

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**ORDER WR 2026-XXXX**

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In the Matter of the Petition of  
Yuba County Water Agency  
For Changes Involving Long-Term Transfers For the Lower Yuba River Accord  
Extension Under Water Right Permit 15026 (Application 5632)

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SOURCE: Yuba River, tributary to the Feather River  
COUNTY: Yuba

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**[PROPOSED] ORDER APPROVING PETITION FOR**  
**LONG TERM TRANSFER OF WATER**

BY THE BOARD:

**1.0 INTRODUCTION**

In 2008, the State Water Resources Control Board (State Water Board or Board) approved a petition for long-term transfer of up to 200,000 acre-feet (AF) per year of water under Yuba County Water Agency's (Yuba Water) Permit 15026 (Application 5632) and made other changes to Yuba Water's water rights to allow implementation of the Yuba River Accord (Yuba Accord or Accord). The approval of Yuba Water's long-term transfer expired on December 31, 2025. Yuba Water now seeks to extend its long-term transfer program, with relatively minor changes, through December 31, 2050.

Based on the evidence in the record and the findings below, the State Water Board approves Yuba Water's petition for long-term transfer of water under Water Code section 1736, subject to the terms and conditions of this Order.

**2.0 BACKGROUND**

**2.1 The Yuba Accord and Transfers Under Order WR 2008-00014**

The Yuba River is the fourth largest river in the Sacramento River Basin and provides water for a wide variety of beneficial uses. Yuba Water diverts Yuba River water for

consumptive use under water right Permit 15026, which authorizes diversion of water to storage at New Bullards Bar Reservoir and direct diversion of water for consumptive use by Yuba Water's member units at downstream locations. (AHO-015 at p. 2.) On July 16, 2003, the State Water Board issued Revised Water Right Decision 1644 (RD-1644), which included, among other things, a series of instream flow requirements involving Yuba Water's consumptive water right permits, including Permit 15026. (*Id.* at p. 1.) RD-1644's instream flow requirements for the lower Yuba River would have caused Yuba Water to release higher springtime flows from New Bullards Bar Reservoir in most years. (RD-1644, pp. 173-176.)

After the Board issued RD-1644, Yuba Water and interested parties negotiated the Yuba Accord as a settlement to resolve litigation over RD-1644. (AHO-015, pp. 29-30; Yuba Water-200, ¶ 10.) The Yuba Accord consists of three interrelated agreements: (1) the Agreement for Long-Term Purchase of Water from Yuba Water by the Department of Water Resources (DWR), dated December 4, 2007, as amended by Amendment Nos. 1-7 (collectively, the Water Purchase Agreement); (2) the Lower Yuba River Agreement for the Conjunctive Use of Surface and Groundwater Supplies between Yuba Water and each of the Yuba Water Member Units, as amended by Amendment Nos. 1-7 (collectively, the Conjunctive Use Agreements); and (3) the Lower Yuba River Fisheries Agreement dated November 5, 2007 (effective March 18, 2008) among Yuba Water, California Department of Fish and Wildlife, South Yuba River Citizens League, Friends of the River, Trout Unlimited, and The Bay Institute (the Fisheries Agreement). (Yuba Water-200, ¶ 12; AHO-002, pp. 2-1 to 2-2.)

In 2008, the State Water Board approved Yuba Water's petition for long-term transfer of water under Permit 15026 and the Water Purchase Agreement through December 31, 2025, after conducting an evidentiary hearing. (See AHO-015 [Order WR 2008-0014].) Order WR 2008-0014 also amended the instream flow requirements in RD-1644 to incorporate the flows set forth in Exhibit 1 of the Fisheries Agreement. (*Id.* at pp. 51-63.) The Board's approval authorized rediversion of water in the Sacramento-San Joaquin Delta (Delta) at DWR facilities and included a variety of conditions designed to protect legal users of water from injury and ensure the transfer would not unreasonably impact fish, wildlife, or other instream beneficial uses.

Although the accounting for transfers effectuated under the Water Purchase Agreement and Corrected Order WR 2008-00014 is complex, the basic structure of Yuba Water's transfer program is straightforward. First, Yuba Water may transfer stored water released from New Bullards Bar Reservoir to meet the Yuba Accord's instream flow objectives. (AHO-002, at p. 2-3.) The precise amount of water available for transfer is the difference in Yuba River flows between baseline conditions—calculated by determining what Yuba Water's operations would have been under RD-1644's Interim Instream Flow requirements, Yuba Water's other water right terms, all Federal Energy Regulatory Commission (FERC) license requirements, and an end-of-September target storage amount of 705,000 AF for New Bullards Bar Reservoir—and actual flows in the Yuba River with Yuba Water operating to the Fisheries Agreement's instream flow requirements and a 650,000 AF end-of-September storage target for New Bullards Bar

Reservoir. (Yuba Water-200, ¶¶ 29-30.) Second, water can be made available for transfer through groundwater substitution operations under the Yuba Accord's Conjunctive Use Agreements. These agreements provide terms for Yuba Water's member units to use groundwater instead of receiving surface water deliveries in dry years, which allows the transfer of an equivalent volume of surface water stored in New Bullards Bar Reservoir under the Water Purchase Agreement. (*Id.* at ¶¶ 35-36.)

Order WR 2008-0014 also provided conditions designed to protect legal users of water and ensure there were no unreasonable impacts to fish and wildlife or other instream beneficial uses from Yuba Water's transfer operations. These conditions included:

