and the 5,001 af from Sly Creek Reservoir would be used to generate hydroelectric power at Sly Creek Powerhouse and released to Lost Creek Reservoir. From there, it would be used to generate hydroelectric power at Woodleaf Powerhouse and released to generate hydroelectric power at Forbestown Diversion Dam. After that, it would be released to Ponderosa Reservoir and then spill to Lake Oroville. SFWPA indicated it will comply with all legal and regulatory requirements, including ramping rates contained in its FERC license, temperature requirements, and water right terms.

SFWPA also indicated that a specific flow schedule for delivery of the transfer water will be developed by SFWPA, SFWPA's power purchaser, and in coordination with DWR. SFWPA stated it is willing to also coordinate with CDFW in development of the reservoir release schedule. SFWPA agreed to monitor its operations to ensure compliance with all legal and regulatory requirements, including ensuring that its operations do not unreasonably impact aquatic and terrestrial species, during its transfer period.

State Water Board Response:

The Order is conditioned to require SFWPA to operate the transfer in accordance with release schedules that SFWPA develops in coordination with CDFW and DWR to ensure that its operations will not unreasonably impact fish, wildlife, or other instream beneficial uses. This Order also includes a condition that requires SFWPA to comply with the interim ramping rate requirements specified in Condition 3 of the Water Quality Certification for Federal Energy Regulatory Commission Project No. 2088 issued in 2018. The ramping rate requirements in the 2018 Water Quality Certification were developed by the State Water Board in coordination with CDFW, the United States Fish and Wildlife Service, the United States Forest Service, and SFWPA, to prevent impacts to FYLF caused by rapid changes in streamflows due to reservoir releases.

3.4 Comments of DWR

By letter dated June 17, 2020, DWR provided comments regarding the proposed transfer. DWR indicated that the refill of water vacated from Little Grass Valley Reservoir and Sly Creek Reservoir for the transfer may injure the water rights of DWR and impact the operations of the SWP, and therefore requested the following:

1. SFWPA provide DWR the baseline operation plans of Little Grass Valley Reservoir and Sly Creek Reservoir;
2. The transfer be performed in compliance with existing regulatory requirements in the Delta;
3. Any order the State Water Board issues approving the transfer require that SFWPA have a signed and executed refill agreement with DWR in place before the transfer begins. The refill shall not occur if Lake Oroville is at or below flood control reservation or the Delta is in balanced or restricted conditions; and
4. SFWPA provide DWR with both copies of reports filed with the State Water Board pursuant to the transfer order, and monthly refill accounting reports after the transfer is complete.

SFWPA Response:

SFWPA responded that it has agreed to comply with all of DWR's conditions listed above.

State Water Board Response:

This Order includes a condition requiring SFWPA obtain a reservoir refill agreement with Reclamation and DWR before the transfer may commence.

3.5 Comments of CDWA

By letter dated June 17, 2020, CDWA provided comments regarding the proposed transfer as described below:

Comment 1- Notice of Petition and Posting of Pertinent Documents

CDWA commented on the State Water Board's public notice procedures for petitions for temporary transfer as follows: 1) CDWA stated that the State Water Board should post temporary transfer petitions and supporting documentation along with the public notice on the State Water Board's website to better facilitate public review of proposed transfers; 2) CDWA indicated that Water Code section 1726 requires that water right holders who may be affected by the proposed transfer be notified in writing of the proposed transfer, however none of the members within CDWA were notified; and 3) CDWA believes that the State Water Board should re-notice the proposed transfer to

additional parties, including CDWA member agencies, and allow additional time for processing the transfer.

State Water Board Response:

The State Water Board posted the public notice on its website and provided an email notice to its electronic email list for transfers, which includes over two thousand recipients who have requested to be notified of all proposed water right transfers. The State Water Board is limited to what documents can be posted on its website based on the requirements for all state agencies to satisfy Priority 1, 2, and 3 guidelines for "AA" compliance of the World Wide Web Consortium, Web Content Accessibility Guidelines 1.0. The State Water Board's website is also required to comply with Section 508, Subpart B, Subsection 1194.22, Guidelines A-P of the Rehabilitation Act of 1973 as revised in 1998. Therefore, in order to comply with web accessibility requirements, the State Water Board was not able to post the petitions on its website. However, the State Water Board provided a copy of the petition and supplemental information to all parties who requested the documents.

