

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT PERMIT 13856 (APPLICATION 18085)
OF PLACER COUNTY WATER AGENCY**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO
21,053 ACRE-FEET OF WATER TO WESTLANDS WATER DISTRICT**

SOURCES: Duncan Canyon, North Fork American River, Middle Fork American River,
Rubicon River

COUNTIES: Placer and Sacramento

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On June 4, 2021, Placer County Water Agency (Placer CWA or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change (Petition) involving the transfer of water under water right Permit 13856 (Application 18085), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 21,053 acre-feet (af) of water will be transferred to Westlands Water District (Westlands). The temporary changes approved pursuant to Water Code section 1725 under this petition may be effective until September 30, 2021.

1.1 BACKGROUND

The Middle Fork American River Project (MFP)

Placer CWA owns and operates the MFP and holds appropriate water rights for the MFP pursuant to Permits 13856 and 13858 (Applications 18085 and 18087). The permits allow for a total direct diversion amount of 2,025 cubic feet per second (cfs) from November 1 of each year to July 1 of the succeeding year from North Fork American River and for a combined diversion to storage of 315,000 af per annum of MFP water held in two storage reservoirs (French Meadows Reservoir and Hell Hole

Reservoir). The MFP is a multi-purpose project designed to conserve waters of the Middle Fork American River (MFAR), the Rubicon River, and tributaries for domestic, municipal, industrial, recreational, and irrigation uses as well as for hydroelectric power generation. The MFP's principal project features include French Meadow Reservoir and Hell Hole Reservoir (French Meadows Reservoir is located on the Middle Fork American River and Hell Hole Reservoir is located on the Rubicon River), five associated diversion dams (Duncan, North Fork Long Canyon, South Fork Long Canyon, Middle Fork Interbay, and Ralston Afterbay), and five power plants (French Meadows, Hell Hole, Middle Fork, Ralston, and Oxbow).

Placer CWA has determined that it has at least 21,053 af of surplus water stored in the MFP. The determination was reached by reviewing current MFP reservoir storage levels, projected inflow, and modeled project operations data for 2021. As of June 1, 2021, Placer CWA had approximately 194,000 af of water (67 percent of average year-to-date) held in storage in its MFP reservoirs.

Placer CWA would be solely exercising Permit 13856 for the proposed transfer of up to 21,053 af of water to Westlands.

Westlands Water District

Westlands was formed in 1952 and encompasses more than 600,000 acres of farmland in western Fresno and Kings Counties. According to information provided in the Petition, Westlands is interested in augmenting its water supply with Placer CWA's transfer water because the Central Valley Project (CVP) south of San Francisco Bay/Sacramento-San Joaquin Delta (Delta) contracted water allocations are zero percent in 2021. The additional water would provide Westlands' agricultural customers with a water supply for irrigation of crops.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by releasing water that would otherwise be stored in Hell Hole Reservoir and French Meadows Reservoir under Permit 13856.

2.1 Reservoir Release

Under a reservoir release transfer, surface water supply is made available for transfer as a result of a petitioner releasing water held in storage that would remain in storage if the transfer were not to occur. The transfer proposed by Placer CWA involves water currently stored in Hell Hole Reservoir and French Meadows Reservoir. Following the transfer, the reservoirs may have additional storage capacity that will result in diversions that would not occur in the absence of the transfer, referred to as a reservoir refill. Reservoir refill has the potential to injure other legal users of water if it occurs when the

Delta is in balanced conditions¹ or there is limited streamflow in the channel from which the water is being transferred.

Refill criteria developed in conjunction with the Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) can ensure that future refill of the reservoir space made available in Hell Hole Reservoir and French Meadows Reservoir from this transfer does not adversely impact other legal users of water.

3.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER

3.1 Description of the proposed temporary changes

In order to facilitate the transfer, Placer CWA proposes to temporarily add the following to Permit 13856:

- 1) CVP's Bill Jones Pumping Plant (Jones Pumping Plant) as a point of rediversion, located within NE $\frac{1}{4}$ or SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M;
- 2) State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay as a point of rediversion, located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M;
- 3) San Luis Reservoir as a point of rediversion, located within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M; and
- 4) Service area of Westlands as an additional place of use.

