

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF LICENSE 1986 AND PERMITS 11885, 11886, AND 11887  
OF THE U.S. BUREAU OF RECLAMATION**

**PETITIONS FOR TEMPORARY CHANGE INVOLVING THE  
TEMPORARY TRANSFER OF UP TO 76,069 ACRE-FEET OF WATER  
FROM THE U.S. BUREAU OR RECLAMATION  
TO FRIANT WATER CONTRACTORS**

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SOURCES: San Joaquin River

COUNTIES: Fresno, Merced, Kings, Tulare, and Kern

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

**1. OVERVIEW**

On December 15, 2015, the U.S. Bureau of Reclamation (Reclamation) submitted four petitions under Water Code sections 1725-1732, to the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) for temporary change to add two points of rediversion. This will allow Reclamation to transfer up to 76,069 acre-feet (af) of dedicated instream flows (Restoration Flows) previously stored in Millerton Reservoir and/or taken under control at Friant Dam pursuant to direct diversion rights. If approved, Restoration Flows could be rediverted through Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID) facilities to the Delta-Mendota Canal (DMC) for reuse by Central Valley Project (CVP) contractors through direct delivery, exchange, and/or transfer.

In 2013, to facilitate implementation of the San Joaquin River Restoration Program (SJRRP), the State Water Board approved changes for long-term instream flow dedication and the rediversion of those flows at specified locations pursuant to Water Code section 1707. (See Order Approving Change and Instream Flow Dedication, October 21, 2013 [hereinafter referred to as "2013 Order"].) The 2013 Order anticipated that recapture and recirculation of flows may occur in the future at PID and BCID facilities. The temporary change petitions before the Division now relate only to the new points of rediversion not previously authorized in 2013.

Reclamation submitted a map showing the locations of the two proposed points of rediversion. BCID is located in the Delta downstream of Vernalis. PID is south of the Delta and upstream of Vernalis. Both PID and BCID are located downstream of the Merced River. The proposed transfer operations with rediversion at the BCID Pumping Plant would be outside the current assumptions of the State Water Board Revised Water Right Decision 1641 (D-1641). Such an operation would increase Delta Inflow and Net Delta Outflow Index (NDOI) as currently defined by D-1641, Figure 3, Page 190. Therefore, the petitions include a request to modify NDOI consistent with the purpose of the transfer.

The proposed transfer would assist Reclamation in meeting the two primary goals of the San Joaquin River Settlement Act to: (1) restore and maintain fish populations, including salmon, in good condition in the mainstem of the San Joaquin River below Friant Dam; and (2) reduce or avoid adverse water supply impacts on all of the Friant Contractors that may result from Restoration Flows. The transfer period begins on the date of State Water Board approval and continues for up to one year. The transfer will be subject to existing provisions in the 2013 Order, Reclamation's License 1986 and Permits 11885, 11886, and 11887, and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

## **2. CRITERIA FOR APPROVING THE TEMPORARY TRANSFER**

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 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, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1725.)

## **3. PROCEDURE**

On January 8, 2016, the Division posted public notice of the petitions for temporary change on the Division's website and by the State Water Board's LYRIS e-mail notification system. In addition, on January 8, 2016, Reclamation noticed the project via publication in the Fresno Bee newspaper and mailed the notice via first class mail to interested parties. The comment deadline was January 25, 2016. Comment letters were received from San Joaquin River Exchange Contractors Water Authority (SJRECWA), Stockton East Water District, Wonderful Orchards, The Bay Institute and Natural Resources Defense Council (NRDC), San Joaquin Tributaries Authority (SJTA), South Delta Water Agency, and San Luis & Delta-Mendota Water Authority (SL&DMWA). A comment letter from Friant Water Authority was received on February 5, 2016 after the comment deadline. The State Water Board requested additional time to process the petitions due to the many issues raised by the commenters, and Reclamation agreed to extend the time to process until March 23, 2016. In addition, the State Water Board requested that Reclamation respond to the comments, and it did by email dated February 16, 2016.

