

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

**DIVISION OF WATER RIGHTS**

---

**IN THE MATTER OF LICENSE 11118 (APPLICATION 14804)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 10,700 ACRE-FEET OF WATER  
FROM SOUTH SUTTER WATER DISTRICT  
TO SEVEN STATE WATER CONTRACTOR AGENCIES**

---

SOURCE: Bear River

COUNTIES: Placer and Yuba

---

**BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:**

**1.0 SUBSTANCE OF PETITION**

On April 17, 2020, the South Sutter Water District (District or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change Involving a Transfer of Water pursuant to Water Code section 1725 et seq. The District requested to transfer up to 10,700 acre-feet (AF) of water from the Bear River under water right License 11118 (Application 14804) from July through September 2020. The proposed surface water transfer will be made available to participating State Water Contractor Agencies (SWC Agencies) by groundwater substitution, where the District's agricultural customers will pump groundwater in lieu of receiving water released from Camp Far West Reservoir (Reservoir) and the Camp Far West Diversion Dam (Diversion Dam).

**1.1 Description of the Transfer**

The District proposes to transfer up to 10,700 AF of previously stored water under License 11118 (Application 14804) from the Reservoir, which flows downstream to the Diversion Dam on the Bear River, to seven SWC Agencies: Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, Tulare Lake Basin Water Storage District, Santa Clarita Valley Water Agency, and Alameda County Water District. From July 1, 2020 to September 30, 2020, the District proposes to release up to 10,700 AF of water in the Reservoir into the Bear River tributary to Feather River thence Sacramento River thence the San Francisco Bay/Sacramento-

San Joaquin Delta. The District's agricultural customers would increase groundwater pumping in lieu of receiving surface water that would otherwise be delivered by the District under License 11118. The water would be available for rediversion at the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) and San Luis Reservoir for use within the service areas of the participating State Water Contractor Agencies.

The District would make previously stored surface water available for temporary transfer via groundwater substitution. Groundwater substitution involves the use of groundwater pumped from within the District's boundaries to irrigate crops within District's boundaries in exchange for a corresponding amount of surface water (minus a streamflow depletion loss) that will remain instream for rediversion at the proposed additional points of rediversion. As described in the petition, absent the proposed temporary transfer, the District would deliver the entire quantity of stored surface water proposed for transfer for irrigation use within District boundaries.

## **1.2 Groundwater Substitution Transfers**

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of the Petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion). Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to injure other legal users of water if it occurs when the Delta is in balanced conditions<sup>1</sup> or there is limited streamflow in the channel from which the water is being transferred.

Proposals for transfers of water through Central Valley Project (CVP) and/or SWP facilities that involve groundwater substitution generally must be consistent with the Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), dated December 2019, prepared by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation). Depending on

---

<sup>1</sup> The Delta is in balanced conditions when the SWP and CVP agree that releases from upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use, or if an alternative groundwater substitution accounting method may be applied. The DWR and Reclamation criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

The District has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, this transfer is conditioned to meet the requirements of the Draft Technical Information, which includes only allowing groundwater wells approved by Reclamation and DWR for suitability and acceptability, development of a monitoring program plan and mitigation program plan, and the application of a streamflow depletion factor (SDF), as approved by DWR and Reclamation. The District is proposing a seven percent SDF, consistent with the 2015 and 2018 transfers agreed upon by the District, DWR, and Reclamation.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfer. The boundaries of the District are within the North American Subbasin. The District formed a Groundwater Sustainability Agency (GSA), and is in the process of preparing a Groundwater Sustainability Plan (GSP). Moving forward, groundwater substitution transfers are also required to comply with current groundwater management law under the water code provisions pursuant to the 2014 Sustainable Groundwater Management Act (SGMA).

#### *Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers*

Depletion of surface stream flows due to groundwater pumping, including groundwater substitution transfers, has been a long-standing issue of concern in California. Part of the concern involves whether the SDFs being used pursuant to groundwater substitution transfers are stringent enough to protect against long-term negative impacts to surface water flows.

Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation have estimated impacts on streamflow due to groundwater pumping by using analytical and numerical groundwater models. DWR and Reclamation have previously based the overall impacts to streamflow on an agreed upon minimum seven percent average SDF for single year transfers requiring the use of SWP or CVP facilities. This SDF was developed based on a technical memorandum dated July 3, 2008 submitted to DWR to support a 2008 Pilot Water Transfer by the District. DWR and Reclamation also rely on results from modeling efforts conducted for Reclamation's Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report, published October 2019, to establish SDFs for single year transfer requiring the use of SWP or CVP facilities.

DWR and Reclamation anticipate on-going refinement of groundwater substitution transfer modeling will allow them to more accurately evaluate potential long and short-term surface water depletion impacts from individual transfers and be able to condition future transfers as necessary to protect against those impacts.

## **2.0 BACKGROUND**

### **2.1 Substance of the District's License**

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

Water diverted under License 11118 is used for irrigation and domestic purposes within the authorized places of use, as well as incidental power generation. The authorized places of use under License 11118 is a net 59,000 acres within a gross area of 65,796 acres within the District, 4,180 acres within the Camp Far West Irrigation District (including 102 acres outside the District's boundaries and served under contract), and a power generation plant located on the District's conveyance canal.

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

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

### **2.2 Proposed Temporary Changes**

The proposed transfer would temporarily add the Banks Pumping Plant and San Luis Reservoir as points of rediversion under License 11118. A portion of the SWP service area (as shown on Maps 1878 - 2 and 3 on file with Application 5630) would be temporarily added as to the places of use of License 11118. Municipal and Industrial uses would be added as purposes of use under License 11118.

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

On April 27, 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 Lyris email notification system. In addition, on April 30, 2020, the District noticed the project via publication in the Appeal-Democrat newspaper and mailed the notice via first class mail to interested parties. The comment deadline was May 27, 2020. Comments were received from South Delta Water Agency, Reclamation, DWR, California Department of Fish and Wildlife (CDFW), South Delta Water Agency, Mr. Richard Morat, and a combined comment from Aqualliance, the California Impact Network, and the California Sport Fishing Alliance (CSPA).

#### **3.1 Comments of Reclamation**

On May 27, 2020, Reclamation submitted comments on the proposed transfer requesting that the Order approving the transfer be conditioned as follows:

- A refill agreement is necessary for a reservoir release transfer proposal to not adversely affect the water rights or operations of the CVP. Reclamation requests that in the Board's order granting approval of such an action, it is noted that the transfer is subject to such an agreement. Such an agreement would need to protect CVP water rights and operations from injury.
- To the extent that the transfer is occurring via groundwater substitution:
  - Only wells approved by Reclamation and DWR for suitability and acceptability may be used for groundwater substitution.
  - The amount of transferable water credited to the District's groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
  - Before commencing the groundwater substitution operation, the District shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
  - The amount of transferred water pursuant to the Order shall not exceed the SDF of 13 percent as set forth in the Draft Technical Memorandum.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

District Response:

The District responded in a comment letter dated June 17, 2020, and indicated that pursuant to discussions with Reclamation on June 15, 2020, Reclamation requested the District to provide a comparison of its proposed 2020 water transfer with the District's prior water transfers during similar water year types. That comparison was provided in the June 17, 2020 response to comment letter by the District to demonstrate that a refill agreement was not necessary for the water transfers by the District, including the proposed 2020 water transfer. The District also provided a copy of the information provided to Reclamation, dated November 14, 2019 (MBK Letter), that described how a refill agreement was not needed for the District's 2018 Water Transfer.

The District went on to state:

“As identified in the MBK Letter, and pursuant to Reclamation's request for the District's 2018 Water Transfer, the District reviewed Camp Far West Reservoir (CFWR) refill after the previous water transfers by the District in 2008, 2009, 2010, 2014, 2015, and 2018. The refill of the transfer quantity for each of these water transfers occurred while the Delta was in excess conditions. Therefore, the refilling of the water transfer quantity in CFWR occurred at a time that did not or would not have adversely impacted the State Water Project (SWP) or Central Valley Project (CVP). In addition, based on the data reviewed for those previous water transfers and the multiple factors that affect CFWR storage such as upstream operations, no end of season storage target, no flood control requirement, and that CFWR storage capacity is minor compared to the annual runoff of the Bear River watershed, CFWR was operated by the District in a typical manner.