1. Limiting transfers to an annual volume of 200,000 AF per calendar year. (AHO-015, p. 59.)
2. Limiting transfers to 20,000 AF in the December 1 to June 30 period unless Yuba Water and DWR petition and are approved by the State Water Board's Deputy Director of the Division of Water Rights (Deputy Director) to increase the 20,000 AF limit. (AHO-015, pp. 59-60, ¶ 3.)
3. Making any redirection of Yuba Accord transfer water through the Central Valley Project (CVP) and State Water Project (SWP) Delta-export facilities subject to the requirements for export imposed on operations of the SWP and CVP by State Water Board Decision 1641 (D-1641) and the United States Fish and Wildlife Service and National Marine Fisheries Service Biological Opinions for the Coordinated Operations of the CVP and SWP (collectively referred to as the "Delta BiOps"), "or any future State Water Board order or decision implementing Bay-Delta water quality objectives," and any "court orders applicable to [Delta] operations." (AHO-015, p. 60, ¶ 4.)
4. Making transfers subject to compliance with DWR and the United States Bureau of Reclamation's (Reclamation) "Response Plan for Water Level Concerns in the South Delta Under Water Rights Decision 1641." (AHO-015, p. 38.)
5. A reservation of authority to limit Yuba Accord transfers through the Delta "at any time the effects of the diversions cause or threaten to cause a negative impact on fisheries in the Delta." (AHO-015, p. 61, ¶ 6.)
6. Inclusion of the Yuba Accord Water Purchase Agreement's accounting provisions as a condition of the transfer order. (AHO-015, p. 61, ¶ 6.)
7. Requiring each transfer to include a percentage of "carriage water" to be left instream to "mitigate any changes in salinity and chloride concentrations in the Delta." (AHO-015, p. 49.)
8. Making the transfers subject to compliance with certain mitigation measures in the 2007 Environmental Impact Report (2007 EIR) designed to avoid potential environmental impacts and potential legal injury impacts associated with the transfers. (AHO-015, pp. 34-36, 45-46, 49-50, 62.)

Order WR 2008-00014 originally contemplated that Yuba Water would transfer water solely to SWP and CVP contractors south of the Delta. (AHO-015 at pp. 13, 53-54.) In 2014, the State Water Board approved adding a point of redirection at the Freeport Regional Water Authority's intake on the Sacramento River to enable the diversion of

Accord transfer water to the East Bay Municipal Utility District (EBMUD). (Yuba Water-223.) The following year, Yuba Water successfully petitioned to add San Luis Reservoir as a long-term point of diversion for Accord transfer water. (Yuba Water-225.) Finally, Contra Costa Water District's (CCWD) Delta intakes were added as temporary points of diversion to Yuba Water's water rights permits in 2022-2025. (Yuba Water-200, ¶ 77.)

After accounting for carriage water used to maintain Delta water quality, Yuba Water has transferred approximately 1.2 million AF of water since 2008. (*Id.* at ¶¶ 42, 48.) Those transfers have generated over \$100 million in revenue for Yuba Water that has helped to fund both flood control and habitat projects in Yuba County. (SYRCL-004; Yuba Water-100, ¶¶ 9-13.)

## **2.2 The Pending Petition for Long-term Transfer**

On April 4, 2024, Yuba Water filed a petition for an extension of the Yuba Accord Water Transfer Program, seeking continued authorization to transfer up to 200,000 AF per year under Water Right Permit 15026 through December 31, 2050, pursuant to Water Code section 1735, et seq (Petition). (AHO-010; Hearing Notice, p. 4.) Yuba Water's only requested changes to the points of diversion (PODs) and diversion (PODs) are that the current temporary PODs be authorized as PODs for transfers through December 31, 2050. (AHO-010, pdf p. 3.) Similarly, the Petition requests no changes to the places or purposes of use previously authorized by Order WR 2008-00014. (*Ibid.*)

The authorized users of the Accord transfers are also not proposed to change under the Petition, other than to extend their authorized use until December 31, 2050, and to add CCWD's diversion facilities as long-term points of diversion of Yuba Accord transfer water. (AHO-010, p. 3, Yuba Water-200.) The Fisheries Agreement will remain in effect until FERC issues a new long-term license for the Yuba River Development Project, and no changes are requested to the instream flow requirements in Order WR 2008-0014. (AHO-010.) As with the long-term transfer approved by Order WR 2008-0014, Yuba Water proposes to make water available for the Accord transfers from stored water released from New Bullards Bar Reservoir and through the substitution of groundwater for transferred surface water supplies, consistent with the terms of the Yuba Accord Fisheries Agreement and the Conjunctive Use Agreements. (AHO-010.)

Apart from the proposed additional conditions outlined below, the Petition proposes to extend the existing terms and conditions for Accord transfers required by the 2008 Order. The proposed additional conditions are summarized as follows:

1. The petition proposes a condition to add a "streamflow depletion factor" (SDF) that would be applied to groundwater substitution transfers to mitigate any long-term impacts on streamflow from groundwater substitution transfers. (AHO-010, pdf pp. 11-12, ¶ 24; see also Yuba Water's Submission of Revised Proposed Approval Terms, ¶ 27.) The SDF would be determined from time to time by and between Yuba Water and DWR, in consultation with Reclamation.
2. Water released from Nevada Irrigation District's Yuba-Bear Project or PG&E's Drum-Spaulding Project upstream of New Bullards Bar Reservoir under current and future regulatory requirements is expressly included as a "Baseline

Condition” for purposes of determining the amount of available “Baseline Flows” under the Accord’s Scheduling and Accounting Principles. (Yuba Water’s Submission of Revised Proposed Approval Terms (Yuba Water’s Revised Proposed Terms), ¶ 24.)

## **2.3 California Environmental Quality Act Compliance**

Yuba Water acted as the California Environmental Quality Act (CEQA) lead agency and prepared a Supplemental Environmental Impact Report (SEIR) for the proposed extension of the Yuba Accord Water Transfer Program. The SEIR supplemented Yuba Water’s 2007 Lower Yuba River Accord EIR and subsequent addenda to evaluate the effects of the proposed extension until December 31, 2050. On September 17, 2024, Yuba Water certified the final SEIR. (AHO-001 to AHO-002.) No party challenged Yuba Water’s certification of the final SEIR.

## **3.0 PROTESTS AND PROCEDURAL BACKGROUND**

### **3.1 Protests to the Pending Petition**

The State Water Board Division of Water Rights (Division) issued public notice of the Petition on May 29, 2024. The State Water Board received four protests to the Petition, one of which was canceled by the hearing officer on June 6, 2025. (Ruling on Legal Sufficiency of Protests (June 6, 2025), at p. 8 (cancelling protest of Richard Morat).) The three remaining protests were based on arguments that extending Yuba Water’s long-term transfer program would result in injury to legal users, unreasonable environmental impacts to fish, wildlife and other instream beneficial uses, and would be contrary to the public interest. (AHO-006 to AHO-009.)