Reclamation's water rights subject to the temporary transfer include License 1986, and Permits 11885, 11886, and 11887, and are available online through the Division's eWRIMS electronic database. The present place of use of water diverted under Reclamation's permits is the entire consolidated CVP place of use shown on maps on file with the State Water Board. Under Reclamation's rights, water may be used for irrigation, domestic, municipal, industrial, salinity control, water quality control, fish and wildlife enhancement, stockwatering, recreation, and incidental power. The transfer has been reviewed by Division staff to ensure that the transfer quantities and season are within the scope of the existing rights and that the source of transfer water is an authorized source under the water rights. The petitions request the temporary addition of the points of redirection to be added as follows:

Intake facility for PID, Located N 2,004,071 ft and E 6,392,268 ft California Coordinate System, Zone 3, NAD 83, being within the SW ¼ of Section 15, T5S, R8E, M.D.B.& M.

Intake facility for BCID, Located N 2,083,018 ft and E 6,327,281 ft California Coordinate System, Zone 3, NAD83, being within the SE ¼ of Section 33, T2S, R6E, M.D.B.& M.

One commenter requested that the State Water Board conduct a hearing on the petitions. Under Water Code section 1726, subdivision (g)(3), the State Water Board can request a hearing with the consent of the petitioner if the board determines it is necessary to make the findings required by Water Code section 1727. In this instance, a hearing is not necessary to make the requisite findings.

#### **4. THE TRANSFER INVOLVES WATER THAT WOULD HAVE BEEN CONSUMPTIVELY USED OR STORED**

When reviewing a petition for temporary change, Water Code section 1725 provides that a permittee may temporarily change the point of diversion, place of use, or purpose of use 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 permittee in the absence of the temporary change. (Wat. Code, §§ 1725, 1726; see also Wat. Code, §1011 [conserved water may be transferred].) 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.”

Reclamation’s petitions for transfer meet the consumptive use requirement of Water Code section 1725. In the absence of the transfer, the water would be diverted by Reclamation at other locations for consumptive use, as authorized under Reclamation’s water rights, or permanently removed from the use as a result of entering the ocean (saline sink). This is consistent with the definition of “consumptively used” under section 1725, which includes “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.*” (Wat. Code , § 1725 [emphasis added].) Furthermore, all Restoration Flows that are released from Friant Dam in accordance with the terms and conditions of the 2013 Order approving the SJRRP’s dedication of Restoration Flows would have either remained in storage or have been directly diverted at Friant Dam for delivery to and consumptive use by the Friant Division CVP contractors without the approved SJRRP dedication under the 2013 Order, or used in the CVP service area.

Some commenters argue that the proposed action is not a water transfer and therefore the procedure under Water Code section 1725 is not appropriate. They argue that because Reclamation states it must release water as Restoration Flows per the Settlement Act, this is not water that “otherwise would have been consumptively used or stored.” This is incorrect. The proposed action is a transfer under Water Code section 1725 since it occurs over a period of time less than one year and involves the transfer of San Joaquin River water from one place to another by adding two new points of rediversion to Reclamation’s existing water rights. Although the authorized place and purposes of use are not changing, adding two new points of rediversion to Reclamation’s existing water rights will facilitate a change in operations that will provide water for instream beneficial uses in a longer reach of the San Joaquin River. In the absence of the transfer, Reclamation would continue to retain dominion and control of all instream flows downstream of the

PID facilities for consumptive use as currently authorized under the subject permits and license. We have interpreted Water Code section 1725 broadly in other cases in order to encourage and promote voluntary instream flows releases under the transfer statute. This petition does not identify a third party to who title, possession or use is formally transferred, but the Water Code does not specify any formality necessary for a change to constitute a “transfer.” (See Wat. Code, § 1728.) The water will in fact be used for the protection and enhancement of instream beneficial uses held in trust for the benefit of the people of the state. Although the transfer does not reduce water deliveries to CVP contractors, it expands public trust resources, and thus amounts to a transfer to the public. Interpreting Water Code section 1725 to include temporary changes that provide additional flows for instream beneficial uses is consistent with the broad language of the statute and the public policies in favor of encouraging transfers and protection of instream beneficial uses. (See Wat. Code, §§ 109, 1243, 85023.)