Placer CWA proposes to transfer up to 21,053 af of water ("transfer water") currently stored in the MFP, which includes Hell Hole Reservoir on the Rubicon River and French Meadows Reservoir on the Middle Fork American River, to Westlands. The transfer water would be released from Hell Hole Reservoir, through Middle Fork Powerhouse, and rediverted to Ralston Afterbay and released to the Middle Fork American River via the Oxbow Powerhouse. Water from Oxbow Powerhouse flows down the Middle Fork American River to the North Fork American River and into Folsom Reservoir. Water from French Meadows Reservoir would be conveyed to Hell Hole Reservoir via the French Meadows – Hell Hole Tunnel for release from Hell Hole Reservoir.

¹ 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.

Subsequent release of the transfer water at Folsom Reservoir would be scheduled by Reclamation in cooperation with Westlands so that the proposed transfer would not disrupt normal CVP and SWP operations and would adhere to all required flow standards for the Lower American River (LAR).

After release from Folsom Reservoir, the transfer water would flow down the lower American and Sacramento Rivers and be rediverted at either the Banks or Jones Pumping Plants. Water diverted at either facility will be temporarily stored in San Luis Reservoir and then delivered via the San Luis Canal to the Westlands' service area.

For the purposes of the proposed transfer, Placer CWA will be solely exercising Permit 13856, which is described in Section 3.2. In absence of this transfer, the total 21,053 af of water would remain in storage in Placer CWA's MFP reservoirs.

3.2 Summary of Placer CWA's Permit

Permit 13856, which has a priority date of April 7, 1958, authorizes direct diversion and combined storage/consumptive use of MFP water as follows: (a) direct diversion of 1,225 cfs from November 1 of each year to July 1 of the succeeding year from North Fork American River; (b) 25,000 af by offstream storage, at a maximum rate of diversion of 400 cfs, from November 1 of each year to July 1 of the succeeding year from Duncan Creek to French Meadows Reservoir; (c) 95,000 af by storage from November 1 of each year to July 1 of the succeeding year from the Middle Fork American River at French Meadows Reservoir; and (d) 129,000 af by storage from November 1 of each year to July 1 of the succeeding year from the Rubicon River at Hell Hole Reservoir. The authorized purposes of use include irrigation, municipal, industrial, recreational, and incidental domestic use. The authorized place of use is shown on Placer CWA's map set dated July 31, 1996 and as amended by an order dated May 24, 2000. Permit 13856 expired on December 1, 2007 and on January 7, 2008, Placer CWA filed a petition for extension of time. The petition for extension of time is currently pending before the State Water Board.

4.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

On May 10, 2021, Governor Gavin Newsom declared a State of Emergency for the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watershed Counties due to drought. The signed proclamation modifies noticing requirements and notice duration for temporary transfers of water. As such, the Division noticed the Petition on June 14, 2021 to the Division's website and via the State Water Board's electronic subscription mailing list pursuant to modified Water Code section 1726(d). The comment deadline was June 29, 2021.

Timely comments on the transfer were received from: 1) Mr. Richard Morat; 2) the California Department of Fish and Wildlife (CDFW); 3) the Central Delta Water Agency (CDWA); and 4) Reclamation. A late comment was received from DWR on July 20, 2021. Petitioner provided responses to timely comments by letter and email to the Division dated July 7, 2021 and July 22, 2021, respectively, and are available in the record for Permit 13856.

4.1 Comments of Mr. Richard Morat

By email dated June 15, 2021, 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 beneficial uses. Mr. Morat also commented that the transfer should be conditioned for only essential uses in 2021, and that the transfer of water be conditioned such that replenishment of the transferred amount be timed and scoped to the affected rivers 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, and thereafter during the refill period.

The State Water Board is supportive of transfers to provide water where it is needed. It is anticipated that Westlands will receive zero (0) percent of their CVP allocation this year.

The proposed temporary transfer by Placer CWA is for water that would have otherwise been stored pursuant to their permit. By approving the transfer, additional water will flow down the American River to the Sacramento River and the Delta. Furthermore, Reclamation is responsible for fulfilling its in-delta and export commitments, consistent with D-1641, related to any storage releases from Folsom Lake. In light of the above explanation, it is not anticipated that this transfer will result in unreasonable effects on fish and wildlife, other instream beneficial uses, or other public trust resources.

