

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF WATER RIGHT LICENSE 6184 (APPLICATION 16401)
OF TUDOR MUTUAL WATER COMPANY**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP
TO 1,500 ACRE-FEET OF WATER TO STATE WATER CONTRACTOR
AGENCIES**

SOURCE: Feather River

COUNTY: Sutter

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On April 28, 2022, Tudor Mutual Water Company (Tudor MWC 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 License 6184 (Application 16401), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 1,500 acre-feet (af) of water will be transferred to participating State Water Contractor (SWC) Agencies. The SWC Agencies that will use the water include: Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, San Gabriel Valley Water Company, Metropolitan Water District of Southern California, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, Napa County Flood Control and Water Conservation District, and Tulare Lake Water Storage District. The temporary transfer period commences on the date of this Order and is effective through September 30, 2022. Temporary transfers may be effective for up to one year from the date of approval.

2.0 TRANSFER TYPE

Petitioner proposes to make water available by pumping groundwater in lieu of diverting surface water under License 6184.

2.1 Groundwater Substitution

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of a petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater pumping. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped by the Petitioner to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion). Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to have an unreasonable effect on fish and wildlife as well as 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.

Proposals for transfers of water through State Water Project (SWP) and/or Central Valley Project (CVP) facilities that involve groundwater substitution are developed to be consistent with the Draft Technical Information for Preparing Water Transfer Proposals (Draft Technical Information), dated December 2019, prepared by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation). Depending on well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use, or if an alternative accounting method should be applied. The DWR and Reclamation criteria used to evaluate groundwater substitution transfers are intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

DWR and Reclamation are currently applying a minimum 13 percent streamflow depletion factor (SDF) to most groundwater substitution transfer projects meeting the criteria contained in the Draft Technical Information unless available information analyzed by DWR and Reclamation supports the need for the development of a site-specific SDF. DWR and Reclamation can also apply SDFs larger than 13 percent for certain transfers as determined necessary. Transfer proponents may also submit site-specific technical analysis supporting a modified proposed SDF for review and consideration by DWR and Reclamation.

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.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfers. The boundaries of Tudor MWC are within the County of Sutter Groundwater Sustainability Agency – Sutter (Sutter GSA), and Tudor MWC has notified Sutter GSA’s point of contact regarding the proposed groundwater substitution activity within the Sutter GSA boundary. Groundwater substitution transfers are also required to comply with current groundwater management law under the 2014 Sustainable Groundwater Management Act (SGMA). Tudor MWC is located within the Sacramento Valley Sutter Subbasin, and the Sutter Subbasin is covered by nine different GSAs including the Sutter GSA. The Sutter Subbasin GSAs worked collaboratively to prepare a single Groundwater Sustainability Plan (GSP) for the Sutter Subbasin that is currently under review by DWR. SGMA requires GSAs to avoid depletions of interconnected surface waters that have significant and unreasonable adverse impacts on beneficial uses of surface water (significant and unreasonable depletions). GSAs avoid significant and unreasonable depletions through the implementation of one or more GSPs. The transfer proposed by Tudor MWC will be subject to the requirements of the adopted GSP.

Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers

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

Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation have estimated impacts on streamflow due to groundwater pumping by using analytical and numerical groundwater models. DWR and Reclamation utilized information from modeling conducted for Reclamation’s 2019 Long-Term Water Transfers EIS/EIR (Transfer EIS/EIR) to establish a *minimum* 13 percent average SDF for most single year transfers requiring the use of SWP or CVP facilities. The selection of a minimum SDF of 13 percent was based on modeling analysis of groundwater substitution transfers occurring across ten different individual years within the modeling period and assessed the total volume of depletions over a duration of ten years from the start of each transfer year. The analysis showed the SDF ranged from 14 percent to over 40 percent with an uncertainty of +/- one percent, hence 13 percent was selected as the minimum.² The Transfer EIS/EIR mitigation measures

² Technical consulting staff involved in the preparation of the Transfer EIS/EIR presented a summary of the basis for the 13 percent SDF to State Water Board staff on January 26, 2022. The presentation showed that the modeled single-year depletion percentages used as the basis for the 13 percent mitigation measure ranged from 14 percent to over 40 percent, with increases to over 40 percent occurring when the transfer occurred at the beginning of a sequence of dry years.

also state that streamflow depletions are in part dependent on hydrologic conditions following the transfer.