## **5. NO INJURY TO OTHER LEGAL USERS OF THE WATER**

Before approving a petition for temporary change, the State Water Board must find that the temporary change would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).) As discussed in detail below, the State Water Board received several comments alleging injury based on Delta flow requirements, and the implementation of the SJRRP generally. These comments fall outside the scope of consideration under the change contemplated by the petitions for temporary change. In the absence of the transfer, Reclamation would continue to retain dominion and control of all instream flows downstream of the PID facilities for consumptive use as currently authorized under the subject permits and license. The instream flows would remain protected and removed from use in the downstream water supply. Approval of the temporary change in no way modifies the obligations and rights under the San Joaquin River Exchange Contract and other contracts.

### *Existing Water Right Requirements*

SJRECWA and others raise issues with the SJRRP generally, that are outside the scope of consideration of the temporary change petitions. These parties object to flows passing through the Mendota Pool, past Sack Dam, and through the bypass system. SJRECWA argues that flows should be diverted at the Mendota Pool where the Friant Division will receive a one-for-one credit in San Luis Reservoir. Also, SJRECWA states that until Reclamation is certain that it can meet its obligations to the Exchange Contractors, it cannot release water into the SJRRP. SJTA expresses concern that implementing the new points of rediversion could increase the likelihood of the Exchange Contractors “calling upon their senior rights” on the San Joaquin River, as they did in 2015, and unnecessarily depleting storage at Friant. SJRECWA requests that if the temporary change is granted, all conditions in the long term permit must be carried over.

The Division authorized instream flow dedication to facilitate implementation of the SJRRP by the 2013 Order. That Order includes a condition specifically stating that the approved change in no way modifies the obligations and rights under the San Joaquin River Exchange Contract and other contracts. The conditions of that Order remain in force and effect. The petitioned change is only to add recapture at PID and BCID and has no bearing on whether or not Restoration Flows will pass through the Restoration Area. Similarly, Wonderful Orchards raises issues already addressed by Term 30 of the 2013 Order for notification of expected flows in Reach 2B.

Approval of the temporary change petition does not alter any existing obligations and requirements. This is consistent with comments from San Luis & Delta-Mendota Water Authority (SL&DMWA). SL&DMWA does not object to the petitions because Reclamation has committed that recapture of water under the SJRRP “shall not cause adverse impacts to any non-Friant Division south-of-Delta water service contractors” and “water supply deliveries to San Luis & Delta-Mendota Water Authority will not change as a result of Settlement implementation.” Note also that the Friant Water Authority and other Districts submitted comments in support of the petitions because they will help them recover from two years of zero water allocation from the CVP as a result of the drought.

### *Delta Flow Requirements*

Several commenters raised the issue of whether Reclamation should be allowed to recapture San Joaquin River Restoration Flows without first letting those flows reach and benefit southern Delta water quality or after Reclamation has developed and implemented a plan whereby it complies with its obligations to meet such standards.

South Delta Water Agency argues that the Friant Unit lacks any obligation towards enhancing Delta salinity control and fisheries needs, and this recapture should not be allowed when Reclamation is otherwise not meeting its CVP obligations in the Delta. San Joaquin Tributaries Authority (SJTA) argues that 2016 is not a good time to experiment with recapture because of Reclamation’s difficulties meeting D-1641 requirements and notes that the 2016 Drought Contingency Plan anticipates that “another TUCP” may be necessary to reduce pulse flows and salinity requirements this year. Stockton East Water District (Stockton) also points out that Restoration Flows present an opportunity for the Friant Unit to contribute to CVP obligations at Vernalis (which they argue disproportionately burdens New Melones). Stockton’s argument for injury is that recapture upstream of Vernalis could result in a reduction of contract water allocation. It proposes a permit term to not recirculate SJRRP flows if flows are being released from New Melones for water quality or fisheries needs in the Delta.