4.2 Comments of CDFW

By letter dated June 28, 2021, CDFW commented on the proposed transfer. CDFW stated concerns over the potential cumulative adverse impacts on the sensitive anadromous and/or resident fisheries within the LAR from water transfer changes to the quantity, timing, and duration of flow. CDFW indicated that releases out of the Folsom Reservoir can substantially influence conditions, including temperature, in the LAR. Similarly, CDFW stated increasing reservoir releases in spring may encourage emigration of juvenile salmonids and improve survival whereas a transfer completed in summer or fall may cause rearing steelhead to redistribute to less desirable habitat.

CDFW recommended working closely with Reclamation and regulatory agencies on optimizing releases to provide stable flows across summer and fall months at a targeted release rate that minimizes warming in Lake Natoma.

CDFW indicated the alteration of volume, timing, and temperature of stream flow associated with the marginal increase of water released into the MFAR and ultimately the North Fork American River under this transfer could impact foothill yellow-legged frog (FYLF) during vulnerable life stages. CDFW stated tadpole rearing sites require protection from unpredictable scouring flows and appropriate ramp down rates to prevent stranding and desiccation, and that lower water velocity and shallower water depth habitats are more suitable for tadpole rearing sites. CDFW recommended Placer CWA provide a detailed water transfer release schedule that identifies both regular hydropower operation releases as well as marginal additional water transfer releases, and that Placer CWA demonstrate the overall schedule of releases and ramping rates align with MFAR Federal Energy Regulatory Commission (FERC) Project No. 2079--069 license conditions.

Placer CWA Response:

Placer CWA indicated that transfer releases out of Folsom Reservoir, including base operations will provide a slight benefit to temperatures in the LAR as shown in the temperature modeling (Attachment G of Petition). In addition, Placer CWA stated that the magnitude of releases from Folsom Reservoir are well within range of normal operational changes as Reclamation makes regular adjustments to Folsom Reservoir operations to meet all beneficial uses and Delta water quality objectives. Placer CWA stated that transfer releases from Folsom Reservoir will ensure that flow and temperature conditions are consistent with existing state and federal regulations, including federal and State Endangered Species Act (ESA) requirements, and all Biological Opinions.

Placer CWA also pointed to Attachment G of the Petition in relation to cold water in the North Fork America River and Folsom Reservoir. Placer CWA stated it is working in close coordination with Reclamation to accomplish the transfer and has provided modeling outputs to help facilitate optimal Folsom Reservoir operations with regards to blending and meeting optimal temperature targets in the LAR.

Placer CWA also pointed to information contained in Attachment E of the Petition and stated that release of transfer water from Oxbow Powerhouse will maintain the range of flows that occur normally in the MFAR in the summer months (160 cfs – 1,050 cfs) while maintaining the ramping rates (Appendix A; Condition No. 24) and conditions contained within Placer CWA's FERC license (Project No. 2079-069) throughout the transfer period.

State Water Board Response:

The Order is conditioned to require ongoing concurrence from Reclamation that the transfer will not impact the cold-water pool in Folsom Reservoir or operations needed to protect health and safety, which will ensure the transfer actions are coordinated with Reclamation and CVP operations. As summarized in the FERC Order Issuing New License for Project No. 2079-069 dated June 8, 2020, Placer CWA prepared the *Supplemental Biological Assessment on the Potential Effects of the Placer County Water Agency's Middle Fork American River Project on Sierra Nevada Yellow-legged Frog* (Supplemental BA). The Supplemental BA was filed on June 9, 2016 and found that the nearest designated critical habitat unit of FYLF is located about one mile upstream of Hell Hole Reservoir. Any change in flows resulting from the transfer will occur downstream of Hell Hole Reservoir and therefore, no impacts to FYLF are anticipated. The transfer is conditioned to require compliance with all existing regulatory requirements, which includes conditions in Placer CWA's FERC license for Project 2079-069.

4.3 Comments of CDWA

By letter dated June 29, 2021, CDWA commented on the proposed transfer. Summaries of CDWA's comments follow.

1. CDWA believes no transfer of water for export from the Delta watershed should be allowed unless D-1641 requirements, without temporary urgency changes, will be met.
2. CDWA believes that the noticing requirements pursuant to Water Code section 1726 were not met as notices were not provided to specific legal water users in the watershed who could be affected by the proposed transfer.