Review of modeling results from the Transfer EIS/EIR shows that the surface water depletions due to groundwater pumping and surface water and groundwater interaction over the modeled period of record compared to total groundwater substitution transfers during those same years result in an average SDF of approximately 25 percent.³ Further, the Transfer EIS/EIR states that during a period of multiple dry years, the impacts during a single year can be greater and can have a potentially significant effect on water supply.

Because 2022 is the third consecutive year of dry conditions as emphasized by the Governor's Executive Order N-7-22, it is necessary to implement a more conservative approach to the SDF reflective of the risk of continued dry conditions to ensure avoidance of injury to other lawful users of water and unreasonable effects on fish and wildlife. Given that the DWR and Reclamation imposition of SDFs for transfers require transfer-specific considerations based on the hydrologic circumstances of the transfer year, and the Transfer EIS/EIR indicates depletions increase during a sequence of dry years, it is uncertain whether the minimum 13 percent SDF applied to a transfer occurring in a third consecutive dry year will be adequately protective of surface stream flows. Consequently, the State Water Board will condition this Order to ensure potential impacts of depletions above the 13 percent SDF resulting from this transfer are addressed. If new information becomes available following the transfer period that demonstrates streamflow depletions due to the transfer have been higher than 13 percent while the Delta was in balanced conditions, this Order is conditioned to require Tudor MWC to prepare a plan in consultation with the DWR and Reclamation to address the additional losses of SWP or CVP stored water identified by the State Water Board. The Sacramento Valley Groundwater-Surface Water Simulation Model (SVSim) developed by DWR to assess streamflow depletions, has completed calibration and was released to the public on June 8, 2022. The availability of the calibrated SVSim model constitutes new information regarding streamflow depletion. However, as of the date of this Order, Division staff have not had the opportunity to review SVSim and the related model documentation in order to apply it to specific transfers. Other examples of

³ Based on Transfer EIS/EIR Figure 3.1-3: Potential Changes in Total Exports at the Delta Pumping Station as a Result of Surface Water and Groundwater Interaction and Figure K-14: Annual Available Water Transfer Supply (EIR/EIS), from Reclamation's March 2019 Long-Term Water Transfers EIS/EIR. The figures provide the annual modeled surface water depletion amounts and the annual modeled groundwater pumping amounts due to transfers. The total of the annual amounts from the two figures indicates a long-term average SDF of approximately 25 percent over the modeled period.

potential new information include new management actions, such as groundwater recharge, undertaken to offset depletions and monitoring related to those management actions.

3.0 BACKGROUND

3.1 Summary of Tudor MWC's License 6184

License 6184, which has a priority date of May 31, 1955, authorizes the direct diversion of up to 32 cubic feet per second of water from the Feather River from about April 1 to about October 1 of each year for irrigation use of 2,614 net acres within a gross area of 2,723 acres.

The existing point of direct diversion is located at:

By California Coordinate System, Zone 2, NAD 83, North 2,299,86 feet, and East 6,676,158 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 1, T13N, R13, MDB&M.

The irrigated area is located within Sections 1, 2, 3, 4, 9, 10, 11, and 12, T13N, R3E, MDB&M.

