

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, 12721, 11967, 11887, 12722,  
12723, 12725, 12726, 12727, 11315, 11316,  
11968, 11969, 11970, 12860, 11971, 11972, 11973 AND 12364  
(APPLICATIONS 23, 234, 1465, 5626, 5628, 5638, 9363, 9364, 9366, 9367, 9368, 13370, 13371,  
15374, 15375, 15376, 15764, 16767, 16768, 17374, AND 17376)  
OF U.S. BUREAU OF RECLAMATION

AND PERMIT 16479 (APPLICATION 14443) OF DEPARTMENT OF WATER RESOURCES

**PETITIONS FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF 196,000 ACRE-FEET OF WATER**

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITIONS**

**1.1 Description of the Transfer.** On May 1, 2013, the U.S. Bureau of Reclamation (Reclamation) and the Department of Water Resources (DWR) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), Petitions for Temporary Change under Water Code Section 1725, et seq.

With the petitions, Reclamation requests a one-year modification of License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973 and 12364 and DWR requests a one-year modification of Permit 16479 to temporarily change the authorized place of use of (1) the Reclamation license and permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks); and (2) the DWR permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones). The maximum total transfer quantity will be 196,000 acre-feet (af). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

*2013 Water Supply Conditions*

Water supply conditions are currently classified as “Dry” for the Sacramento River basin and “Critical” for the San Joaquin River basin. The dry conditions in 2013 to date have resulted in allocations of 35 percent of contract Table A amounts to the SWP contractors and only 20 percent of contract amounts to CVP agricultural contractors south of Jones.

In addition to annual hydrology conditions, the ability of DWR and Reclamation to deliver Project water south of the Sacramento-San Joaquin Delta (Delta) is affected by operational restrictions which limit diversions from the Delta. The operational restrictions include those contained in State Water Board Decision 1641 (D1641) as well as the current biological opinions issued for the protection of Delta smelt and anadromous fish and marine mammal species. Operational limitations severely restrict Project exports through June, impacting the ability of the Projects to capture excess spring flows and move water from upstream storage to contractors south of the Delta.

*Changes Proposed Under the Transfer*

The petitions will further the following list of projects:

- a. CVP-SWP Exchange under a Consolidated Place of Use Petition to Facilitate Conveyance of Water to Santa Clara Valley Water District

Santa Clara Valley Water District (SCVWD) contracts for a water supply from both the CVP (delivered from San Luis Reservoir through the San Felipe Division) and the SWP (delivered via the South Bay Aqueduct (SBA)). Based on projected operating conditions for 2013, total storage in San Luis Reservoir may drop to levels which can result in impaired water quality, potentially causing reductions in CVP supplies available through the San Felipe Division. Further, aging infrastructure in the San Felipe Division could result in both planned and unplanned facility shutdowns for maintenance and repair. In 2013, there are several operational and maintenance issues that may require delivery of the SCVWD's CVP or SWP supplies through an exchange. Up to 40,000 af of the SCVWD's CVP and/or SWP supplies may be subject to these alternative conveyance approaches.

When SCVWD's pumping capacity through the San Felipe Division is limited, meeting district water demands can be impacted, necessitating the request to transfer SCVWD's CVP water through an exchange with the SWP. The proposed transfer includes an exchange of CVP and SWP water to allow SCVWD's CVP water to be pumped at Jones and delivered to DWR at O'Neill Forebay for use within the SWP service area south of O'Neill, and in exchange, an equal amount of SWP water would be pumped at Banks and delivered to SCVWD through the SBA.

In addition, planned and unplanned shutdowns on the SBA as well as within SCVWD's service area may prevent deliveries of SWP water through the SBA. Reclamation and DWR propose an exchange of CVP and SWP water to allow the delivery of SCVWD's SWP through an exchange with CVP. SWP water will be pumped at Banks and delivered to the CVP at O'Neill Forebay for use within the CVP service area south of O'Neill. In exchange, an equal amount of CVP water will be pumped at Jones Pumping Plant and delivered to SCVWD through the San Felipe Division.

The proposed exchanges would not increase the total amount of CVP or SWP water allocated to SCVWD by DWR or Reclamation.