3. CDWA claims that the State Water Board only addressed the potential impacts to DWR and Reclamation water rights in its Refill agreement while excluding other legal water users.
4. CDWA asserts that the transfer of water exacerbates the contribution of selenium runoff in the San Joaquin River. CDWA further states that the impacts to species and water quality caused by transfers in drought conditions likely cause more harm than the standard CVP and SWP operations in conformance with their standard conditions and constraints of their permits and biological obligations. Additionally, CDWA indicated that no analysis was provided regarding the increased accretions of saline water to the San Joaquin River, application of groundwater, or cumulative analysis of applied water within the place of use of Westlands.
5. CDWA indicated that Placer CWA has not provided adequate information to show that the proposed water transfer is excess stored water originally diverted in compliance with Permit 13856.
6. CDWA believes that the State Water Board's June 1, 2021, approval of Reclamation and DWR's Temporary Urgency Change Petition (TUCP) to change D-1641 related terms and conditions contained in the CVP and SWP water rights and the potential for similar TUCPs in subsequent dry years will complicate making the necessary findings to approve Placer CWA's transfer.
7. CDWA states that the State Water Board's June 15, 2021 *Notice of Unavailability of Water for Post-1914 Water Right Holders and Warning of Impending Water Unavailability for Pre-1914 and Riparian Claimants in the Sacramento-San Joaquin Delta Watershed* implied that post-1914 appropriators in the Delta cannot divert water which consists of storage releases necessary to meet other downstream purposes, such as salinity control in the Delta. CDWA believes that the release of water from storage is not necessarily water to which others are entitled in preference to Delta landowners' diversion under post-1914 licenses and other rights. CDWA also states that the storage of water that would have otherwise flowed into the Delta potentially creates a detriment that must be offset by release of such water or other water at a later period, and the water needs within the watersheds of origin should not be deprived to facilitate the export of water from the Delta.
8. CDWA states that Westlands is a party to other transfers this year, including a transfer under Reclamation and DWR water rights. CDWA believes that the State Water Board analyzes petitions for temporary changes involving transfers of water in a piecemealed fashion resulting in cumulative impacts being redirected to non-parties to the transfers and to other legal users of water (including third party groundwater impacts), the public trust and threatened and

endangered species. CDWA ultimately believes that due to piecemealing, a proper analysis of the transfer pursuant to Water Code section 1725 et seq. is precluded.

Placer CWA and State Water Board Response:

1. The June 1, 2021 TUCP approval Order applies only to Reclamation and DWR water rights and does not involve Placer CWA's Permit 13856. Further, Water Code section 1727 subdivision (e) indicates that when determining whether to approve a temporary change involving a transfer, "...the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change." Reclamation and DWR filed the TUCP in response to the 2021 drought emergency. Reclamation and DWR did not file the TUCP to address potential impacts from Placer CWA's proposed transfer. Therefore, the State Water Board cannot deny Placer CWA's petition for temporary changes based on Reclamation and DWR filing of the TUCP to achieve compliance with D-1641.
2. As discussed in Section 4.0 above, the Governor's signed drought proclamation modified the noticing requirements for temporary transfers of water by suspending the requirements for written notice and newspaper publication in Water Code section 1726(d). The Division noticed the Petition in the Division's website and via the State Water Board's electronic subscription mailing list pursuant to modified Water Code section 1726(d). Therefore, the Division has complied with the noticing requirements pursuant to modified Water Code section 1726(d).
3. DWR and Reclamation require parties proposing stored water transfers to develop a reservoir refill agreement to ensure that the refill of stored water that is transferred will not adversely affect downstream water users if the refill is done at a time when other downstream legal users of water could have utilized reservoir releases. DWR and Reclamation refill criteria generally restrict transferees' refill periods to when the refill quantity is in excess of the needs of any legal user of water downstream of the point of diversion. Reports of Permittee provide diversion and use information as required by California Code of Regulations (CCR), title 23, section 925, which requires specific accuracy standards in measurement and certification by the Permittees of meeting those standards. As discussed in Section 7.1 below, the State Water Board has no reason to question the validity of the recent storage quantities under Permit 13856 reported by Placer CWA.