Based on the May 1 edition of the Department of Water Resources (DWR) Bulletin No. 120, the Sacramento Valley Hydrological Water Year Classification (WY Type) for the 2020 Water Year is forecasted to be “dry.” Pursuant to the Bay Delta Settlement Agreement between DWR and SSWD (BDSA), during “critical” or “dry” WY Types, DWR may request that the District release up to 4,400 acre-feet during July through September. DWR made this request to the District on April 29, 2020. Therefore, the releases for BDSA and the proposed transfer during July through September are proposed to be approximately 16,100 acre-feet (4,400 acre-feet for BDSA and up to 10,700 acre-feet for the 2020 water transfer). These releases during 2020, which are in addition to releases pursuant to other regulatory requirements, are similar to 2009 when the District released a total of approximately 14,417 acre-feet for BDSA and the 2009 Water Transfer. In addition, 2009 was also classified as a “dry” WY Type. As identified above, the refilling of the 2009 water transfer quantity in CFWR

occurred at a time that did not adversely impact the SWP or CVP. The District anticipates a similar, typical operation of CFWR during 2020 based on hydrologic conditions, crop water demands, and other factors identified above.

For these reasons, the District expects that the refilling of the 2020 water transfer quantity will occur at a time that will not adversely impact the SWP or CVP. Therefore, the District believes that a refill agreement is not necessary for the proposed 2020 water transfer.”

#### State Water Board Response:

The District clarified in their response to comments that the operation of the Reservoir and associated water storage would be the same as in 2018 with or without the transfer, and a refill agreement should not be required. While refill resulting from prior transfers occurred when the Delta was in excess conditions, hydrologic differences occur year to year. Additionally, in the response to comments submitted by South Delta Water Agency (SDWA), described below, the District states that the transfer will be consistent with the second full paragraph of page 35 of the Draft Technical Information; this paragraph leaves open the need for reservoir refill criteria. Finally, Reclamation was contacted by the District two days prior to submittal of the response to comments and has not yet had the opportunity to concur that refill criteria are not required for the 2020 water transfer. The transfer is conditioned to require refill criteria unless a written exemption from Reclamation is received. The transfer is also conditioned that the District’s groundwater substitution proposal is subject to the evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the Draft Technical Information, which as described in section 1.2 above, includes the criteria identified in Reclamation’s comments.

### **3.2 Comments of CDFW**

By letter, dated May 22, 2020, CDFW commented on the proposed transfer. CDFW expressed concerns over the potential direct and cumulative adverse impacts on the sensitive anadromous and/or resident fisheries within the Bear River from water transfer changes to the quantity, timing, and duration of flow. CDFW is concerned that increased flows in late summer when fall-run Chinook salmon are migrating in the Feather River system have the potential to attract salmon into the Bear River. CDFW indicated that the quantity and velocity of flow in the Feather River under current 2020 conditions, coupled with increased water temperatures due to lower flows, are more conducive to attraction of salmonids into the Bear River. Should fall-run Chinook salmon be attracted into the Bear River by water transfer flows, CDFW remains concerned that lower flow conditions following the transfer, in combination with the lack of suitable habitat, would not support salmon that may have entered the system. To reduce the likelihood of attracting salmonids into the Bear River, CDFW staff recommend conveying transfer water as early in the season as possible and ending

transfer water conveyance by August 30<sup>th</sup> and that the timing of water transfer flows should be coordinated with the CDFW to minimize fishery concerns, and a long-term fish assessment dataset under a variety of water year conditions should be collected to appropriately assess CDFW concerns.