Specifically, the joint protest from the California Sportfishing Protection Alliance (CSPA), South Yuba Citizens League, Friends of the River, American Rivers, Northern California Council Fly Fishers International, and Sierra Club – Mother Lode Chapter (collectively, the NGO Parties) contends that approval of the pending petition will not best serve the public interest and have an adverse environmental impact on fisheries in the Delta. (AHO-008 at pdf p. 1) To resolve their protest, the NGO Parties requested that any approval of the Petition prohibit transfers when Delta water quality objectives are not being met, including when the Board relaxes requirements to meet those objectives under a Temporary Urgency Change Order for the CVP and SWP; that Yuba Water be required to prioritize transfers to EBMUD and CCWD over transfers to south-of-Delta water users; and that the Board reduce the maximum annual transfer volume from 200,000 AF to 100,000 AF because the forthcoming update to the Bay-Delta Plan is likely to reduce the amount of water available for transfer. (*Id.* at pdf p. 17.)

The joint protest filed by Central Delta Water Agency, South Delta Water Agency, and Rudi Mussi Investments L.P. (collectively, the Delta Parties) asserts that transfer operations by Yuba Water will adversely affect the exercise of water rights in the Delta by adversely affecting both water quality and water levels in Delta channels. The Delta

Parties' protest did not provide any conditions that an order approving the Petition could include to resolve their protest. (See generally, AHO-007.)

Finally, NID's protest asserts that approval of the Petition would injure its water rights, have adverse environmental impacts, and would not be in the public interest. NID's protest was based on the possibility that the Federal Energy Regulatory Commission (FERC) could require NID to release additional water from NID's upstream facilities at some point in the future. NID contends that if the Board approves the Petition, Yuba Water would be able to use those additional releases to support its transfer program. (See generally, AHO-009.) NID proposed approval conditions to resolve its protest that would require Yuba Water to compensate NID for any water that FERC might require NID to release. Alternatively, NID's protest argues that the State Water Board should "impose a condition on any approval of [Yuba Water's] Petition that limits transfers in Dry and Critically Dry Years by an amount" equal to the quantum of water that NID and PG&E contribute to the South Yuba or Middle Yuba Rivers to meet potential future regulatory requirements.

Yuba Water filed answers to the protests on August 30, 2024. (AHO-011 to AHO-014.)

### **3.2 Assignment to the Administrative Hearings Office**

On December 24, 2024, the Deputy Director transmitted a memorandum to the State Water Board's Executive Director recommending the State Water Board assign the pending petition to the Administrative Hearings Office (AHO). The Executive Director then assigned the petition to the AHO to conduct an adjudicative hearing and issue a proposed order under Water Code section 1114. (Notice of Assignment for Yuba County Water Agency, p. 11.) The assignment also authorized the AHO to resolve protests under Water Code sections 1703.1, 1703.3, 1703.4, 1703.5 and 1703.6. On April 15, 2025, Yuba Water filed motions to cancel the protests of the NGO Parties, NID, the Delta Parties, and Richard Morart.

The AHO ruled on Yuba Water's motions to cancel protests on June 6, 2025. The AHO's ruling granted Yuba Water's motion to cancel Richard Morat's protest for failure to comply with procedural requirements but denied Yuba Water's motions to cancel the other protests. (AHO Ruling on Motions to Cancel Protests, June 6, 2025.) Although the AHO did not cancel NID's protest, the Hearing Officer determined that NID's claim of injury failed as a matter of law and excluded evidence related to the effect of the FERC re-licensing proceeding on NID's water rights as not relevant to the question of whether Yuba Water's petition for long-term transfer should be approved. (*Id.*, at p. 7.)

The AHO conducted the evidentiary portions of the hearings on July 14, 15, and 21, 2025, and August 19 and 21, 2025. Senior Hearing Officer Sam Bivins presided over the proceedings. Yuba Water, State Water Contractors, DWR, the NGO Parties, and the Delta Parties participated in the hearing as parties.

### 3.3 Hearing Issues

The AHO Hearing Notice contains the following key issues and explanatory questions regarding the key issues:

1. Will the proposed transfer result in substantial injury to any legal user of water?
  - a. Have changes occurred or new information become available since issuance of Corrected Order WR 2008-0014 that would alter the findings related to injury made in that order?
  - b. How does the proposed transfer, including the scheduling and accounting principles of the Yuba Accord transfer program, affect upstream water right holders?
  - c. How is the amount of water available for transfer determined each year?
  - d. Will the transfer cause changes in the amount or timing of water exported from the Sacramento-San Joaquin Delta by the State Water Project or Central Valley Project?
2. Will the proposed transfer unreasonably affect fish and wildlife, recreation or other beneficial users of water?
  - a. What changes have occurred or new information have become available since issuance of Corrected Order WR 2008-0014 that would alter the findings in that order related to fish and wildlife, recreation, or other beneficial users of water?
  - b. Will the proposed transfer benefit fish and wildlife, and if so, how?
  - c. How will the proposed transfer affect temperature management issues for fish and wildlife in the lower Yuba River?
3. Would approval of the transfer be in the public interest?
  - a. Will the ongoing efforts to update the Bay-Delta Water Quality Control Plan, including the potential implementation of the Agreements to Support Healthy Rivers and Landscapes (HRL), affect the amount of water available for transfer, and if so, to what extent?
  - b. What would be the use or fate of the proposed 200,000 acre-feet of transfer water in the absence of an approved transfer petition?
4. Will the transfer have an unreasonable effect on the overall economy of the area from which the water is being transferred?
5. Would approval of the petitions be consistent with Article X, section 2, of the California Constitution? Would approval of the petitions be consistent with other applicable provisions of law?
6. If approved, what terms and conditions, if any, within the Board's authorities should the Board include in the amended permit?
  - a. Are Yuba Water's proposed terms and conditions related to reservoir-refill, Delta carriage-water, and streamflow-depletion appropriate for avoiding substantial injury to other legal users of water and unreasonable effects on fish, wildlife and other beneficial uses of water?

- b. What terms and conditions, if any, should the Board include to address the effects of diverting or diverting transferred water at SWP or CVP facilities?
- c. What terms and conditions are appropriate, if any, to address the potential effects of future regulatory changes, such as those resulting from hydroelectric project relicensing, water quality certifications, biological opinions, or adoption of an updated Bay-Delta Water Quality Control Plan?

## **4.0 LEGAL STANDARD**

### **4.1 Statutes and Regulations Applicable to Transfer Petitions**

The California legislature has expressed a clear policy in favor of facilitating “the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import” and has directed the State Water Board to “encourage” voluntary transfers of water. (Wat. Code, § 109.) Because water transfers typically require a change in the place of use, purpose of use, or point of diversion of an existing water right, transfers that rely on Board-issued water right permits and licenses require Board approval. (See Wat. Code, §§ 386, 1701; 1735.) To approve a water right change necessary to effectuate a transfer, the Board must find that the change “may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred.” (*Id.* at § 386.)