The purpose of the SJRRP is to re-water the San Joaquin River for fisheries in the San Joaquin River. Because the restoration flows will increase flows in the San Joaquin River by 300 cfs and because only 40 cfs of those flows will be diverted under the proposed change, the net effect of the Restoration Flows and the change is expected to be an increase in flows of up to 260 cfs at Vernalis which may help to meet the San Joaquin River flow requirements or reduce the need for releases from New Melones to meet flow requirements at Vernalis. With respect to issues concerning compliance with the San Joaquin River flow objectives, the Friant water rights are not currently conditioned on achieving these objectives and this is not the appropriate forum for doing so. Pursuant to Water Code section 1727, subdivision (e), the State Water Board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Therefore, the temporary transfer should not be conditioned to meet the Vernalis objectives or any other request submitted that is outside the scope of consideration for these petitions.

## **6. NO UNREASONABLE EFFECT ON FISH, WILDLIFE, OR OTHER INSTREAM BENEFICIAL USES**

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) Petitioner provided California Department of Fish and

Wildlife (CDFW) and the applicable Regional Water Quality Control Board (Regional Board) with copies of the petitions in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW and the Regional Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses. As discussed in detail below, the State Water Board received several comments alleging impacts to fisheries and Delta water quality. None of the comments are persuasive that the temporary changes will have an unreasonable effect of fish, wildlife, or other instream beneficial uses. The purpose of the SJRRP is to protect instream beneficial uses in the San Joaquin River. Recapture would occur only at screened facilities. The transfer will be subject to provisions of Reclamation's License 1986 and Permits 11885, 11886, and 11887, and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

#### *Fish Attraction*

SJRECWA argues that Restoration Flows could adversely affect fisheries by "luring" fish to a location that is not yet suitable. It argues that the loss of fall-run Chinook salmon to the Restoration Area burdens the tributaries to the San Joaquin River that are compelled to operate their systems in order to protect and enhance fall-run.

Reclamation responds that the proposed rediversions at PID and BCID would use existing facilities located downstream of the Restoration Area, and have no ability to change conditions attracting salmonids into the Restoration Area. Fall-run salmon that pass the Merced River, straying past the Hills Ferry Barrier and getting into Reach 5 of the Restoration Area are doing so independent of Restoration Program activities. In addition, since the fall of 2012 the Restoration Program has been implementing a trap and haul program to capture stray fall-run salmon that are able to get past the Hills Ferry Barrier and transport these fish to spawning areas in Reach 1 of the Restoration Area.

This issue appears to be unrelated to the request to recapture flows at PID and BCID. The transfer should not increase fish stranding beyond an amount that would otherwise occur absent the transfer. The same is true for comments on fish screen projects at the head of Mendota Pool, Reach 2B bypass, improvements to Sack Dam and Arroyo Canal, and the non-fish related issue of subsidence impacts.

#### *Water Quality*

SJRECWA also argues that using new points of rediversion will decrease water quality in the Delta Mendota Canal (DMC).

Reclamation responds that the proposed change will cause only a very small decrease in water quality. Pumping at Jones Pumping Plant has ranged from about 3100 to 4800 acre-feet per day in February 2016. Using 3600 acre-feet per day equals approximately 1800 cfs of flow. During this same time, water quality at DMC headworks was approximately 600  $\mu\text{S}/\text{cm}$  (ranged between about 450 and 850  $\mu\text{S}/\text{cm}$ ). At most 105 cfs of recaptured Restoration Flows will be introduced into the DMC. Although not the case currently, the water quality on the San Joaquin River near Patterson (SJP gage) is generally worse than at Vernalis near Banta-Carbona. Using the February 2015 SJP water quality of 2,200  $\mu\text{S}/\text{cm}$ , and assuming the SJP water quality for the maximum recaptured Restoration Flows, the electrical conductivity in the DMC would only increase from 600 to 688  $\mu\text{S}/\text{cm}$ . Given the wide fluctuation in the DMC at this time, an 88  $\mu\text{S}/\text{cm}$  change is less than significant.