- b. Oak Flat Water District/Del Puerto Water District Exchange

Oak Flat Water District (Oak Flat), an SWP contractor, and Del Puerto Water District (Del Puerto), a CVP contractor, are adjacent districts located north of San Luis Reservoir in San Joaquin, Stanislaus and Merced Counties. The districts share common landowners with water supply allocations from both projects. These landowners have requested the ability to optimize the application of available supplies on their combined properties. The proposed exchange would allow 1) the delivery of 1,000 af of the landowners' allocated CVP supplies through SWP turnouts on the California Aqueduct to lands within Del Puerto; 2) delivery of a portion of their allocated CVP supply to lands within Oak Flat; and 3) delivery of a portion of their allocated SWP supplies through CVP turnouts on the Delta Mendota Canal to lands within Del Puerto.

In addition to the transfer described above, Oak Flat and Del Puerto propose an even exchange to affect the delivery of up to 2,000 af of Del Puerto's 2013 CVP allocation. A portion of the lands within Del Puerto adjacent to Oak Flat are more efficiently served from Oak Flat's turnouts on the California Aqueduct. Del Puerto proposes to deliver a portion of its 2013 CVP allocation to the lands adjacent to Oak Flat through an even exchange with the SWP. Up to 2,000 af of SWP water will be delivered through the Oak Flat turnouts on the California Aqueduct. An equal amount of CVP water will be delivered to the SWP at O'Neill Forebay. The proposed exchanges will not result in any increase in pumping from the Delta by either the SWP or CVP, and will result in no increase in total SWP or CVP allocations to either district.

c. Kern County Water Agency – Kern Tulare Water District Exchange

Kern County Water Agency (KCWA) is an SWP contractor with numerous member units within Kern County. Kern Tulare Water District (Kern Tulare) is a CVP contractor located in Kern County with a contract for water delivered through the Cross Valley Canal (CVC). Due to limited capacity at Jones, conveyance of CVP-CVC water through SWP facilities is often required to provide deliveries to the CVC contractors. As a result of projected hydrologic conditions and anticipated operational restrictions, it is possible there will be no capacity to move CVC water through Jones or Banks until fall 2013. In order to assist Kern Tulare in meeting peak irrigation demands this summer, KCWA will deliver up to 16,000 af of SWP water to Kern Tulare through the summer months. In exchange, Kern Tulare will deliver an equivalent amount of CVP-CVC water to KCWA in the fall.

d. Castaic Lake Water Agency – San Luis Water District

Castaic Lake Water Agency (CLWA), an SWP contractor, entered in to a long-term water banking and exchange program with Rosedale-Rio Bravo Water Storage District (RRBWSD) to store up to 100,000 af of its SWP contract supply in the RRBWSD Water Banking and Recovery Program. CLWA also entered into a long-term agreement with Buena Vista Water Storage District (BVWSD) for the purchase of up to 11,000 af per year of Kern River water appropriated under BVWSD's pre-1914 water rights to high flows on the Kern River. The high flow Kern River water is diverted and placed in groundwater storage for later extraction. The pre-1914 water purchased by CLWA is stored in its share of the RRBWSD banking and storage program. CLWA is proposing to transfer up to 11,000 af of its purchased pre-1914 water to San Luis Water District (SLWD). The transfer would be accomplished by exchange. CLWA will provide up to 11,000 af of its 2013 SWP supply to SLWD. CLWA will retain up to 11,000 af of pre-1914 water in its portion of the RRBWSD program.

e. Arvin-Edison Water Storage District/Metropolitan Water District Program

*Groundwater Banking*

Metropolitan Water District of Southern California (Metropolitan) stores a portion of its SWP supply in CVP contractor Arvin-Edison Water Storage District's (AEWSD) groundwater banking facilities depending on annual allocations. If requested, AEWSD is obligated to return previously banked SWP water to Metropolitan. In the absence of this proposed exchange, previously banked SWP water can only be recovered from the AEWSD banking facilities through groundwater extraction. The expansion of the CVP place of use will allow AEWSD the option and flexibility to return Metropolitan's banked water through an exchange of its available CVP Delta/San Luis Reservoir, or Friant surface supplies (CVP water). The exchange will allow AEWSD greater flexibility in the scheduling and use of its CVP supplies as well as a reduction in energy and costs associated with groundwater extraction. CVP water supplied to Metropolitan by AEWSD in lieu of extraction to recover previously stored SWP water will result in a balanced exchange or one-for-one reduction of Metropolitan's groundwater banking account with AEWSD. The exchange will occur only to the extent Metropolitan has a positive bank account. Upon return of water to Metropolitan, Metropolitan's previously banked SWP water would transfer to AEWSD.