3.2 Description of the proposed temporary changes

In order to facilitate the transfer, Tudor MWC proposes to temporarily add the following to License 6184:

- 1) SWP's Banks Pumping Plant via the Clifton Court Forebay as a point of diversion, located within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M;
- 2) Barker Slough Pumping Plant as a point of diversion, located within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M;
- 3) Oroville Dam as a point of diversion, located within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1, T19N, R4E, MDB&M;
- 4) 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;
- 5) Castaic Dam as a point of rediversion, located within N $\frac{1}{2}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R16W, SBB&M;
- 6) Perris Dam as a point of rediversion, located within N $\frac{1}{2}$ of SE $\frac{1}{4}$ of projected Section 4, T4S, R3W, SBB&M;
- 7) Pyramid Dam as a point of rediversion, located within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 2, T6N, R18W, SBB&M;
- 8) a portion of the SWP's service area as shown on Maps 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630; and
- 9) Municipal, industrial, and domestic purposes of use.

3.3 Governor Newsom's 2021 and 2022 Proclamations of a Drought State of Emergency

California is experiencing severe to exceptional drought conditions across the state. Water Year 2020-2021 was a second consecutive dry year with record-breaking high temperatures. In response to California's severe drought conditions in 2021, Governor Gavin Newsom proclaimed a regional drought state of emergency on April 21, 2021 for the Russian River Watershed, and on May 10, 2021 he signed a proclamation expanding the drought state of emergency to the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds. On July 8, 2021, the Governor signed a proclamation further expanding the regional drought state of emergency to include nine counties where drought effects are increasingly severe or where state emergency response may be needed. The Governor's drought proclamations brought a total of 50 of the state's 58 counties under the drought state of emergency.

The Governor's July 8, 2021 Proclamation states:

"since my May 10, 2021 Proclamation, California's water supplies continue to be severely depleted, and high temperatures are now increasing water loss from reservoirs and streams (especially north of the Tehachapi Mountains), and thus demands by communities and agriculture have increased, supplies of cold water needed for salmon and other anadromous fish that are relied upon by tribal, commercial, and recreational fisheries have been reduced, and risk has increased of drought impacts continuing in 2022 because of continued water loss from climate change-driven warming temperatures and less water available in reservoirs and streams from two years of below average precipitation."

The July 8, 2021 Proclamation directed the State Water Board to consider,

"modifying requirements for reservoir releases or diversion limitations to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, enhance instream conditions for fish and wildlife, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. The Water Board shall require monitoring and evaluation of any such changes to inform future actions."

On October 19, 2021, the Governor extended the drought emergency proclamation to include California's remaining eight counties.

On March 28, 2022 the Governor issued Executive Order N-7-22, finding that "early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water supply" and that "the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish

and wildlife that rely on stream flows and cool water.” The March 28, 2022 Order applies various measures to encourage water conservation and to increase resilience of state water supplies during prolonged drought conditions.

4.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE

Governor Newsom’s May 10, 2021 drought proclamation modified noticing requirements and notice duration for temporary transfers of water. Consistent with the Governor’s proclamation, the Division noticed Tudor MWC’s petition on May 9, 2022, to the Division’s website and via the State Water Board’s electronic subscription mailing list pursuant to modified Water Code section 1726, subdivision (d).

The comment deadline was May 24, 2022. Timely comments on the transfer were received from South Delta Water Agency (SDWA), Reclamation, the California Department of Fish and Wildlife (CDFW), and Central Delta Water Agency (CDWA).

Following delays in Petitioner responses to the above comments, the State Water Board indicated in a June 23, 2022 email to the Petitioner that if responses to comments were not received by June 27, 2022, an Order on the transfer petition would not be issued before July 15, 2022. The Petitioner did not object. The Petitioner’s response to comments were received on July 7, 2022 and are available in the record for License 6184.

4.1 Comments of SDWA

By email dated May 12, 2022, SDWA commented on the proposed transfer. SDWA commented that section 1725 of the Water Code that pertains to groundwater substitution transfers 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. SDWA asserts that under a groundwater substitution transfer, the transferor doubles the amount of water being consumed and therefore it is an increase the transferor’s water right. SDWA states these type of water transfers are in violation of Water Code section 1725 and particularly should not be done during times of drought.