Further, the notice was published in Plumas News and the Oroville Mercury-Register newspaper, and mailed to applicable counties, interested parties, and downstream diverters who Division staff believed could be harmed by the transfer. The Division and SFWPA have complied with the public notice requirements in Water Code section 1726 subdivision (d); therefore, the State Water Board declines to adjust the timeline of the proposed transfer and the timeline for processing the petitions will not be extended.

Comment 2 – Reservoir Storage Release Information

CDWA indicated that SFWPA should have provided the same reservoir storage release information to the State Water Board that is required by DWR's and USBR's *Draft Technical Information for Preparing Water Transfer Proposals* (Draft Technical Information).

SFWPA Response:

SFWPA indicated the reservoir storage release information is not necessary for the State Water Board to approve the petitions because approval of the transfer would be subject to DWR's approval under Water Code section 1810 and that CDWA is conflating the Board approval process of the transfer with the DWR approval process. SFWPA indicated that the information requested would be available to CDWA and all other interested parties, once provided to DWR.

State Water Board Response:

DWR and Reclamation require parties proposing stored water transfers to provide historical reservoir operation information in order to develop a reservoir refill agreement

with the transferor. DWR and Reclamation require a refill agreement to ensure that the stored water that is transferred will not be replaced at a time when operations of the SWP and CVP could be injured. To protect SWP and CVP water rights, this Order requires SFWPA obtain and comply with a reservoir refill agreement with DWR and Reclamation.

Comment 3 – 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 SFWPA’s petitions did not demonstrate that the water proposed to be transferred was truly surplus and would not be needed to meet requirements in the Delta such as D-1641. CDWA also stated that the Petitioner should demonstrate that the proposed transfer would not injure water right holders subject to Term 91.²

SFWPA Response:

SFWPA indicated that CDWA is associating SFWPA with the SWP and the CVP, who are subject to the legal authorities cited by CDWA. SFWPA stated that the obligation to meet D-1641 requirements in the Delta and the requirements of the Delta Protection Act and the Watershed Protection Act are imposed on DWR as the operator of the SWP, and Reclamation as the operator of the CVP. The Petitioner stated that SFWPA is a senior water right holder with its own water rights, storage facilities, and power projects and is not subject to requirements imposed on the SWP and the CVP. SFWPA also indicated it is not obligated to meet D-1641 requirements in the Delta or any other upstream requirements imposed on DWR or Reclamation to protect fish and wildlife and other beneficial uses within the Delta and the areas of origin. SFWPA stated it would retain the transfer water in storage for future use in accordance with its water rights without the proposed transfer, and under no scenario would the transfer water be used to meet D-1641 standards. SFWPA indicated the refill criteria agreed to by the Petitioner and copied with the Petition will ensure that there is no injury to other legal users of water, including Term 91 water right holders.

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 authorize the collection to storage within the Delta of more than 100 acre-feet of water per year. There are 119 active water right permits and licenses that include Term 91.

State Water Board Response:

The proposed temporary transfer involves water that has already been diverted to storage from Lost Creek and South Fork Feather River pursuant to SFWPA's permits. By approving the transfer, water normally held in storage will flow in the Feather and Sacramento Rivers to the Delta. Absent the transfer, this water would not be released by SFWPA and would not be available downstream to meet temperature or other requirements such as those established by D-1641. Reclamation and DWR cannot require release of water previously diverted to storage by another right holder to assist in establishing compliance with water quality and flow standards in the Delta.

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 transfer, and that the proposed transfer 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 failed to explain how the proposed transfer would "deprive" the Delta of flows it would receive absent the transfer (Wat. Code, § 11460) or otherwise result in diminished flows to the Delta or to CVP or SWP operations compared to the without-transfer scenario. As discussed above, the proposed transfer would increase the flow of water to the Delta. In addition, 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.)

SFWPA's permitted points of diversion and rediversion are on Lost Creek, tributary to South Fork Feather River, eventually tributary to the Feather and Sacramento Rivers. The waterways from SFWPA's diversion area to the Project pumps are currently controlled by Term 91, which restricts diversions from streams tributary to the Sacramento-San Joaquin Delta and the Delta.