4. Placer CWA pointed out in its July 22 response that Revised D-1641 states, “Lands within WWD’s service area do not discharge drainage water, tailwater, or tile water outside the boundary of WWD.”² Relative to CDWA’s claim that transfers during drought conditions could cause increased harm to species and water quality in the Delta, this Order includes a condition limiting redirection of water (i.e. transfer or export of water) at the Jones Pumping Plant to compliance by Reclamation and DWR with the objectives currently required of Reclamation and DWR in D-1641, including the June 1, 2021 State Water Board Order approving the TUCP temporarily modifying conditions in D-1641. The redirection of water at Jones Pumping Plant 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. The transfer water would have no potential impact on return flows. Further, redirection of water at Jones Pumping Plant to facilitate the transfer must comply with all current regulatory requirements which are intended to be protective of aquatic species and water quality in the Delta.
5. Water Code section 1725 indicates that 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 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.

In Placer CWA’s July 7 response, Placer CWA indicated that the Petition is consistent with §81-5(a) of the Placer CWA Act. Pursuant to §81-5(a) of the Placer CWA Act, on June 3, 2021, the Placer CWA Board of Directors adopted Resolution No. 21-21 declaring a surplus of MFP water for 2021. Placer CWA claimed that all water stored in Placer CWA’s MFP reservoirs pursuant to water right Permit 13856 prior to June 15, 2021 was lawfully diverted to storage and consistent with the Water Code. Placer CWA further indicated that absent the proposed transfer, the water would remain in storage for future use by Placer CWA and would not be available to other downstream water users.

As discussed in Section 7.1 below, the State Water Board believes adequate information has been included in the Petition, and Placer CWA’s Reports of Permittee for Permit 13856, to indicate that Placer CWA has adequate stored water to allow a transfer of up to 21,053 af to Westlands.

6. Permit 13856 is not subject to Reclamation and DWR’s 2021 TUCP request to change terms and conditions of CVP and SWP water rights.

² Revised D-1641, page 109

7. Permit 13856 does not require, and there are no other State Water Board orders in place that require, Placer CWA to release (and abandon) its water previously diverted to storage to provide water for downstream Delta diverters.
8. Westlands is purchasing water from several parties to provide water supplies to its service area this year since Fresno County has declared a local emergency due to extreme drought conditions. Water Code section 1725 et. seq. requires an analysis based on each individual water right that is subject to a change petition and the analysis required is focused on the water right holder petitioning for the change. Consequently, the State Water Board believes regardless of whether Westlands will be the recipient of several water transfers, each transfer will be evaluated appropriately as required pursuant to Water Code section 1725 et. seq.

4.4 Comments of Reclamation

By letter dated June 29, 2021, Reclamation commented on Placer CWA'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 Placer CWA, Reclamation, and DWR.
- The transfer shall be carried out in compliance with all existing regulatory constraints in the Delta and shall not cause harm to other legal water users or impact water quality.
- Placer CWA shall coordinate with Reclamation on the Folsom operations schedule as part of on-going real-time operations for the CVP. No water can be transferred unless Reclamation concurs that the transfer will not result in increased risks of negative impacts to the cold-water pool at Folsom Reservoir resulting from incoming transfer water.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
- If necessary, Westlands will execute a Warren Act contract with Reclamation prior to transfer of water under Permit 15836 into Folsom Reservoir.
- Execution of a Warren Act contract is required for Placer CWA to use the Jones Pumping Plant.

Placer CWA Response:

Placer CWA indicated that they do not object to the conditions proposed by Reclamation. However, Placer CWA stated that Reclamation cannot simply claim negative impacts to the cold-water pool at Folsom Reservoir without justification as Folsom Power Bypass is already part of the baseline CVP operations discussions for Fall 2021. Thus, Placer CWA requested that Reclamation provide a detailed analysis demonstrating negative impacts to Folsom Reservoir's cold-water pool as a result of Placer CWA's incoming transfer water, if applicable.

State Water Board Response:

To avoid injury to the water rights and operations of the CVP, this Order includes a requirement for Placer CWA to obtain a reservoir refill agreement with Reclamation and DWR prior to initiating the transfer. Additionally, the Order includes a condition requiring Placer CWA to obtain regular confirmation from Reclamation during the transfer period that the cold-water pool in Folsom Reservoir and operations to protect health and safety are not being negatively impacted by Placer CWA's transfer. Further, this Order includes a condition that requires Placer CWA to ensure that any required Warren Act contract with Reclamation is executed prior to use of the Jones Pumping Plant and Folsom Reservoir for delivery of water to Westlands. This Order also includes conditions requiring that the transfer take place only during balanced conditions in the Delta.