CDFW also expressed its concerns associated with proposed and future transfers that have the potential to impact Groundwater Dependent Ecosystems (GDEs). The letter states that water transfers made available by groundwater substitution have the potential to affect groundwater hydrology due to increased groundwater use and reduced groundwater recharge.

#### State Water Board and District Response:

The District has coordinated and provided the release schedule to CDFW for review and comment for the 2020 Water Transfer. The District's release schedule has been approved by CDFW via email, dated June 15, 2020, and will occur within the period from July 1, 2020 to the first few days into September 2020 to avoid the attraction of fall-run Chinook salmon into the Bear River during late summer.

The operations of the Banks Pumping Plant are governed by Biological Opinions issued by the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for the long-term operations of the Central Valley Project (CVP) and the SWP.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfer. The boundaries of the District are within the North American Subbasin. The District formed a GSA and is in the process of preparing a GSP. Moving forward, groundwater substitution transfers are also required to comply with current groundwater management law under the water code provisions pursuant to the 2014 SGMA.

### **3.3 Comments of Mr. Richard Morat**

By email, dated April 27, 2020, Richard Morat commented on the proposed transfer. Mr. Morat requested terms and conditions that better protect public trust resources and that the transfer will not result in an unreasonable effect 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.



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, which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer.

The State Water Board is supportive of transfers to provide water where it is needed. It is anticipated that SWC Agencies involved in this transfer will only receive 20 percent of their SWP allocation this year.

The proposed temporary transfer by the District is for water that would have otherwise been beneficially used pursuant to their license. By approving the transfer, additional water will flow down the Bear River to the Sacramento River and the Delta. As described above in section 3.1, the transfer is conditioned to adhere to a release schedule approved by CDFW to avoid attraction of fall-run Chinook salmon into the Bear River. In light of the above explanation, 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.

Also see response to Reclamation's comments in Section 3.1 of this Order regarding compliance with the Draft Technical Information.

### **3.4 Comments of DWR**

By email, dated May 27, 2020, DWR commented on the proposed transfer. DWR stated that similar to past transfers and this 2020 Water Transfer, it will be necessary for DWR and the District to enter into a conveyance agreement. The conveyance agreement will include provisions related to groundwater substitution that are consistent with the Draft Technical Information. In order to protect DWR's water rights and operations, DWR requests that the transfer be conditioned on the District complying with all groundwater substitution provisions contained in the conveyance agreement between DWR and the District.

DWR believes additional technical information is needed to support the suggested seven percent SDF in the petition. DWR is requesting that the District provide additional technical analysis to support the suggested SDF factor. After receiving such information and analysis, DWR will work with the District to establish a suitable SDF for this year.

District Response:

The District responded by letter, dated June 17, 2020, to address DWR comments to provide information regarding the seven percent SFD. The District stated that pursuant to a similar request by DWR, MBK Engineers prepared a technical memorandum, dated July 3, 2008, which was provided to Mr. Bob Niblack of DWR. The District goes on to state:

“In the MBK memorandum a six percent SFD [*sic*] was proposed for the 2008 Pilot Water Transfer by the District. Mr. Niblack responded to the MBK memorandum on July 14, 2008 accepting the six percent SFD for the 2008 Pilot Water Transfer. The six percent SFD was included in the District’s 2009, 2010, and 2014 water transfers. In 2015, the SFD for the District’s 2015 Water Transfer was increased to seven percent. The seven percent SFD was also included in the District’s 2018 Water Transfer and is proposed by the District to be included in its 2020 Water Transfer.