With the proposed temporary transfer, SFWPA would transfer water that has already been diverted to storage under their permits. The transfer of previously stored water will not decrease the flow in streams tributary to the Delta, and therefore will not impact whether or when Term 91 will apply during the transfer period. The amount of water available for transfer by SFWPA is determined by their water rights and established diversion and beneficial use histories. Normal river operation and the application of Term 91 will ensure that the water entering the project facilities will be similar to that absent the proposed transfer.

Comment 4 – Quantification of Losses from Transferred Water Source to Export Pumps and Transferee's Place of Use

CDWA commented that an accurate analysis and quantification of losses that occur is required to prevent injury to legal users of water. CDWA requested that this analysis include losses from the source of the transferred water to the export pumps, carriage losses, and losses from the export pumps to the ultimate places of use.

SFWPA Response:

SFWPA indicated CDWA's comment is directed at DWR's and Reclamation's carriage water loss analysis, and not at the Petitioner. SFWPA states that DWR and Reclamation through its independent analysis and application of carriage losses, will ensure no legal injury to other lawful users of water and no unreasonable effects to fish and wildlife from Petitioner's proposed transfer and other transfers occurring in 2020.

State Water Board Response:

The Draft Technical Information requires a conveyance agreement between SFWPA, Reclamation, and DWR, as the transferred water is non-project water being conveyed through CVP and SWP facilities. According to the Draft Technical Information, only that portion of the proposed transfer that is determined to represent new water to the system is transferable using CVP or SWP facilities. This water, frequently referred to as "new water or real water," is the net addition of water to the downstream system that would not be available absent the transfer.

Reclamation and DWR have a shared responsibility for meeting Delta water quality and environmental requirements. Appendix A of the Draft Technical Information addresses potential adverse effects of transfers on the CVP and SWP. If water transferred is not new water to the system, it will instead come out of the supply for CVP and SWP contractors. The Draft Carriage Water Overview for Non-Project Water Transfers (Carriage Water Overview) dated October 2019, describes how Reclamation and DWR account for the losses of water as it is transferred from the seller to the buyer. The document provides a methodology for determining carriage losses through the Delta. The transfer proposed by SFWPA will be subject to this accounting as part of the conveyance agreement between SFWPA and DWR. Once the water has been conveyed through the Delta, the SWP and the CVP are responsible for delivering the transferred quantities and making up any potential conveyance losses to the final place of use for the transfer.

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

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

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

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

(Wat. Code, § 1727, subd. (b).)

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

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

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

6.0 REQUIRED FINDINGS OF FACT

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

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

In the absence of the proposed transfer, SFWPA indicated the transfer water would have remained in storage in Little Grass Valley Reservoir and Sly Creek Reservoir. SFWPA indicated that its combined end of year storage target is 66,000 af in 2020 without the proposed transfer.

Accordingly, pursuant to Water Code section 1726, subdivision (e), I find that the water proposed for transfer under 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 transfer would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).)

The water proposed for transfer pursuant to this temporary change consists of water previously stored in Little Grass Valley Reservoir and Sly Creek Reservoir pursuant to Permits 1267 and 2492. In the absence of the proposed transfer, the water would remain in storage for future use by SFWPA and would not be available to other water users. The release of the water from storage at Little Grass Valley Reservoir and Sly Creek Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream. In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water.

In addition, SFWPA will enter into a reservoir refill agreement with DWR and Reclamation, ensuring that future refill of any storage space in Little Grass Valley Reservoir and Sly Creek Reservoir created by the transfer will not reduce the amount of water that Reclamation, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of the water would occur due to the transfer.

Accordingly, pursuant to Water Code section 1727, subdivision (b)(1), I find that the proposed temporary change would not injure any legal users of the water.

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

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Board) with a copy of the petitions in accordance with California Code of Regulations, title 23, section 794, subdivision (c).

CDFW provided comments regarding protections for FYLF, and mitigating the potential negative impacts to FYLF by controlling the rate and timing of water released from Little Grass Valley Reservoir and Sly Creek Reservoir during the transfer. To ensure that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses, this Order includes conditions which require SFWPA coordinate with CDFW in the development of reservoir release schedules and comply with the interim ramping rate requirements specified in Condition 3 of the Water Quality Certification for Federal Energy Regulatory Commission Project No. 2088 issued in 2018. The Regional Board did not provide any comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

In addition, the transfer will also be subject to all applicable federal and state Endangered Species Act requirements, including applicable Biological Opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversions and exports of water at the SWP and CVP Delta pumps.