Petitioner Response:

The Petitioner stated that the claim that an increase in the quantity of water will be diverted under License 6184 due to the transfer is incorrect. The Petitioner stated that they will be transferring only “new water” or “real water” that would have been diverted under License 6184 and consumptively used within the Tudor MWC place of use in the absence of the proposed temporary change. Also, consistent with the Draft Technical

Information, DWR reduces the quantity of water delivery to the transferee in order to account for losses including streamflow depletion loss from groundwater pumping, delta carriage losses, and conveyance losses.

State Water Board Response:

Please see the discussion of groundwater substitution transfers in Section 2.1 of this Order. Further, it is the policy of the State to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses.

Water Code section 1011.5 subdivision (d) specifically states:

“Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.”

4.2 Comments of Reclamation

By letter dated May 17, 2022, Reclamation commented on the proposed transfer. Reclamation requested that any Order approving the proposed transfer include the following conditions to protect Reclamation’s water rights and operations for the CVP Jones Pumping Plant.

- 1) The Petitioner’s groundwater substitution proposal is subject to evaluation and approval by Reclamation and DWR, consistent with the approval criteria of the December 2019 Draft Technical Information.
- 2) Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

Petitioner Response:

The Petitioner stated that it will obtain approval by DWR for the proposed transfer consistent with the Draft Technical Information and has already provided the necessary documentation to DWR.

State Water Board Response:

In order to avoid injury to Reclamation’s water rights, Condition 14 of this Order requires compliance with the groundwater substitution agreement executed pursuant to the Draft

Technical Information. Further, the Delta was declared to be in balance by DWR on June 15, 2022, and is expected to remain so through at least the end of the transfer period.

4.3 Comments of CDFW

By letter dated May 20, 2022, CDFW commented on the proposed transfer as summarized below.

- 1) CDFW recommended a more protective groundwater level trigger to reduce or cease pumping groundwater pursuant to the transfer to avoid adverse impacts on groundwater dependent ecosystems (GDEs) after sequential dry or critically dry years. Additionally, the Petitioner should ensure that the groundwater pumping reduction and cessation triggers used during the transfer period are at least as protective as the sustainable management criteria in the applicable subbasin GSP.
- 2) The minimum SDF of 13 percent included in the Draft Technical Information may be insufficient to replace increased surface water depletion caused by lowered groundwater levels induced by transfer pumping especially during consecutive dry years. CDFW recommended a more conservative presumptive standard for SDFs based on available information, or the development of site-specific and hydrologic-specific SDFs.

Petitioner Response:

- 1) The Petitioner stated that the Sutter Subbasin GSP identified no potential GDEs within one-half mile of the proposed groundwater substitution wells with the Tudor MWC service area. However, consistent with the Draft Technical Information, Tudor MWC will implement a monitoring program which includes a reduction/cessation of groundwater substitution pumping if a historical low groundwater level is met.
- 2) The Petitioner stated that the 13 percent SDF is based on Section 3.4.3 of the Draft Technical Information and Mitigation Measure WS-1 contained within Section 3.1.4.1 of the Transfer EIS/EIR. Further, DWR has relied upon the 13 percent SDF for the majority of water transfers since 2015 and there is no change to the 13 percent SDF proposed for the 2022 water transfers by DWR and Reclamation. The Petitioner also stated that the recently released SVSim model may eventually be used to assess streamflow depletions relative to GSPs and future water transfers.

State Water Board Response:

This Order includes a condition requiring Tudor MWC to take additional actions should the 13 percent SDF applied to this transfer be determined to not adequately protect

surface water supplies. In accordance with requirements of the Draft Technical Information, Tudor MWC will provide DWR and Reclamation with documentation of Sutter GSA's determination that the proposed transfer is consistent with the Sutter Subbasin GSP. Further, in order to avoid impacts to groundwater, Condition 17 of this Order requires the Petitioner to measure the daily average pumping rate of groundwater pumped in excess of that which would have been pumped in the absence of this transfer, and to monitor the groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer.