Under Water Code section 1736, the Board “may” approve a petition a long-term transfer petition if doing so would not result in “substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” The approval order must also: (1) identify existing rights and current uses of water, (2) designate the amount(s) of water involved in the change, (3) designate the quantities of current and new or temporary beneficial uses of water, (4) designate the existing and new or temporary point(s) of diversion, places(s) of use, and purpose(s) of use, (5) include any required statutory findings, and (6) include any terms and conditions to which approval of the change is subject. (Cal. Code Regs., tit. 23, §§ 816, 792 subd. (c).)

### **4.2 Legal Injury to Other Users of Water**

A water right holder may be injured by a change to an existing water right if the change would interfere with the right holder’s exercise of its right in a significant and material way. (Order WR 79-22, p. 7; *Hudson v. Dailey* (1909) 156 Cal. 617, 630.) As relevant here, injury may occur from impairments to water quality that materially affect the water’s suitability for its intended use. (*Joerger v. Pacific Gas & Electric Co.* (1929) 207 Cal. 8, 25-26.)



## 5.0 FINDINGS OF FACT AND CONCLUSIONS OF LAW

### 5.1 Approval of the Petition Will Not Injure Other Legal Users of Water

Yuba Water has proposed a variety of terms and conditions designed to ensure that its continued transfer operations avoid injuring other legal users of water. As DWR witness Aaron Miller testified, transfer water can only be conveyed through SWP facilities when DWR's regulatory obligations and permit requirements for the facilities are being met, and "the redirection of Yuba transfer water can be accomplished within [DWR's] changing regulatory requirements." (Hearing Tr., July 14, 2025, at 93-95.) As explained by DWR and Yuba Water's witnesses, Accord transfers will be limited by extensive regulatory requirements such as Delta water quality objectives, biological opinions governing the CVP's and SWP's operations, and DWR's obligations under D-1641. (DWR-01, ¶¶ 11-12; Yuba Water-200, ¶¶ 69-73.) Additionally, carriage water requirements ensure that some part of each water transfer is left in the Delta to mitigate any potential impacts to water quality from each transfer. (*Ibid.*)

Yuba Water also asserts that the proposed transfer will not injure other legal users because the transfer water would not otherwise be available for their use. DWR has stated that it will not transfer water through the Delta unless it is "new" water made available by changes in the transferor's operations. (See Yuba Water-200, ¶ 21; see also DRAFT Technical Information for Preparing Water Transfer Proposals (Dec. 2019), p. 2.)<sup>1</sup> The State Water Board has, in previous orders, determined that Yuba Water's transfer water is "new to the system" because it consists of stored water released from New Bullards Bar Reservoir to ensure compliance with the Accord's minimum streamflow requirements or made available through its member units' substitution of groundwater for surface water supplies under the Conjunctive Use Agreements. (Yuba Water-226, pp. 8-9; Yuba Water-200, ¶¶ 21, 37; AHO-015, p. 9.)

In addition to these requirements, Yuba Water has proposed reservoir refill and streamflow depletion terms as conditions of approval of the transfer designed to ensure that its transfer operations will not adversely impact the operation of the CVP and SWP. Reservoir refill accounting associated with transfers in the Delta watershed are necessary because transfers (other than groundwater substitution transfers) draw down the transferor's reservoir further than would have occurred without the transfer. (Yuba Water-200, ¶ 52.) When the transferor later refills that portion of its reservoir, it diverts more water than it would have without the transfer. (Yuba Water-200, ¶ 52.) There are instances when refill of New Bullards Bar Reservoir may result in lower bypass of flow into the lower Yuba River, which could in turn require the SWP and CVP to release more water or export less water to maintain Delta water quality. (Yuba Water-200, ¶¶ 52-54.)

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<sup>1</sup> The Board takes official notice of the DRAFT Technical Information for Preparing Water Transfer Proposals pursuant to Cal. Code Regs., tit. 23, section 648.2 and Evidence Code section 452, subdivision (c). This document was downloaded in October 2025 from [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Water-Transfers/Files/Draft\\_2019WTWhitePaper-012324.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Water-Transfers/Files/Draft_2019WTWhitePaper-012324.pdf) and is available in the [Admin Record Folder].

To avoid injury to SWP and CVP operations, Yuba Water and DWR negotiated reservoir refill provisions contained in the Water Purchase Agreement, which include "payback" provisions that require Yuba Water to compensate for additional reservoir refill by releasing the same volume of refill the next time the Delta is in balanced conditions. (Yuba Water-200, ¶¶ 54-55; Yuba Water-206, Exh. 2.) The 2008 Order conditioned Accord transfers on Yuba Water refilling New Bullards Bar Reservoir consistent with the refill provisions in Exhibit 2 to the Water Purchase Agreement. (Yuba Water-200, ¶ 55; Yuba Water-209, pp. 37, 50, 61.) Yuba Water proposes to continue to adhere to reservoir refill provisions negotiated with DWR in conducting long-term transfers. (See Yuba Water's Revised Proposed Terms, ¶ 25.)

Additionally, the 2024 SEIR analyzed potential effects of groundwater substitution transfers on flows downstream of the Yuba subbasin where pumping takes place. (Yuba Water-200, ¶¶ 84-85.) The 2024 SEIR determined that the effects associated with groundwater substitution transfers would not unreasonably affect flows downstream of the Yuba subbasin. (Yuba Water-200, ¶ 86.) Yuba Water has also developed a streamflow depletion factor, which will account for reductions in streamflow over time from additional seepage from streams back to a groundwater basin that may occur incrementally in connection with future groundwater substitution transfers. (Yuba Water-200, ¶ 85.) When a streamflow depletion factor is used, the amount of surface water made available to the transferee is less than the amount of surface water the transferor—or in Yuba Water's case, one or more of its member units—foregoes by pumping groundwater. (*Ibid.*) The difference is water left in the stream system to address additional streamflow depletion resulting from the substitution. (*Ibid.*) With minor modifications to Yuba Water's proposed term to ensure consideration of the factors necessary for evaluating streamflow depletion, we conclude that its general approach will avoid injury to other legal users of water.