Accordingly, pursuant to Water Code section 1727, subdivision (b)(2), I find that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

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

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727, and therefore, based on the available evidence, I find as follows:

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

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary change for the transfer of up to 10,001 acre-feet (af) of water under SFWPA's Permits 1267 and 2492 are approved.

All existing conditions of Permits 1267 and 2492 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing the date of this Order through November 30, 2020.
2. The following points of diversion are temporarily added to Permits 1267 and 2492:

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

California Coordinate System, Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M.

Barker Slough Pumping Plant

California Coordinate System, Zone 2, NAD 83, North 567,682 feet and East 2,017,761 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M.

CW "Bill" Jones Pumping Plant:

California Coordinate System Zone 3, NAD 83, North 2,121,505 feet and East 6,255,368 feet, being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Projected Section 29, T1S, R4E, MDB&M.

San Luis Reservoir:

California Coordinate System, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M.

3. The place of use under Permits 1267 and 2492 is temporarily expanded to include the service area of Cawelo Water District (Cawelo WD).
4. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies, including the Federal Energy Regulatory Commission. This Order shall not be construed as authorizing the violation of any agreements entered by the Petitioner.
5. If, at any time prior to or during the period of transfer, the State Water Board issues notification that water is unavailable for collection to storage pursuant to Permits 1267 and 2492, only water collected to storage prior to issuance of the notification may be transferred.
6. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
7. Rediversion of water at the Barker Slough, the Banks, or the Jones Pumping Plants is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at that point of diversion, including compliance with the various plans required under D-1641. Diversion of water is also subject to compliance by DWR and Reclamation with all applicable Biological Opinions and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.

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

8. Petitioner shall ensure that any required Warren Act contract with Reclamation is executed prior to use of the Jones Pumping Plant for the delivery of water to Cawelo WD under this transfer. Petitioner shall provide confirmation to the Deputy Director for Water Rights (email confirmation is acceptable) that this condition has been complied with, within 30 days of issuance of this Order.
9. Petitioner shall coordinate with CDFW and DWR in the development of reservoir release schedules and obtain CDFW concurrence that the release schedule will not impact foothill yellow-legged frog (FYLF). Documentation of the concurrence shall be submitted to the Deputy Director for Water Rights within 15 days after Petitioner obtains CDFW's concurrence.
10. During the period of this transfer, SFWPA shall comply with the interim ramping rate requirements specified in Condition 3 of the Water Quality Certification for Federal Energy Regulatory Commission Project No. 2088 issued in 2018.
11. Water may not be transferred through the Barker Slough, the Banks, or the Jones Pumping Plants until SFWPA has executed a Refill Agreement between the U.S. Bureau of Reclamation (Reclamation), DWR, and SFWPA to address potential refill concerns in Little Grass Valley Reservoir and Sly Creek Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and SFWPA shall be submitted to the Division within 15 days of the date of execution of the agreement. The terms of the Refill Agreement shall be binding until such time as all of the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill Agreement. SFWPA may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.
12. SFWPA shall provide data describing the transfer of water pursuant to this Order as an attachment to its annual Report of Permittee. The following shall be included:
 - a. The average daily release rates and corresponding volume of water released from Little Grass Valley Reservoir and Sly Creek Reservoir as a result of this transfer (reported on a daily basis);

- b. The daily amounts of water delivered to Cawelo WD pursuant to this Order; and
- c. SFWPA shall provide reservoir refill reporting in its Report of Permittee by April 1 of each year following the end of the transfer period and on monthly reservoir refill until the reservoir Refill Agreement has been satisfied. This occurs when the value of the Refill Reservation, as defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation and monthly reservoir refill.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to SFWPA in time for inclusion in a submittal, SFWPA shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

15. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

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

16. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish and Game Code sections 2050 to 2097) or the federal ESA (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take prior to commencing transfer of water. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
17. The State Water Board reserves authority to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: AUG 13 2020