At this time, the District is unaware of any additional technical analysis that has been completed to evaluate the SFD prior to this proposed water transfer. The District is within the North American Subbasin (NASb) and is participating as a Groundwater Sustainability Agency (GSA). Collectively, the GSAs within the NASb are currently developing a Groundwater Sustainability Plan (GSP) in accordance with the Sustainable Groundwater Management Act (SGMA). Groundwater data has been collected and will continue to be collected for modeling purposes through the SGMA process. SGMA requires that GSPs assess various sustainability indicators, including depletions of inter-connected surface waters. This assessment will assist with the determination of the SFD for future water transfers by the District. The quantification of surface and groundwater interaction is extremely technical and complicated. In addition, DWR is currently developing a groundwater model (SVSim). Once this model has been developed, calibrated, and thoroughly reviewed by others, it is the District’s understanding that the model may be available to assess streamflow depletions relative to water transfers. To evaluate and possibly change the SFD at this late date would be without adequate time to address the level of complexity. In addition, the District is unaware of new information that would necessitate a change to the SFD, consistent with water transfer discussions held between water transfer participants, DWR, and Reclamation for 2020 Water Transfers. Further, a change to the SFD has the potential to disrupt the arrangements made and the opportunity to transferring water to areas of water supply deficiencies.

State Water Board Response:

The July 3, 2008 memorandum to Mr. Niblick (2008 Memo) primarily summarizes technical analyses related to a Sacramento Valley Water Management Program EIS/EIR<sup>2</sup> (SVWMP EIS/EIR), how that EIS/EIR doesn't support a 10% SDF proposed by DWR, and modeling of pumping by Yuba County Water Agency (YCWA) for the SVWMP EIS/EIR that indicated a six percent depletion factor should also be applied to the District due to the District's proximity to YCWA. The District states it is not aware of additional technical analysis that has been completed to evaluate SDF. However, there is more recent analysis available related to Reclamation's Long-Term Water Transfers Environmental Impact Statement / Environmental Impact Report (Transfer EIS/EIR). This document was published in October 2019 and specifically considers South Sutter Water District as part of the Feather River Area of Analysis. DWR and Reclamation rely on modeling used to support the Transfer EIS/EIR to apply a minimum 13 percent SDF to each temporary transfer. The Transfer EIS/EIR and the current version of the Draft Technical Information have been published since approval of the District's most recent transfer. In light of the above, the transfer is conditioned with a 13 percent SDF.

As described above, this transfer relies on making water available through groundwater substitution. In order to avoid injury to DWR's water rights, the transfer is conditioned that the District's groundwater substitution proposal is subject to the evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the Draft Technical Information and the requirements contained within related to groundwater substitution.

### **3.5 Comments of South Delta Water Agency**

By email, dated April 28, 2020, Mr. John Herrick representing the SDWA commented on the proposed transfer. SDWA cited Water Code Section 1725 that the water transferred be that which "would have been consumptively used or stored" and stated that the District's notice is specified as being of stored water and appears the District will still consume the same amount of water by pumping groundwater. SDWA also indicated the wording of the notice is awkward, and that they may be wrong in that there will be groundwater substitution.

State Water Board Response:

As described above, the District is making water available through groundwater substitution, where the District's agricultural customers will forego deliveries of surface water delivered under License 11118 and will instead pump groundwater. This will not

---

<sup>2</sup> It is assumed the 2008 Memo is using the undefined acronym EIS/EIR to refer to an Environmental Impact Statement / Environmental Impact Report.

result in an increase in consumptive use. The District's petition states that in the absence of the transfer, all of the water proposed for transfer would be delivered to its agricultural customers.

### **3.6 Comments of Aqualliance, California Impact Network, and California Sport Fishing Alliance (CSPA)**

By email, dated June 24, 2020, Aqualliance, California Impact Network, and CSPA (Parties) submitted combined comments on the proposed transfer. The Parties stated that: (1) the transfer does not best serve the public interest, (2) is contrary to law, and (3) has an adverse environmental impact. Due to these reasons, the Parties ask that the Division not approve this temporary transfer.