Only the Delta Parties contend that these terms are not sufficient to avoid injury to legal users of water.<sup>2</sup> Specifically, the Delta Parties argue that their water rights will be injured by transfer operations that will continue to occur when electrical conductivity (EC)—a measure of salinity—exceeds the Table 2 Objectives of Water Right Decision D-1641 (D-1641) for the monitoring station at Old River at Tracy Boulevard (OLD). (See generally, Closing Brief of SDWA Parties (Delta Parties' Closing Brief).)

With respect to the effect of Delta rediversions on water quality, Order WR 2008-0014 provides:

Rediversion of water at the Clifton Court Forebay and the Jones Pumping Plant pursuant to this Order is subject to compliance by the operators with the objectives currently required of the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR) set forth in

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<sup>2</sup> NID also protested the Petition on the theory that approval would injure its water rights. (See generally, AHO-009.) We hereby affirm the Hearing Officer's June 6, 2025, ruling that our approval of the Petition cannot, as a matter of law, cause injury to NID's upstream water rights.

Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by DWR and USBR.

The Table 2 Objectives of D-1641 require a maximum EC (measured as the 30-day running average of the mean daily EC in mmhos/cm) at OLD of 0.7 between April and August and 1.0 between September and March of each year. The Delta Parties' witness, Mr. Greg Wilson, testified that between 2008 and 2023, approximately 59 percent of the Yuba transfer water rediverted at Clifton Court Forebay and Jones Pumping Plant occurred while EC at OLD exceeded this objective even though Yuba Water's transfers were subject to a carriage water requirement between 20-35 percent. (SDWA-001R, ¶ 12.)

Yuba Water does not dispute that rediversions of Accord water at the Clifton Court Forebay and the Jones Pumping Plan (through-Delta transfers) have occurred when EC at OLD has exceeded the Table 2 Objective. (See Yuba Water's Closing Brief, p. 7:21-10:6.) Instead, Yuba Water argues that past and potential future exceedances of the 0.7 mmhos/cm standard are not sufficient to establish injury because the Board determined that a year-round EC objective of 1.0 mmhos/cm at OLD would provide reasonable protection for agricultural beneficial uses in the southern Delta in the December 12, 2018 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2018 Bay-Delta Plan). (Yuba Water-504, pdf pp. 23, 25.) According to Yuba Water, the exceedances identified in Mr. Wilson's testimony either occurred when the requirement to meet the Table 2 Objective was modified by a temporary urgency change order or were exceedances of D-1641's requirement to meet the older 0.7 mmhos/cm standard.<sup>3</sup> (Yuba Water Closing Brief, p. 9:6-11.) Yuba Water also argues that transfer operations do not have a significant effect on EC at OLD. (Yuba Water Closing Brief, p. 9:12-22; AHO-002, pp. 2.5-18 – 3.5-20.)

Based on the information in the record before us, we find that the proposed transfer will not injure Delta Parties' water rights through degradation of water quality. In the 2018 Bay-Delta Plan, we determined that a year-round EC standard of 1.0 mmhos/cm at OLD would "attain the highest quality of water that is reasonable, considering all the demands being made on waters in the Estuary watershed." (Yuba Water-504, pdf p. 22.) The Delta Parties have not provided any evidence in this proceeding to indicate that transfers that have and will occur under this standard have significant and material impacts on their water rights by increasing salinity.

Although the 2018 Bay-Delta Plan "hasn't been implemented" in the sense that responsibility for meeting the objectives has not been assigned to specific permittees, this implementation status does not affect the validity of the State Water Board's adopted water quality objectives or the extent to which they inform an appropriate injury

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<sup>3</sup> Yuba Water's argument appears to be generally correct except for an eight-day period between September 23 and September 30, 2021. (See SDWA-004.)

analysis. (Hearing Tr., July 15, 2025, at 83:5-7.) As Mr. Wilson confirmed, the 2018 plan contains "currently effective water quality objectives adopted by the State Water Board." (Hearing Tr., July 15, 2025, at 82:10-13.) The fact that DWR may continue to operate under certain D-1641 requirements pending full implementation of the 2018 Bay-Delta Plan does not preclude our reliance on the 2018 objectives when evaluating new or extended water transfers. (See also Order WR 2010-0002, p. 15 [determining that enforcement of D-1641's salinity objective at OLD would not be warranted while the Board was in the process of considering whether to change the objective].) Thus, for purposes of this proceeding, the 1.0 mmhos/cm year-round standard represents the most appropriate legal benchmark for evaluating potential injury to agricultural water users in the Southern Delta generally.<sup>4</sup>

Even if we were inclined to deviate from the OLD salinity objective set forth in the 2018 Bay-Delta Plan in assessing the Delta Parties' generalized injury claim here, that claim would still fail because the Delta parties have failed to show that Yuba Water's transfer operations would cause a material increase in salinity. This failure extends not only to transfers that occurred when the 0.7 EC standard at OLD was exceeded, but also to the transfers that occurred between September 23-30, 2021, when EC at OLD exceeded 1.0 mmhos/cm. The State Water Board and California courts have consistently held that injury only occurs when a proposed change "materially diminishes" either the quantity of water available to the protestant or deteriorates its quality for intended uses. (See Order WR 79-22, p. 7.) Thus, to find that Yuba Water's transfer operations will result in injury to the Delta Parties' water rights, we must also find a causal connection between Yuba Water's operations and changes in salinity that may materially affect those rights.

The evidence in the record does not support such a finding. To avoid water quality impacts in the Delta, Yuba Water must provide carriage water to mitigate any changes in salinity and chloride concentrations in the Delta. (Yuba Water-700, ¶¶ 26, 46-50, 71; see also Yuba Water-215, p. 2.) The modeling Yuba Water conducted in connection with the CEQA process shows that its transfer operations would only have minimal effects on salinity conditions at OLD—and in certain situations, would actually improve salinity conditions in the southern Delta. (Yuba Water-700C, ¶¶ 4-9.) Aaron Miller of DWR also testified that the redirection of Yuba transfer water does not negatively impact DWR's ability to comply with its regulatory obligations, and that to the extent there have been exceedances of water quality objectives, they are not related to the export of Yuba transfer water. (Hearing Tr., July 14, 2025, at 94:6-15.) Instead, the admissible evidence in the record suggests that San Joaquin River flows and discharges of saline water near the OLD station are the most significant factors in the exceedances of the 0.7 mmhos/cm EC standard for the southern Delta. (DWR-001, ¶ 12; SDWA-011, ¶ 5 [discussing effects of releases of water from New Melones Reservoir on salinity at OLD]; see also Hrg. Trans. (Aug. 19, 2025), 5:45:12 – 5:45:20 [additional water in the San Joaquin River can have a dramatic effect on salinity at OLD]; DWR-005, pdf p. 4 [discussing factors that may explain the increase in salinity from Vernalis to OLD].) We find that the combined weight of Yuba Water's modeling and

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<sup>4</sup> In so holding, this Order does not purport to modify the terms and conditions of DWR's water rights as set forth in D-1641.

these factors, standing alone, is sufficient to establish a reasonable likelihood that continued Accord transfers will not materially degrade water quality in the southern Delta.