*Regulation Program*

Additionally, the requested change in consolidated place of use would allow AEWSD to deliver CVP water supplies to Metropolitan first and receive back SWP water supplies in exchange at a later time. This program better facilitates the use of AEWSD CVP water supplies that have a limited opportunity for use under current CVP operations. The ability to regulate water in this manner reduces the need to directly recharge and subsequently extract supplemental water on a one-for-one basis.

### *Fall/Winter Supplies Exchange*

In the event that hydrologic conditions become wetter than expected later in the year (2013 fall or 2013/2014 winter), and AEWS D believes that there may be limited ability to carry over 2013 CVP supplies in CVP reservoirs, AEWS D CVP water supplies would be delivered to Metropolitan to reduce risk of spill and subsequent potential loss of water supplies. The CVP water will be delivered to Metropolitan by exchange in San Luis Reservoir or directly into the California Aqueduct via the Friant Kern Canal and AEWS D facilities. Metropolitan would later return a lesser amount (return 2 af for every 3 af regulated) to AEWS D. The unbalanced nature of the exchange reflects the compensation to Metropolitan for its water management services, which would protect a portion of the water from spilling. In the absence of the exchange with Metropolitan, AEWS D would attempt to avoid spilling the water by delivering the available CVP contract supplies to groundwater banking programs within the AEWS D service area or other areas that are within the CVP place of use.

One of the benefits of the above exchanges is reduction of the impacts to AEWS D of the San Joaquin River Restoration Program (SJRRP). The exchanges increase AEWS D's ability to efficiently use water supplies and increase the opportunities to complete the return of SJRRP releases to AEWS D.

The proposed exchanges total up to 100,000 af of CVP water supplies for all three programs described above. CVP Delta supplies will be provided as stated above. Friant Division CVP water will be provided directly via delivery from the Friant-Kern Canal and AEWS D's distribution system, including its connections to the California Aqueduct at Milepost 227 (Reach 14C) or via its capacity in the Cross Valley Canal to the California Aqueduct at Tupman/Milepost 238 (Reach 12E).

f. Kern County Water Agency to Westlands

KCWA proposes to deliver up to 10,000 af of its 2013 SWP allocation to land within Westlands Water District (Westlands) to facilitate the delivery of previously stored CVP water in the Semitropic Water Storage District (Semitropic) groundwater banking program. Two landowners, Paramount Farming Company and Poso Creek Water Company, have agricultural operations in both KCWA and Westlands and have both a SWP and CVP contract supply. The landowners have banked CVP water in the Semitropic program. The landowners plan to recover up to 10,000 af of their previously stored CVP water. Delivery of the CVP water currently stored in Semitropic will be accomplished through exchange. KCWA will deliver up to 10,000 af of SWP water to Westlands turnouts on the joint use facilities. An equivalent amount of the landowners' water stored in Semitropic will be transferred to KCWA.

g. Kern County Water Agency to Westlands – Kern River Water

KCWA proposed to deliver up to 16,000 af of its 2013 SWP allocation to Westlands to facilitate the delivery of Kern River water rights water purchased by Westlands. Up to 7,600 af of Nickel Kern River water rights previously stored in Semitropic along with up to 8,400 af of 2013 Kern River water will be assigned to KCWA. The exchange will be a one for one exchange. The KCWA SWP Table A water will be delivered to Westlands turnouts in Reaches 4-7 of the joint-use San Luis Canal.

## **2.0 BACKGROUND**

### **2.1 Existing Place of Use**

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

## **2.2 Place of Use under the Proposed Transfer**

The petitioners request the temporary addition of the CVP service area downstream of Jones to the place of use under DWR's Permit 16479. The petitioners also request the temporary addition of the SWP service area downstream of Banks to the place of use under Reclamation license and permits noted above. These temporary additions would be for the purpose of completing the transfers/exchanges described above and would be effective from the date the petitions are approved for a period of one year. The areas to be added to the SWP are shown on Map 214-202-83 and the areas added to CVP are shown on Map 214-202-84 on file with the State Water Board under Applications 14443 and 5626, respectively.