More specifically, the Parties state that the State Water Board must act on its public trust obligation to safeguard the trust resources by requiring a public trust analysis and in light of the fact that the District transferred water in 2008, 2009, 2010, 2014, 2015, and 2018 and proposes to transfer water in 2020, these transfers represent long-term transfers and should not be exempt from CEQA. The parties state that the CEQA analysis should address three areas:

- Hydrologic Conditions: The Parties stated that the petition failed to reveal the condition of the groundwater basin that is dependent on groundwater substitution for the transfer. The Parties further state that the SGMA classified the North American Basin as a high priority basin in 2019 and that multi-year transfers, such as those being carried out by the petitioner, necessitate full disclosure of groundwater conditions in and around the project area. The Parties state that long-term groundwater and streamflow monitoring should have been done for all previous transfers and asked for any information that has been compiled on hydrological impacts since 2000.
- Streamflow Depletion: The Parties state that the SDF, referenced in Section 1.2, is nearly half of the SDF recommended in the Draft Technical Information and requests that the District apply a SDF of at least 13 percent or justify the seven percent SDF through site-specific analysis.
- Subsidence: The Parties stated that damage from both dropping groundwater levels and subsidence can be severe, permanent, and complicated. The Parties asked if the District has conducted subsidence monitoring for past transfers and whether they plan on conducting monitoring for this transfer. They request that subsidence monitoring be conducted for all groundwater substitution transfers and that the information be made available to the public, preferably in a CEQA analysis.

### State Water Board Response:

The responses by the District and the State Water Board provided above in sections 3.1 through 3.5 address a majority of the concerns raised by the commenters related to public trust, stream depletions, and effects on fish and wildlife. Additional information pertaining to the Parties comments is also provided in section 1.2. As described below in Section 5.0, 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).

Water Code section 1735 et seq. authorize the State Water Board to consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use only for any period in excess of one year and are subject to CEQA. Because the proposed 2020 water transfer is for a one-year duration or less, it does not meet the criteria for a long-term transfer pursuant to Water Code section 1735. Water Code section 1729 provides that temporary changes under Water Code section 1725 et seq. are exempt from CEQA.

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

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

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

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

To provide water for the transfer, the District proposes to forgo distribution of up to 10,700 AF of water stored at the Reservoir which the District anticipates would have been consumptively used by the District’s customers during July, August, and September 2020. Customers within the District’s service area utilize stored surface water provided by the District to meet irrigation requirements. When additional water is

necessary above the amount of water received from the District, the District's customers meet those needs with groundwater pumping.

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

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

Water proposed for the transfer consists of surface water released from the Reservoir made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. The order is conditioned that 13 percent of the additional groundwater pumping has the potential to affect streamflow. This Order limits the amount of water available for transfer to 87 percent of the surface water released from the Reservoir.

In general, the transfer of water that would otherwise be stored or consumptively used will not result in injury to other legal users of water. In the absence of the transfer, the District would have released the surface water for delivery to its service area or retained the water in storage.

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

The District adopted the South Sutter Water District Groundwater Management Plan (Plan) in 1995 and was subsequently updated in 2009. The District is also required to submit periodic reports on groundwater conditions to the State Water Board pursuant to Order WR 2000-10. The most recent report, dated January 15, 2020, indicates a lack of long-term overdraft or subsidence, based on the data provided in the report.

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

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

Before approving a temporary change due to a transfer or exchange of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Wat. Code, § 1727, subd. (b)(2).). The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding concerns regarding creation of false fall attraction flows and increased water temperatures during the month of September that could negatively impact fall run Chinook Salmon rearing, and that proper basin management to avoid potential future impacts to GDEs resulting from groundwater substitution transfers, which is discussed in Section 3.2 of this order. 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 general, North of Delta transfers result in an incremental increase in instream flows between the Petitioner's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and does not result in false fish attraction flows to streams not suited for fish rearing. To ensure the transfer will not impact fishery resources, the District is required to adhere to a protective water transfer release schedule developed with CDFW. The transfer will also be subject to Biological Opinions issued by the USFWS and the NMFS under the federal Endangered Species Act.

Rediversion of water at the Banks Pumping Plant and San Luis Reservoir pursuant to this Order is subject to compliance by the operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations. Rediversion of water at the Banks Pumping Plant and San Luis Reservoir pursuant to this Order is also subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181 to 187 of D-1641, or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641.



In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## **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 sections 1725 and 1745.10, and therefore I find as follows:

I conclude that, based on the available evidence:

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

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petition filed by the South Sutter Water District (District) for temporary change for the transfer of up to 10,700 acre-feet (AF) of water under License 11118 is approved.