### *Downstream Fisheries and Water Quality*

NRDC and the Bay Institute argue that reductions in flow as a result of the petitions would adversely impact the Settlement's Restoration Goal, downstream water quality, and fisheries.

Reclamation responds that the net effect of the release of the Restoration Flows is an increase in flows (not a reduction) along the lower San Joaquin River and into the Delta. A primary focus of the Restoration Goal in 2016 is achieving flow connectivity through the Restoration Area. The existing flow constraints within the Restoration Area are the key factors for achieving that goal. Once Restoration Flows reach the Merced River confluence, the San Joaquin River is continuously wet all the way to the Delta. Because recapture at PID and BCID (40 cfs and 65 cfs maximum, respectively) is constrained to the Restoration Flows exiting the Restoration Area, the action would not affect, and may improve, continuity of flows to the Delta consistent with the SJRRP's commitment to have no adverse impact on the Restoration Goal.

Once Restoration Flows pass the Merced River confluence and mix with water in the lower San Joaquin River, recapture at any location cannot physically change the concentration of any constituents in the San Joaquin River water column and, therefore, will have no effect on water quality. PID and BCID's pumping plant on the San Joaquin River have modern fish screens that are operated and maintained to meet criteria for anadromous salmonids. Recapture of Restoration Flows at PID and BCID would occur within the approved operating criteria, consistent with the SJRRP's commitment to have no adverse impact on fisheries downstream of the Restoration Area.

On page 104 of the September 18, 2012 Program Biological Opinion, NMFS concluded that "Recapture at existing facilities on the San Joaquin River that will not require structural modifications, are screened to NMFS fish criteria, have undergone ESA consultation regarding the facilities operations, and are unlikely to cause any additional impacts to listed species." Operations of these facilities will fall within the current operational requirements at each diversion, so additional impacts to listed species will not occur from diversion operations.

Reclamation's response is persuasive. The Restoration Flows would be released with or without the transfer. As stated above, the percentage of rediversion at PID and BCID is minimal compared to the Restoration Flows and would not have a significant impact on water quality or fisheries in the south Delta. Fall-run salmon that pass the Merced River, straying past the Hills Ferry into Reach 5 of the Restoration Area can do so independent of Restoration Flows.

### *Environmental Assessment*

NRDC and the Bay Institute argue that the environmental analysis for the recirculation is flawed or absent. They state that the Draft Environmental Assessment (EA) does not adequately address potential water quality and fisheries impacts from the recirculation of flows released past Sack Dam. The EA compares flow recapture to the monthly modeled flow at Vernalis, rather than using daily flow at the San Joaquin River gage at Patterson.

Reclamation responds that the comparison at Vernalis was used for two main reasons: 1) it is the San Joaquin River compliance location for flow and water quality under the SWRCB D-1641, so is representative of potential downstream impacts, and 2) when the same comparison point is used, all the action alternatives can be compared to each other. The flow gage at Patterson was not used for the analysis, as suggested, because historical gage data only reflects the current system operations at that time and can't control for the influence of land-use change or upstream flow regulation. CalSim II uses an 82-year hydrologic record, and can apply the SJRRP operations

while holding facilities, land-use, water supply contracts, and regulatory requirements constant over this period, representing a fixed level of development. Additionally, CalSim II presumes that there are no losses of SJRRP flows between Patterson and Vernalis. Under recent drought conditions (including no Restoration Flows), the gages in the San Joaquin River have been malfunctioning due to the low flows in the river. Therefore, this unreliable gage data would not be appropriate for the analysis in this EA.

The purpose of using simulated data is to understand the conditions that might exist under current operations for a broader number of water year types with a more representative sample of each year type. Similar to the protections available for the SJRRP water rights, CalSim II accounts for characteristic change in flows between the Merced River to the Delta under all hydrologic conditions. Thus, the volume of Restoration Flow available at Vernalis exists along the entire length of the San Joaquin River and the location of the diversion relative to the gage would not influence the analysis.