The Delta Parties have not offered competent evidence to rebut this conclusion. Instead, Mr. Wilson opined that DWR and Reclamation have authority to meet the 0.7 mmhos/cm EC standard at OLD by making operational changes that would result in greater San Joaquin River flows that have a stronger influence on salinity at that location. (SDWA-011, ¶¶ 5-6.) Such a proposal puts the cart before the horse. In the absence of any evidence that Yuba Water's transfer operations would materially diminish water quality at OLD, no basis exists to require changes in the coordinated operations of the SWP and the CVP in connection with the proposed transfer.<sup>5</sup>

Mr. Wilson also opined that we cannot find that approval of the Petition will avoid injury to the Delta Parties' water rights without conducting a quantitative analysis of the cumulative impacts of the proposed transfer and other large projects currently pending before us. (SDWA-001R, ¶ 21.) Although evidence of the cumulative impacts of multiple pending projects may appropriately inform our injury finding, there is no such evidence in the record here. As the Board has explained before, a person claiming injury from a change in the terms of a water right permit must submit evidence showing that "the change will interfere with his or her right to use the water . . . ." (Order WR 2013-0009, p. 7 [quoting *State Water Resources Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 805]; see also Order WR 89-8, pp. 41- [requiring protestants, in the context of a water right application, to "establish the likelihood of harm to their prior rights" and the "relationship between the harm to their rights and the proposed diversion" before an applicant will be required to prove that their diversions will not harm [p]rotestants."].) The Delta Parties' decision to merely raise the specter of cumulative impacts does not constitute such an evidentiary showing.<sup>6</sup>

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<sup>5</sup> Our decision not to require greater San Joaquin River flows to maintain appropriate water quality protections for the southern Delta in connection with this transfer, which appears to have minor and sometimes positive effects on Delta salinity, does not foreclose our authority to do so in other regulatory contexts.

<sup>6</sup> We also reject the Delta Parties' argument that CEQA requires the Board to conduct a quantitative analysis of the cumulative impacts of the proposed transfer with other projects pending before us. (See SDWA-001R, ¶ 21.) Under CEQA Guidelines section 15096, subdivision (e), a responsible agency that has not timely challenged the adequacy of a lead agency's EIR is deemed to have waived any objection to its adequacy unless it can either prepare a subsequent EIR if permissible under CEQA Guidelines section 15126 or assume the lead agency role as provided in section 15052, subdivision (a)(3). None of the criteria that would allow us to prepare a subsequent EIR under CEQA Guidelines section 15162 are satisfied here, and we lack authority to assume the role of lead agency under section 15052. In any event, the Delta Parties have not supported their assertion that CEQA requires a quantitative cumulative impacts analysis. On the contrary, the CEQA Guidelines explicitly state that an EIR's cumulative impacts "discussion need not provide as great detail as is provided for the effects attributable to the project alone" and authorize the SEIR's "list" approach of analyzing cumulative impacts. (Cal. Code Regs., tit. 14, § 15130 subd. (b); AHO-002, p. 4-2.)

Accordingly, based on Yuba Water's proposed terms and the evidence admitted at the hearing on the Petition, we find that approval of the Petition will not injure any other legal user of water, including the Delta Parties. (See Wat. Code, § 1736.)

## **5.2 Approval of the Petition Would Not Unreasonably Affect Fish, Wildlife, or Other Instream Beneficial Uses or Otherwise Harm Public Trust Resources**

In Order WR 2008-0014, the State Water Board considered Yuba Water's 2007 EIR/EIS for the Yuba Accord (2007 EIR) in finding that implementation of the Yuba Accord, including transfers pursuant to the Water Purchase Agreement, would not have unreasonable effects on fish, wildlife, or other instream beneficial uses. (See AHO-015, pp. 40-44.) The 2024 SEIR Yuba Water prepared to evaluate the potential environmental effects of continuing the transfer operations also concludes that approval of the Petition would not result in any new significant environmental impacts or cumulative effects beyond those previously analyzed and mitigated in the 2007 EIR. (AHO-002, pp. 3.4-28 – 3.4-37, 4-25 – 4-28.) Indeed, Yuba Water contends that continued authorization of transfers under the Yuba Accord would benefit fish, wildlife, and other instream beneficial uses by providing additional flow and cooler water temperatures that improve conditions for species of concern in the lower Yuba River, and by providing carriage water for additional Delta outflow. (Yuba Water-200, ¶¶ 66, 104, 106; Yuba Water-211, pp. 10-108 to 10-113; AHO-015, p. 49.) Yuba Water also acknowledges that future transfers are conditioned upon all applicable water quality objectives being met and biological opinions that govern the operation of the CVP and SWP. As a result, Yuba Water contends that we need not reconsider the Board's prior finding that Accord transfers do not unreasonably affect fish, wildlife, or other instream beneficial uses. (See Wat. Code, § 1736.)

The NGO Parties disagree that Order WR 2008-0014's finding with respect to instream beneficial uses remains valid. As an initial matter, they contend that Order WR 2008-0014 anticipated that the Accord's transfer program would contribute to the Environmental Water Account Program (EWA). (NGOs' Closing Brief, p. 7:6-8.) They argue that because the EWA effectively ended in 2007 and transfer water delivered to the EWA did not result in any specific environmental benefits, we cannot continue to rely on Order WR 2008-0014's findings with respect to fish, wildlife, and other instream beneficial uses. (*Id.* at 7:8-16.)

Contrary to the NGO Parties' arguments, the Board's prior finding that approval of Yuba Water's transfer program would not unreasonably affect instream resources expressly disclaimed any reliance on the provision of transfer water to the EWA. (See AHO-015, p. 30 [the State Water Board's finding that Accord transfers would not unreasonably affect public trust resources "did not rely on the transfer being used for any particular purpose . . . ."].) The end of the EWA, therefore, has no bearing on the continued validity of our finding about impacts on fish, wildlife, and other public trust resources in considering whether to extend our approval of the Accord transfer program.