4.4 Comments of CDWA

By letter dated May 24, 2022, CDWA commented on the proposed transfer. CDWA's comments are summarized as follows:

- 1) Transfer water should not be exported from the Delta unless State Water Board Revised Water Right Decision 1641 (D-1641) requirements (without temporary urgency changes)⁴ are and will be met.
- 2) The petitions did not include sufficient information to evaluate and approve the transfers.
- 3) With a priority date of May 31, 1955, there may be no water available for appropriation and transfer under License 6184.
- 4) CDWA states it is not clear from the petition how Tudor MWC intends to satisfy section 1745.10 of the Water Code that states groundwater may not replace surface water unless the transfer is consistent with a groundwater management plan. The petitions do not provide information to determine if the requirements for identification, monitoring and historic metering of the groundwater substitution wells have been conducted.
- 5) No analysis has been done to determine the 13 percent SDF proposed in this transfer is adequate to cover the various system losses.
- 6) The Watershed Protection Act and Delta Protection Act prohibit the export of water that is not surplus to the needs of the Delta. The water that would be exported
- 7) could be used to meet D-1641 requirements and Term 91 may not be triggered as early, if at all, in any given year.

⁴ On April 4, 2022, the State Water Board conditionally approved a temporary urgency change petition (TUCP) filed by Reclamation and DWR to modify certain terms of the CVP and SWP water rights subject to D-1641 during the period from April 1 through June 30, 2022.

Petitioner Response:

- 1) The Petitioner stated that diversion of water made available for transfer by Tudor MWC is subject to compliance with the objectives set forth in D-1641 or any future State Water Board order or decision implementing Bay-Delta water quality objectives at proposed the additional points of diversion/rediversion. Also, the proposed transfer will result in greater inflow to the Delta and will not result in less outflow.
- 2) The Petitioner stated that it included all required forms, information, and associated documentation required in order for the State Water Board to make the findings necessary pursuant to Water Code section 1725.
- 3) The Petitioner indicated that if the diversion of water under License 6184 is curtailed this year, Tudor MWC will not transfer water and instead divert surface water from the Feather River for use within its service area pursuant to its 1976 contract with DWR.
- 4) The Petitioner stated that its proposed groundwater substitution transfer meets the requirements of Water Code section 1745.10, as required by Water Code section 1732. The Petitioner stated that the proposed transfer is consistent with the Sutter Subbasin GSP, and Tudor MWC will monitor and evaluate a network of groundwater wells relative to minimum threshold water level measurements determined by the Sutter Subbasin GSAs to ensure that no substantial depletion of groundwater occurs as a result of groundwater substitution pumping throughout the transfer period, which is at least as protective as the criteria contained in the GSP. The Petitioner has also reviewed available historic and recent groundwater level data and has generally determined that while groundwater elevations have fluctuated seasonally each year, groundwater elevations have remained relatively stable within the area of groundwater substitution pumping proposed by Tudor MWC. Based on review of the historical data, the Petitioner stated that it has reasonably determined that the proposed single season increase in groundwater production will not cause or contribute to conditions of long-term overdraft.
- 5) See the Petitioner's response in Section 4.3 of this Order.
- 6) The Petitioner disagreed that the Watershed Protection Act applies to water that is the subject of the proposed transfer and noted that the transfer would result in export of non-surplus water from the Delta. The Petitioner stated that Water Code section 11460 applies to DWR and Reclamation and not Tudor MWC. The Petitioner also stated that CDWA's arguments relative to Term 91 are flawed and should be disregarded by the Division.