## **2.3 Governor's 2013 Executive Order to Streamline Approvals for Water Transfers**

On May 20, 2013, Governor Edmund G. Brown Jr. issued Executive Order B-21-13 to streamline approvals for water transfers to address the dry conditions and water delivery limitations in 2013 to protect California's agriculture. The Governor's Order directs the State Water Board and DWR to expedite the review and processing of temporary transfers for 2013 (in accordance with the Water Code) and to assist water transfer proponents and suppliers, as necessary, provided that the transfers will not harm other legal users of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses. The State Water Board and DWR were also 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.

## **3.0 LEGAL REQUIREMENTS FOR TEMPORARY TRANSFERS**

Temporary change petitions receive approval where the water 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 water, and would not unreasonably affect fish, wildlife or other instream beneficial uses." (Wat. Code, §§ 1725, 1727.) Contractors are "legal users of water" for purposes of the no injury rule for transfers. However, the extent to which they are protected from injury is only to the extent that their contractual rights are violated: a harm within the bounds permitted by their contract is not legally cognizable. (*State Water Resources Control Board Cases* (2006) 135 Cal.App.4<sup>th</sup> 674, 803-805).

## **4.0 PUBLIC NOTICE AND COMMENTS**

On May 7, 2013, public notice of the petitions for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's Lyris email notification program; and 4) by publication in the Sacramento Bee and the Stockton Record. California Water Impact Network (C-WIN), California Sportfishing Protection Alliance (CSPA), and AquAlliance submitted a joint comment letter to the State Water Board on June 3, 2013.

### **4.1 Joint Comments of C-WIN, CSPA, and AquAlliance**

On June 3, 2013, the commenters indicated their concerns regarding the transfer proposal. The concerns extend beyond the scope of the current transfer, and encompass all pending 2013 water transfers being processed by the State Water Board. To expedite transfer processing, the concerns are not repeated herein; however, the State Water Board response letter dated June 27, 2013 is incorporated by reference. The response letter details the issues raised by the commenters. Reclamation also responded to the commenters' letter and a summary of their response is provided below as well.

#### Reclamation Response:

On June 14, 2013, Reclamation responded to the commenters letter and indicated that Reclamation

and DWR filed almost identical petitions to consolidate the CVP and SWP places of use on three previous occasions, and the State Water Board has made findings on each previous petition that the consolidation of the places of use, and the actions implemented by the consolidation, will not harm other legal users of water, fish, wildlife, or other instream beneficial uses. Reclamation believes it established a prima facie case regarding the petition pursuant to Water Code section 1727 (c) since the State Water Board has approved three similar petitions in the past.

Water Code section 1727 (c) requires that the commenters bear the burden of proof that the proposed consolidated place of use is injurious to other legal users of water or fish, wildlife, or other instream beneficial uses if the State Water Board has determined the petitioners have established a prima facie case. Reclamation claims the commenters have not provided any specific evidence that meets their burden of proving that the proposed temporary change would not comply with paragraphs (1) and (2) of Water Code section 1727 (b).

#### State Water Board Response:

The State Water Board response letter identifies a need to evaluate the following issues in the present order: (a) whether there is a change in return flow associated solely with the transfer, and (b) whether the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011.

In addition, the response letter indicates that use of the Delta Pumps for transfer purposes should be conditioned on compliance by DWR and Reclamation with D1641, all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

The objection is addressed upon a finding that: (a) no change in return flows is occurring, and (b) the transfer only involves water that would have been consumptively used or stored. Approval of the petition is also contingent on inclusion of condition 6 of this order. The required evaluations are found in Section 5 of this order.

## **5.0 REQUIRED FINDINGS OF FACT**

### **5.1 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 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.”

The projects proposed under these petitions involve water that would have been consumptively used or stored in the absence of the transfers/exchanges. According to the petitions, the transfer/exchange will not result in the diversion of additional water from the Delta or the delivery of more water to any individual water supplier or user than has been delivered historically. Instead, the requested change will provide the operational flexibility the Projects need to get available supplies where they are needed most and in the most efficient manner possible. The water proposed for transfer/exchange consists of either:

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

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.