More fundamentally, the NGO Parties argue that fisheries in the lower Yuba River in the Delta have declined since 2008, and that Accord transfers have contributed to this decline. (See NGO Parties' Closing Brief, pp. 8:20-24; 16:4-17:27.) Specifically, the NGO Parties contend:

1. The Yuba Accord and its water transfer program have not accomplished the stated goal of improving fisheries and aquatic resources;
2. The Accord's overall release regime's shifting of the hydrograph from spring into summer has been detrimental to Delta fisheries;
3. Through-Delta transfers have adverse impacts on aquatic resources, especially salmonids;
4. The Board cannot rely on Yuba Water's or DWR's assurances that compliance with Delta water quality objectives will avoid unreasonable effects on public trust resources because those objectives are regularly modified pursuant to Temporary Urgency Change Orders (TUCOs); and
5. Allowing through-Delta transfers between December 1 and June 30 have detrimental effects on public trust resources in the Delta. (*Ibid.*)

We agree with the NGO Parties that through-Delta transfers between December 1 and June 30 should be prohibited. When the Board adopted Order WR 2008-0014, it expressed significant concerns about through-Delta transfers in winter and spring despite "a great deal of uncertainty" regarding the effects of Delta pumping on public trust resources. (AHO-015, p. 27.) At the time, regulatory limits designed to protect listed species did not preclude relatively small amounts of through-Delta transfers during these winter and spring months in "very wet or very dry" years. (*Ibid.*) Based on the evidence available to us at the time, we concluded it was appropriate to permit through-Delta transfers at a rate of up to 500 cfs up to an annual limit of 20,000 AF, between December 1 and June 30. (*Id.* at pp. 27-28.)

Circumstances have since changed. There is uncontroverted evidence in the record that significant numbers of steelhead are impacted by the operation of the CVP and SWP Delta export facilities in winter and spring. (FOR-002, ¶ 10-12; FOR-012, pdf p. 8.) Further, as Yuba Water admits in its closing brief, the biological opinions issued by the National Marine Fisheries Service and the U.S. Fish & Wildlife Service that govern DWR's ability to move Accord transfer water through the Delta (Delta BiOps) have consistently prohibited transfers between December 1 and June 30 since we adopted Order WR 2008-0014. (Yuba Water Closing Brief, p. 19:17-19.) DWR's incidental take permit for the Long-Term Operation of the State Water Project (ITP) also prohibits through-Delta transfers between December 1 and June 30. (DWR-02, p. 19.) Both the Delta BiOps and the ITP are required to be based on the best available science. (See Fish & Game Code, § 2081, subd. (c); Cal. Code Regs., tit. 23, § 783.2, subd. (b); Cal. Code Regs., tit. 23, § 783.4, subd. (c); 16 U.S.C. § 1536, subd. (a)(2).) Given the uncontroverted evidence of the effects of CVP and SWP operations on migrating steelhead and the Delta BiOps' prohibition of transfers in winter and spring, we conclude that our previous finding that authorized limited through-Delta transfers between December 1 and June 30 is no longer valid and thus decline to re-authorize

such transfers within that time frame. In doing so, we do not preclude continued winter and springtime transfers to EBMUD or CCWD.<sup>7</sup>

In all other respects, however, the NGO Parties' arguments are not persuasive. First, the NGO Parties have not provided evidence that supports a causal connection between continued Accord transfers and their generalized concerns about the status of Delta fisheries. (See NGO Parties' Closing Brief, p. 16:4-17:15.) The NGO Parties' arguments about the environmental effects of the Accord transfers rely on the testimony of Dr. Devon Pearse. (See *id.* at p. 16:6-19 [citing FOR-002].) Dr. Pearse's testimony generally establishes that operation of the CVP/SWP export facilities in the Delta have adverse effects on Central Valley Steelhead, and that many Central Valley Steelhead entrained at the Delta export facilities in 2024 originated from the Yuba River. (FOR-002, ¶¶ 4-12.)

But Dr. Pearse's testimony connects these adverse effects to the operation of the CVP and SWP generally, not Accord transfers themselves. (See *id.* at ¶ 11 [opining that juvenile outmigrants are "negatively impacted by CVP/SWP operations." (emphasis added, citation omitted)].) Indeed, Dr. Pearse's testimony admits that "[a]lmost no steelhead were salvaged" between July 1 and November 30, when all exports of Accord transfer water have occurred since 2009. (*id.* at ¶ 12; Yuba Water-200, ¶ 70.) And even if Central Valley Steelhead are entrained during exports of Accord transfer water between July 1 and November 30, denying the Petition would not necessarily avoid such harms because DWR and Reclamation could simply export Yuba Accord instream flows that reach the Delta export facilities. (CSPA-1c, ¶ 37; see also Yuba Water-200, ¶¶ 100-102.) Accordingly, the NGO Parties have not put forward any evidence to show that allowing continued Accord transfers between July 1 and November 30 would have an unreasonable effect on public trust resources in the Delta.<sup>8</sup>

Second, the NGO Parties' argument that approval of the Petition would harm instream resources by shifting the lower Yuba River's hydrograph also lacks merit. (See FOR-002, ¶¶ 14-16; NGO Parties' Closing Brief, p. 17:6-15.) As an initial matter, the NGO Parties cannot show that denying the Petition would cause the lower Yuba River's hydrograph to revert to a more natural state. On the contrary, the hydrograph would generally remain shifted from spring to summer regardless because maintenance of the Accord's instream flow regime is required under the terms of Yuba Water's water rights. (See AHO-015, pp. 56-58.) Thus, our decision to continue authorizing these flows for transfer once they pass the Marysville Gage will not affect Yuba Water's obligation to

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<sup>7</sup> Although State Water Contractors assert that winter and spring rediversions of transfer water by CCWD also "may impact salinity, outflow and OMR flows[.]" they point to no evidence that such rediversions have or may affect fish in the Delta to the same extent as CVP and SWP operations. (State Water Contractors' Comments on Draft Proposed Order, p. 2:15-28.)

<sup>8</sup> To the extent the NGO Parties argue that we should deny the Petition because "the Yuba Accord and its Water Transfer Program have not accomplished the stated goal of improving" public trust resources, they misapprehend the standard that governs our consideration of the Petition. (NGO Parties' Closing Brief, p. 16:20-21.) We are required to evaluate whether approval would "unreasonably affect" public trust resources, not whether approval of the Petition would improve the status of such resources. (Wat. Code, § 1736.)



continue releasing them. (See CSPA-1c, ¶¶ 35-37; Yuba Water-200, ¶ 95; Yuba Water-100, ¶ 6.)