State Water Board Response:

- 1) The State Water Board's April 4, 2022 TUCP approval Order applies only to Reclamation and DWR water rights and does not involve Tudor MWC License 6184. 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 2022 drought conditions. Reclamation and DWR did not file the TUCP to mitigate potential impacts from Tudor MWC's proposed transfer, therefore the State Water Board cannot deny Tudor MWC's petition for temporary changes based on Reclamation and DWR filing the TUCP to achieve compliance with D-1641.
- 2) Water Code section 1725 et. seq 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 propose change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. As described in Sections 8.1 through 8.3 of this Order, the State Water Board believes adequate information has been included in the Petition and finds that the proposed transfer is water that would have been consumptively used by the licensee in the absence of the proposed change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.
- 3) Condition No. 10 of this Order requires the transfer of water cease if License 6184 is curtailed.
- 4) Condition No. 14 of this Order requires Tudor MWC to comply with all provisions contained in the Draft Technical Information, including DWR and Reclamation's approval of which wells are appropriate for the groundwater substitution transfer. Further, Condition No. 16 of this Order requires Tudor MWC to comply with any applicable requirements of the GSP adopted by the Sutter Subbasin GSAs.
- 5) See the State Water Board's response in Section 4.3 of this Order.
- 6) The Petitioner, not Reclamation, owns the water right for the water proposed to be transferred, and water diverted, used or transferred under License 6184 cannot be redirected for existing or potential needs in the Delta pursuant to Reclamation's obligations. DWR and Reclamation are the parties responsible in meeting D-1641 requirements with water that is diverted under SWP and CVP water rights.

5.0 POTENTIAL CURTAILMENT

During any period in 2022 that Tudor MWC's right under License 6184 is curtailed, Tudor MWC will be required to cease all diversions in accordance with the curtailment order, including any diversions for temporary transfer, regardless of whether the actual diversion would be facilitated by DWR or other SWP facilities. A condition is therefore included in this Order that the transfer shall be consistent with curtailment requirements should the State Water Board curtail Tudor MWC's right under License 6184.

Additionally, water may only be diverted and temporarily retained by DWR in Lake Oroville when water is available under License 6184, thus only storage releases would be permitted during a period of water unavailability that affects DWR's water rights.

6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

7.0 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) (see Section 8.3 of this Order).

8.0 REQUIRED FINDINGS OF FACT

8.1 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.”

Tudor MWC has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, the groundwater substitution component of this transfer is conditioned to allow use of only those wells found acceptable by DWR and Reclamation, and the wells must be in compliance with DWR’s and Reclamation’s well construction, location, and monitoring criteria as well as the application of the SDF. As described in Section 8.2 of this Order, a SDF of 13 percent will be applied to Tudor MWC’s groundwater substitution transfer. To account for streamflow depletion related to groundwater pumping, Tudor MWC will only transfer 87 percent of the total quantity pumped in exchange for the surface water available for transfer. Therefore, the amount available for transfer will be up to 1,305 af.

The State Water Board conducted an independent evaluation of its records. The combined annual use under License 6184 was 2,159 af, 2,318 af, 2,854 af, 3,768 af, and 2,376 af during 2017, 2018, 2019, 2020, and 2021 respectively. These data indicate that the Tudor MWC has put the amount proposed to be transferred to recent beneficial use.

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.

8.2 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 sections 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.*)

The water proposed for transfer consists of surface water made available through increased groundwater pumping. DWR has reviewed the proposed transfer and determined that, with the inclusion of the 13 percent depletion factor applied to the quantity of water transferred, as well as their oversight of the groundwater substitution operations described in Section 2.1 of this Order, other water right holders will not be injured from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 2.1 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these agreements and plans.

To the extent that the additional groundwater pumped does not affect streamflow, this water represents an amount of water which would not be available for use in the downstream water supply. To the extent that new information becomes available indicating that additional depletions due to this transfer impacted surface flows when the Delta is in balanced conditions, this Order requires Tudor MWC to consult with DWR and Reclamation to develop a plan, potentially including a water diversion reduction schedule or other measures including groundwater recharge, to address and offset the reduced stream flows that occurred as a result of the transfer. In general, the transfer of water that would otherwise be stored or consumptively used will not result in injury to other legal users of water. In the absence of the transfer, Tudor MWC would have diverted the surface water for delivery to its service area. Additionally, the transfer is conditioned such that diversion pursuant to the transfer must cease if the Division notifies the Petitioner that water is unavailable under the water right priority for License 6184.