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

1. The transfer of water is limited to the period commencing July 1, 2020 and continuing through September 30, 2020. The District shall comply with the California Department of Fish and Wildlife (CDFW) approved release schedule, dated June 15, 2020, for the timing of transfer water releases as a condition of

the transfer. Any changes to the release schedule shall be approved by CDFW prior to occurring.

2. Refill criteria shall be developed for the 2020 water transfer by October 15, 2020, subject to approval by the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation), unless a written exemption from this requirement is provided by Reclamation. Documentation that acceptable refill criteria or an exemption have been agreed to by DWR, Reclamation, and the District shall be submitted to the Deputy Director, Division of Water Rights within 15 days of the date of execution of the agreement. The refill criteria shall govern the conditions under which refill of the water released pursuant to this Order occurs, including the conditions under which refill impacts may accrue and how the District shall rectify any impacts. At the conclusion of refilling water in the Reservoir for the water released pursuant to this Order that would have remained in storage, if a refill impact has occurred, the District shall release the amount of water identified in the refill criteria to DWR and Reclamation in a manner and on a schedule agreed to between the District, DWR, and Reclamation. Any release required pursuant to this paragraph shall be conducted in a manner that does not injure any legal user of water and does not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. Petitioner shall comply with all groundwater substitution provisions contained in the conveyance agreement pursuant to the Draft Technical Information, between DWR, Reclamation, and the District as a condition of transferring water pursuant to this Order.
4. The amount of surface water transferred pursuant to this Order shall not exceed 87 percent of the amount of reservoir release for the transfer.
5. The place of use under License 11118 is temporarily amended to include a portion of the State Water Project service area (as shown on Maps 1878 - 2 and 3 on file with Application 5630). Water transferred pursuant to this Order shall only be delivered to Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, Tulare Lake Basin Water Storage District, Santa Clarita Valley Water Agency, and Alameda County Water District.

6. The following points of rediversion shall be temporarily added to License 11118. The water diverted at these facilities is limited to the quantities made available as transfer water, as specified above:
  - a. Banks Pumping Plant via the Clifton Court Forebay – North 2,126,440 feet and East 6,256,425 feet, California Coordinate System of 1983, Zone 3, being within NW¼ of SE¼ of projected Section 20, T1S, R4E, MDB&M.
  - b. San Luis Reservoir – North 1,845,103 feet, East 6,393,569 feet, California Coordinate System of 1983, Zone 3, being within SW¼ of SE¼ of projected Section 15, T10S, R8E, MDB&M.
7. Municipal and Industrial are temporarily added as purposes of use.
8. Rediversion of water at Banks Pumping Plant and San Luis Reservoir is subject to compliance by the operators with the objectives currently required of DWR and Reclamation set forth in Tables 1, 2, and 3 on pages 181-187 of D-1641, or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641. Rediversion of water is also subject to compliance by DWR and Reclamation with all applicable BOs and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

Rediversion of water at the Banks Pumping Plant and San Luis Reservoir 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.
9. During the period of the transfer, the District shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the District.
11. Within 90 days of completion of the transfer, the District shall provide the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
  - a. General locations where the transferred water was used;
  - b. The daily average rate water is made available for transfer pursuant to this Order;

- c. An accounting by average release rate and total volume of any storage releases and deliveries;
- d. The daily average streamflow measured at the nearest representative gaging station on the Bear River;
- e. The daily average pumping rate of groundwater pumped by the District or its customers, in excess of that which would have been pumped in the absence of this transfer; and
- f. Groundwater elevations within the vicinity of the District prior to the proposed transfer.

The District shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2020, a map defining the groundwater elevations within the vicinity of the District until such time as these elevations correspond to pre-transfer levels.

12. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
13. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of 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.

14. This Order does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a “take” will result from any act authorized under this Order, right holder shall obtain any authorization for an incidental take prior to commencing the transfer of water. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

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

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: JUN 29 2020