4.5 Comments of DWR

By letter dated July 20, 2021, DWR commented on the proposed transfer. DWR requested that the Order approving the proposed transfer includes the following conditions to protect DWR's water rights and SWP operations, including DWR's ability to meet all applicable regulatory requirements for the Delta.

- The Petitioner must provide DWR and Reclamation the baseline operation plan of Hell Hole Reservoir;
- The transfer must be performed in compliance with existing and/or amended regulatory requirements for the American River and the Delta;
- An executed refill agreement between the Petitioner, DWR, and Reclamation be in place prior to the transfer. The refill shall not occur if the Delta is in balanced or restricted conditions; and
- The Petitioner must provide DWR with copies of any reports filed with the State Water Board pursuant to any transfer order, and monthly refill accounting reports after the transfer is complete.

DWR further recommends that transfer be conditioned to require the Petitioner to work closely with Reclamation during the transfer period to ensure that the cold-water pool in Folsom Reservoir is not negatively impacted by the transfer.

State Water Board Response:

As indicated in Placer CWA's response in Section 4.2, the transfer operations plan is provided in Attachment E of the Petition. The requested and recommended conditions by DWR are addressed by the State Water Board's response in Section 4.4 and are included with this Order.

5.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000 et seq.) The State Water Board will file a Notice of Exemption.

6.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

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).

7.0 REQUIRED FINDINGS OF FACT

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

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer 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 absence of the proposed transfer, Placer CWA indicated the transfer water would have remained in storage in Hell Hole Reservoir and French Meadows Reservoir. Placer CWA indicated that its combined end of year storage target is 130,000 af in 2021 without the proposed transfer.

The State Water Board conducted an independent evaluation of its records. The combined annual use under Permit 13856 was 25,384 af, 24,435 af, 25,509 af, 25,189 af, and 48,438 af during 2016, 2017, 2018, 2019, and 2020, respectively. The maximum authorized storage is 249,000 af under Permit 13856. According to the Petitioner, in 2021 the combined end of year storage in the absence of the transfer would be 130,000 af. The end of year storage target with the transfer is 108,947 af.

In light of the above, and in accordance with Water Code section 1726, subdivision (e), the State Water Board finds that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

7.2 No Injury to Other Legal Users of the Water

Before approving a temporary change due to a transfer or exchange of water, 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).)

Thus, with respect to the “no injury” inquiry under Water Code section 1727, the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board’s inquiry is the effect of the change on the rights of others. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her *right* to use the water, whatever the source of that right may be.” (Id. at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*)

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. The water proposed for transfer pursuant to this temporary change consists of water previously stored in Hell Hole Reservoir and French Meadows Reservoir pursuant to Permit 13856. In the absence of the proposed transfer, the water would remain in storage for future use by Placer CWA and would not be available to other water users. Further, the release of the water from storage at Hell Hole Reservoir and French Meadows Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream. Additionally, this Order is conditioned to only allow transfer of water collected to storage prior to issuance of the Order.

The refill criteria provide for an accounting of the refill of Hell Hole Reservoir and French Meadows Reservoir resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Delta is subject to repayment to DWR and Reclamation, according to a schedule agreed to by Placer CWA, DWR, and Reclamation.

Placer CWA will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Hell Hole Reservoir and French Meadows Reservoir created by the transfer will not reduce the amount of water that Reclamation, DWR, 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.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(1), the State Water Board finds that the proposed temporary changes would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

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

Before approving a temporary change in order to facilitate a transfer 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 Control Board (Central Valley Water Board) with a copy of the petition in accordance with CCR, title 23, section 794, subdivision (c). The Central Valley Water 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. CDFW provided comments regarding water quality and FYLF, which are discussed in Section 4.2 of this Order; the Order is conditioned to ensure the potential impacts raised by CDFW are avoided.

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 also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures or water quality.

The transfer will be subject to all applicable federal and State ESA 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. The transfer will also be subject to the conditions of the FERC license for Project No. 2079-069, which includes the Placer CWA facilities relied upon for the transfer.

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

8.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

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

9.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1725 et seq.