Water Code Section 1745.10 requires that groundwater substitution transfers be (a) consistent with a groundwater management plan adopted pursuant to state law for the affected area or (b) approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin. As indicated in Section 2.1 of this Order, the boundaries of Tudor MWC are within the Sutter GSA, and Tudor MWC has notified the Sutter GSA point of contact regarding the proposed groundwater substitution activity within the GSA boundary. The groundwater substitution activity must be consistent with the GSP adopted for the Sutter Subbasin.

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.

8.3 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 Water Quality Control Board (Central Valley Water Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding the transfer as discussed in Section 4.3. Conditions 15, 16, and 17 have been included in this Order based in part on CDFW's comments. The Central Valley Water Board did not provide comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

In general, North of Delta transfers result in an incremental increase in instream flows between the Petitioner's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and 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 also be subject to all

applicable federal and State Endangered Species Act requirements, including applicable biological opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversions and exports of water at the SWP and CVP Delta pumps.

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.

9.0 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. Resolution No. 2012-0029 authorizes the Deputy Director to redelegate this authority, and this authority has been so redelegated by memorandum dated June 6, 2022.

10.0 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.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petition filed for temporary change for the transfer of up to 1,500 acre-feet (af) of water under Tudor Mutual Water Company (Tudor MWC or Petitioner) License 6184 is approved.

All existing conditions of License 6184 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, 2022.
2. The transfer amount under License 6184 is limited to a total of up to 1,500 af prior to subtracting streamflow depletion loss by groundwater substitution.
3. The Petitioner shall reduce its diversion rate at the original point of diversion authorized under License 6184 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 87 percent of the rate of additional groundwater pumping. Accordingly, the maximum amount of water available for transfer given a 13 percent depletion rate is 1,305 af.
4. The stream depletion factor (SDF) is initially set at 13 percent for the purposes of this transfer. If new information becomes available, by no later than April 1, 2023, that the Deputy Director for Water Rights determines demonstrates cumulative streamflow depletions due to the transfer are higher than 13 percent and the streamflow depletions are occurring or have occurred while the Delta is in balanced conditions, Tudor MWC shall prepare a plan and implementation schedule in consultation with the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) to address the additional losses of State Water Project (SWP) or Central Valley Project (CVP) stored water identified by the Deputy Director for Water Rights. The Deputy Director for Water Rights shall provide the new information to the Petitioner and provide a 30-day opportunity for the Petitioner to comment on the new information before determining cumulative streamflow depletions are higher than 13 percent. The plan and implementation schedule, if required, shall be submitted to the Deputy Director for Water Rights within 90 days of a determination by the Deputy Director for Water Rights that the new information demonstrates cumulative stream flow depletions due to the transfer are higher than 13 percent. If the plan and schedule remain required, Tudor MWC shall reduce direct diversions under License 6184 equivalent to the losses to the SWP and CVP according to a schedule agreed to by DWR and Reclamation and approved by the Deputy Director for Water Rights. In lieu of reducing future direct diversions under License 6184, and with approval by the Deputy Director for Water Rights, Tudor MWC may reduce their Settlement Contract water allocation or

undertake other water management actions, such as groundwater recharge, to compensate for the losses.