The State Water Board agrees with Reclamation's approach of considering simulated average monthly modeled flow at Vernalis since Vernalis is the compliance location for flow and water quality under D-1641 and the data at the Patterson gage is unreliable. The average monthly restoration flow able to be recaptured at PID and BCID as a percentage of average monthly San Joaquin River Flow at Vernalis is minimal, as shown on Table 3-4 of the Draft EA for One-Year Recapture of San Joaquin River Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District. Therefore the recaptured flows would not have a significant impact on water quality at Vernalis in the south Delta.

## **7. PROPOSED TERM**

The proposed transfer operations with rediversion at the BCID Pumping Plant would be outside the current assumptions of D-1641. If transfer waters enter the Delta at Vernalis but are subsequently rediverted at BCID, this flow would not be calculated as a Delta export, even though it qualifies. This can be resolved by subtracting BCID flows from the inflow part of the D-1641 equation. Accordingly, the following term has been added to the Order to reflect the modification to the NDOI calculation for this transfer:

During the times that water is being rediverted at the BCID facility pursuant to this temporary transfer order, San Joaquin River flows used to inform conditions in D-1641 will be reduced by the quantity of water rediverted by the BCID facility pursuant to this temporary transfer order.

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

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 issue a Notice of Exemption for this project.

In addition to any obligation the State Water Board may have under CEQA, the Board 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 may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The independent

evaluation of impacts to public trust resources was conducted concurrent with the Water Code section 1727 evaluation.

## **9. 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.

## **10. GOVERNOR'S PROCLAMATIONS OF A DROUGHT STATE OF EMERGENCY**

This Order is consistent with the January 17, 2014 Proclamation of a Drought State of Emergency (Proclamation) issued by Governor Edmund G. Brown Jr. and the Governor's Executive Order B-21-13 (Executive Order) issued on May 20, 2013 for the purpose of streamlining approval for water transfers to address the dry conditions and water delivery limitations to protect California's agriculture. The State Water Board and DWR are directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California. This Order is also consistent with the April 25, 2014, Proclamation of a Continued State of Emergency (April Proclamation) directing the State Water Board to immediately and expeditiously process requests to move water to areas of need, including requests involving voluntary water transfers.

## **11. CONCLUSIONS**

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

I conclude that, based on the available evidence:

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

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petitions filed for temporary change for the transfer of up to 76,069 af of water under License 1986 and Permits 11885, 11886, and 11887 are approved.

All existing terms and conditions of the water rights remain in effect, including the terms and conditions of the 2013 Order, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of Order issuance and continuing for up to one year.
2. The points of diversion/diversion under Reclamation's License 1986 and Permits 11885, 11886, and 11887 et al. are temporarily amended to add:

Intake Facility for PID, located N 2,004,071 ft and E 6,392,678 ft California Coordinate System, Zone 3, NAD 83, being within the SW ¼ of Section 15, T5S, R8E, M.D.B.& M.

Intake Facility for BCID, Located N 2,083,018 ft and E 6,327,281 ft California Coordinate System, Zone 3, NAD 83, being within the SE ¼ of Section 33, T2S, R6E, M.D.B.& M.

3. Rediversion of water is subject to compliance by Reclamation with all applicable BOs and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
4. During the times that water is being rediverted at the BCID facility pursuant to this temporary transfer order, San Joaquin River flows used to inform conditions in D-1641 will be reduced by the quantity of water rediverted by the BCID facility pursuant to this temporary transfer order.
5. Reclamation is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall include the daily average rate of water diverted and daily volume of water diverted from BCID and PID facilities pursuant to this Order.

If the above required information is in the possession of BCID and PID and has not been provided to Reclamation in time for inclusion in a monthly or annual report, Reclamation shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

6. 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.

7. 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 (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this temporary transfer, Reclamation shall obtain

authorization for an incidental “take” permit prior to construction or operation. Reclamation shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

8. 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:

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: MAR 23 2016