The State Water Board concludes that, based on the available information:

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 neither injure, nor unreasonably affect, any legal user of water, including 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 water or return flows.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 21,053 acre-feet (af) of water under Placer County Water Agency's (Placer CWA or Petitioner) Permit 13856 is approved.

All existing conditions of Permit 13856 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through September 30, 2021.
2. The following points of rediversion are temporarily added to Permit 13856:

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

California Coordinate System of 1983 (CCS83), Zone 3, 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.

Bill Jones Pumping Plant (Jones Pumping Plant):

CCS83, Zone 3, North 2,121,505 feet and East 6,255,368 feet, being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T1S, R4E, MDB&M.

3. San Luis Reservoir located at CCS83, Zone 3, 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 is temporarily added as a point of rediversion and place of storage for purposes of the transfer.
4. The place of use under Permit 13856 is temporarily expanded to include the service area of Westlands Water District (Westlands) as shown in Attachment C submitted with the Petition.
5. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies, including applicable conditions in the Federal Energy Regulatory Commission license issued for Project No. 2079-069. This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
6. Only water collected to storage prior to issuance of this Order may be transferred pursuant to this Order.
7. Transferrable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.
8. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
9. Rediversion of water at the Banks Pumping Plant or the Jones Pumping Plant is subject to compliance by the operators with the objectives currently required of Department of Water Resources (DWR) and U.S. Bureau of Reclamation (Reclamation) set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Resources Control 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 regulatory agencies applicable to these operations.

10. Rediversion of water at the Banks Pumping Plant or Jones Pumping Plant is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.
11. Petitioner shall ensure that Westlands has executed a Warren Act contract with Reclamation prior to transferring water into Folsom Reservoir under this Order, unless Reclamation states a Warren Act contract is not required. Petitioner shall provide confirmation from Reclamation and Westlands 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.
12. Water may not be transferred through the Banks Pumping Plant or Jones Pumping Plant until Placer CWA has executed a Refill Agreement between Reclamation, DWR, and Placer CWA to address potential refill concerns in Hell Hole Reservoir and French Meadows Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and Placer CWA 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 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. Placer CWA 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.
13. No water may be transferred under this Order unless Reclamation concurs that the transfer will not result in increased risks of negative impacts to either the cold-water pool at Folsom Reservoir or Reclamation operations needed to protect health and safety. Such concurrence by Reclamation may be given on a weekly basis or other time-step acceptable to Reclamation and may be rescinded based on new information available to Reclamation. If Reclamation determines that there are increased risks of negative impacts resulting from the Petitioner's water transfer, Petitioner shall request that Reclamation provide to the Deputy Director for Water Rights evidence demonstrating the increased risks of negative impacts. Petitioner shall provide documentation by email to the Deputy Director for Water Rights of any Reclamation approvals issued after the date of issuance of this Order. Petitioner shall coordinate with Reclamation on the Folsom operations schedule as part of on-going real-time operations for the CVP.

14. By December 15, 2021. Placer CWA shall provide the Deputy Director for Water Rights, and the Deputy Director for DWR, State Water Project one or more tables describing the transfer authorized by this Order. The table(s) shall include the following information:

- a. The general location of where water was delivered, and the acreage and/or population served by the water delivered to Westlands pursuant to this Order;
- b. The average daily release rates and corresponding volumes of water released from Hell Hole Reservoir and French Meadows Reservoir as a result of this transfer (reported on a daily basis);
- c. For each day of the transfer, the average daily release rates and corresponding volume of water released from Folsom Reservoir as a result of this transfer (reported on a daily basis);
- d. For each day of the transfer, the daily average rate of water diverted and daily volume of water diverted at the Banks Pumping Plant or Jones Pumping Plant pursuant to this Order;
- e. The daily amounts of water delivered to Westlands pursuant to this Order;
- f. The amount of the Refill Reservation as defined in the Refill Agreement (reported on a daily basis); and
- g. Recognizing that reservoir refill will occur after the transfer ends, monthly reporting of reservoir refill is not required during the transfer period. However, Placer CWA shall provide reservoir refill reporting in its Report of Permittee by April 1 of each year 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.

If any of the above required information is in the possession of DWR or Reclamation and has not been provided to Placer CWA in time for inclusion in a monthly or annual report, Placer CWA 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.

16. 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.
17. 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.
18. 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: JUL 28 2021