5. Municipal, industrial, and domestic uses are temporarily added as purposes of use.
6. The following points of diversion are temporarily added to License 6184:
 - a. Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay located as follows: California Coordinate System (CCS), Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 20, T1S, R4E, MDB&M.
 - b. Barker Slough Pumping Plant located as follows: CCS, Zone 2, NAD 83, North 1,862,435 feet and East 6,619,928 feet being within NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R2E, MDB&M.
 - c. Oroville Dam located as follows: CCS, Zone 2, NAD 83, North 2,332,087 feet and East 6,707,558 feet, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 1, T19N, R4E, MDB&M.
7. The following points of rediversion are temporarily added to License 6184:
 - a. San Luis Reservoir located as follows: CCS, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 15, T10S, R8E, MDB&M.
 - b. Castaic Dam located as follows: CCS, Zone 5, NAD 83, North 2,012,680 feet and East 6,378,993 feet, being within N $\frac{1}{2}$ of SW $\frac{1}{4}$ of projected Section 18, T5N, R16W, SBB&M.
 - c. Perris Dam located as follows: CCS, Zone 6, NAD 83, North 2,254,478 feet and East 6,275,612 feet, being within N $\frac{1}{2}$ of SE $\frac{1}{4}$ of projected Section 4, T4S, R3W, SBB&M.
 - d. Pyramid Dam located as follows: CCS, Zone 5, NAD 83, North 2,057,463 feet and East 6,331,046 feet, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 2, T6N, R18W, SBB&M.
8. The place of use under License 6184 is temporarily expanded to include the service areas of Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, San Gabriel Valley Water Company, Metropolitan Water District of Southern California, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, Napa County Flood Control and Water Conservation District, and Tulare Lake Water Storage District (hereinafter collectively referred to as State Water Contractor (SWC) Agencies), as shown on Maps 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630.

9. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
10. The transfer of water pursuant to License 6184 must cease during any time when License 6184 is curtailed.
11. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
12. Diversion of water at the Banks Pumping Plant is subject to compliance by the operators (DWR) with the objectives currently required of operators set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Banks Pumping Plant by DWR. Diversion of water is also subject to compliance by DWR and Reclamation with all applicable federal and State Endangered Species Act requirements (ESA), including applicable biological opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
13. Diversion/rediversion of water at Banks 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.
14. Petitioner shall comply with all provisions contained in the groundwater substitution agreement pursuant to the Draft Technical Information for Preparing Water Transfer Proposals, between DWR, Reclamation, and Tudor MWC as a condition of transferring water pursuant to this Order.
15. Tudor MWC shall develop and submit to the Deputy Director for Water Rights, by April 1 of each year following 2022, a map defining the groundwater elevations within the vicinity of Tudor MWC, until such time as these elevations correspond to pre-transfer levels. Each monitoring well will be identified using the same numbering and naming convention as used in the Groundwater Sustainability Plan (GSP) adopted by the Sutter Subbasin Groundwater Sustainability Agencies (Sutter Subbasin GSAs). The methods and units used to measure groundwater elevations will be consistent with those utilized in the GSP and related annual reports.
16. The Petitioner shall comply with any applicable requirements of the GSP adopted by the Sutter Subbasin GSAs or related implementation actions of the plan, such as regulations, adopted by the County of Sutter GSA – Sutter.

17. By December 15, 2022, Tudor MWC shall provide to the Deputy Director for Water Rights a report including one or more tables describing the transfer authorized by this Order. The report shall include the following information.
- a. The general location of where water was delivered, and the acreage and/or population served by water delivered to the SWC Agencies pursuant to this Order;
 - b. The location and characteristics of the wells used to pump groundwater, if available;
 - c. For each day of the transfer, the daily average rate of water made available for transfer pursuant to this Order;
 - d. For each day of the transfer, the daily average diversion rate of water directly diverted pursuant to License 6184 during the transfer period;
 - e. The average daily streamflow measured at the nearest representative gaging station on the Feather River;
 - f. The daily average pumping rate of groundwater pumped by Licensee in excess of that which would have been pumped in the absence of this transfer; and
 - g. Groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer. Each monitoring well will be identified using the same numbering and naming convention as used in the GSP adopted by the Sutter Subbasin GSAs. The methods and units used to measure groundwater elevations will be consistent with those utilized in the GSP and related annual reports.
18. 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.

19. 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 ESA (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C. §§ 1531-1544). 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.
20. 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: August 2, 2022