## **5.2 No Injury to Other Legal Users of Water**

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

The total quantity of diversions from the Delta will not change. The timing of diversions from the Delta will not change, however the timing of deliveries south of the Delta diversion facilities to specific SWP or CVP contractors will change as detailed above in paragraphs 1.1 (b), (d) and (f). The delivery rates from San Luis Reservoir may be slightly different. The scheduling of the deliveries will be coordinated between DWR and Reclamation so as not to adversely impact any SWP or CVP contractor deliveries. Adequate capacity in the California Aqueduct and in the Delta Mendota Canal is available, and will not be adversely impacted as a result of the exchanges. The terms and conditions contained in D1641 protect other in-basin diverters from any potential impacts of Project diversions of natural flow. DWR and Reclamation are required to operate in conformance with D1641 and all other applicable regulatory restrictions governing SWP and CVP operations. There are no other legal users downstream of the points of diversion that would be affected by the exchanges. Overall, there will be no impact to other legal users of water.

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 user of the water.

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

In accordance with Water Code section 1729, temporary changes involving transfer of water are exempt from the requirements of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) However, the State Water Board must consider potential impacts to fish, wildlife, or other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The water is diverted out of the watershed from which it originates in conformance with the provisions of the respective DWR and Reclamation water right license and permits governing those diversions. There will be no change in the amount of SWP or CVP water diverted at the Banks or Jones Pumping Plants. Therefore, there will be no change in flow or water quality conditions in the Delta. All water exported at the SWP and CVP pumping plants is pumped consistent with the criteria contained in D1641 and all other applicable regulatory restrictions governing SWP and CVP operations.

Exchanges similar to those proposed herein occurred in 2009, 2010 and 2012 consistent with the provisions of WR 2009-0033, WR 2010-0032-DWR and a July 6, 2012 State Water Board order on transfer. No measurable effects on fish and wildlife or the environment were noted from those transfers. The exchanges will not result in an increase in deliveries to any drainage impaired lands, or in a measurable change in quantity or quality of return flows.

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.

## **6.0 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 2010-0029.

## **7.0 CONCLUSIONS**

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

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 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 transfer of 196,000 af of water are approved.

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

1. The transfer/exchanges of water are limited to the period commencing on the date of this Order and continuing for one year.
2. The place of use under DWR Permit 16479 is temporarily expanded to include portions of the CVP service area shown on map titled *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to SWP Authorized Place of Use*, Map 214-202-83.
3. The place of use under Reclamation License 1986 and Permits 11885, 11886, 12721, 11967, 11887, 12722, 12723, 12725, 12726, 12727, 11315, 11316, 11968, 11969, 11970, 12860, 11971, 11972, 11973, and 12364 is temporarily expanded to include portions of the SWP service area as *Petition for Temporary Change to Modify SWP and CVP Places of Use, Areas to be added to CVP Authorized Place of Use*, Map No.214-202-84.
4. Water transferred/exchanged pursuant to this Order shall be limited to 196,000 af as specifically described in item 1.1 (a) through (g) in "Substance of Petitions" above. Although the transfer limits water service as noted herein, the one-for-one repayment of exchanged transfer water is not limited to service areas (a) through (g), but may occur within the more general service areas shown on Maps 214-202-83 and 214-202-84.
5. DWR and Reclamation shall not increase their allocations of water to the transfer/exchange parties beyond the quantities authorized by existing contract for purposes of this transfer/exchange.
6. Diversion of water at the Delta Pumps pursuant to this Order is subject to compliance by the SWP and CVP project operators with the objectives set forth in Tables 1, 2 and 3 on page 181 to 187 of State Water Board's Revised Decision 1641 (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 as prerequisites for the use of the Joint Points of Diversion by DWR and Reclamation. Diversion of water at the Delta Pumps pursuant to this Order is subject to compliance by the pumping plant operators with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
7. Within 90 days of the completion of the transfer; but no later than September 30, 2014, the Petitioners shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information:
  - a. Separate data identifying the monthly and total volumes of water delivered to each of the transfer/exchange parties pursuant to this Order.
  - b. The monthly and total amounts of Delta and delivered water to each of the transfer/exchange parties for the period covered by this transfer. This total shall include SWP and CVP deliveries, other water transfers, and any other amount of Delta water each location received.
  - c. Documentation that the water transferred/exchanged did not result in an increase in water diverted to SWP and CVP facilities from the source waters of DWR's permit and Reclamation's license and permits beyond the quantities that would otherwise have been diverted absent the transfer.

8. 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 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.

9. This order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this transfer, the petitioners shall obtain authorization for an incidental take permit prior to construction or operation. Petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
10. I reserve 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  
JAMES W. KASSEL FOR:

*Barbara Evoy, Deputy Director*  
*Division of Water Rights*

Dated: JUL 01 2013