Further, the NGO Parties expressly disclaimed any intent to modify Yuba Water's instream flow obligations. (See, Letter from NGO Parties to Yuba Water re Yuba County Water Agency's Petition for long-Term Transfer for Water Right Permit 15026 (Application 5632) (Dec. 23, 2024), p. 3 [stating that "the goal of the [NGO Parties] in this proceeding is not the re-examination of instream flows memorialized in the Yuba Accord" and that "reopening of the Yuba Accord Fisheries Agreement and its instream flow requirements" is not "at issue here . . ."].) The hearing officer relied in part on these statements in allowing the NGO Parties to introduce Dr. Pearce's testimony. (See Procedural Ruling on Evidentiary Objections and Allocation of Time (Jul. 11, 2025) p. 7.) The NGO Parties are therefore estopped from seeking modifications to the instream flow requirements adopted in Order WR 2008-0014. (See *Jackson v. County of Los Angeles* (1997) 60 Cal. App. 4th 171, 181-183 [discussing doctrine of judicial estoppel].)

Although the NGO Parties disclaimed any intention to modify the instream flow requirements of Order WR 2008-0014, the hearing officer specifically invited them to offer evidence as to whether approval of the Petition would unreasonably affect public trust resources in the lower Yuba River by authorizing the transfer of water beyond that required to be released to meet instream flow objectives. (Procedural Ruling on Evidentiary Objections and Allocation of Time (Jul. 11, 2025) p. 7.) The NGO Parties declined to introduce any such evidence, so there is nothing in the record to support their argument that continued transfers would unreasonably affect instream beneficial uses in the lower Yuba River.

Finally, the NGO Parties' arguments about the possibility of through-Delta transfers under future TUCOs are not persuasive. There is no dispute that we have granted temporary urgency change petitions (TUCPs) in the recent past to relax DWR and Reclamations' obligation to operate the SWP and CVP to meet the requirements of D-1641, and that through-Delta transfers of Accord water have occurred under such relaxed requirements. (CSPA-1c, ¶¶ 18-20; CSPA-9, p. 30; CSPA-10, p. 37.) There is also no dispute that we may be asked to consider such TUCPs in the future.<sup>9</sup> (CSPA-1c, ¶ 25.) The NGO Parties appear to contend that we cannot rely on D-1641's terms to find that the transfer will not unreasonably harm fish and wildlife while there is a likelihood that future transfers will occur pursuant to TUCOs modifying DWR's obligations under D-1641. (See Wat. Code, § 1736.) To address the possibility of harm to public trust resources that may occur if water is transferred when a future TUCO is in effect, they propose a complex permit term that would, under specified conditions: (1) prohibit Yuba Water and DWR from using Accord flows to "back up" water into Oroville Reservoir; (2) prohibit groundwater substitution transfers; and (3) require Yuba Water to contribute 20 percent of gross transfer revenues generated when DWR's obligations

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<sup>9</sup> We note, however, that because our approval of the Petition is conditioned on compliance with the objectives of the operative Bay-Delta Water Quality Control Plan at the time transfers occur rather than the water quality objectives of D-1641, Yuba Water will have no basis to argue that it may transfer water under TUCOs obtained by DWR. (See NGO Parties' Comments on Draft Proposed Order, p. 6:9-12.)

under D-1641 have been modified to a mitigation fund to improve the production of wild spring-run Chinook salmon in Butte Creek. (NGO Parties' Revised Proposed Permit Term (Aug. 28, 2025), pdf pp. 4-5.)

The NGO Parties' position, however, fails to account for the fact that we cannot grant a TUCP unless we find that the proposed change can be made "without unreasonable effect upon fish, wildlife, and other instream beneficial uses." (See Wat. Code, § 1435 subd. (b)(4); see also CSPA-9, pdf pp. 20, 24-27.) This is essentially the same standard that governs our approval of the Petition. (See Wat. Code, § 1736 [requiring a finding that a long term transfer would not "unreasonably affect fish, wildlife, or other instream beneficial uses."].) When we have previously authorized DWR to facilitate through-Delta transfers under a TUCO, we have done so based on findings consistent with our prior approval under Water Code section 1736. (See AHO-15, pp. 40-44; CSPA-9, pdf pp. 24-27; CSPA-10, pp. 30-33.) Thus, any transfer we may permit under a future TUCO would evaluate whether the new conditions would "unreasonably affect fish, wildlife, or other instream beneficial uses" under the circumstances and include conditions to ensure the change would not. (Wat. Code, § 1736.)

Our conclusion that future transfers may be conducted under potential TUCOs without unreasonable effects on fish, wildlife, or other instream beneficial uses does not necessarily mean that such transfers will always be permitted. Under Water Code section 1438, subdivisions (d) and (e), the NGO Parties may object to any future TUCP, and we are required to promptly consider any such objections. If the NGO Parties believe that a particular temporary urgency change petition authorizing Accord transfers will result in unreasonable effects on public trust resources, they may object on that basis and propose restrictions or conditions that would resolve their concerns.<sup>10</sup> We cannot, however, conclude as a blanket matter that the possibility of future TUCOs will unreasonably affect public trust resources.

The State Water Board declines to find that the Board's authority to temporarily modify the terms of a water right transfer or of the export facilities it uses (including evaluation of such modifications' effects on instream uses) undermines our ability to find that a transfer will not unreasonably harm fish and wildlife. Accordingly, based on the evidence in the record and for the reasons stated herein, we find that approval of the Petition will not unreasonably affect fish, wildlife, or other instream beneficial uses.<sup>11</sup> (Wat. Code, § 1736.)

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<sup>10</sup> While we appreciate the NGO Parties' procedural concerns about how TUCPs are processed, we lack authority to modify the standards and processes mandated by the Legislature in Water Code sections 1435 *et seq.* (See NGO Parties' Comments on Draft Proposed Order, pp. 7:8-8:12.)

<sup>11</sup> Based on this finding, we need not further address the NGO Parties' proposed permit term. But because we believe the mitigation fund proposal may have value in resolving other matters that may come before us, we describe the evidentiary showing necessary for us to consider similar terms in the future. A party seeking to dedicate a portion of transfer revenues to mitigate environmental impacts must provide evidence sufficient for us to find that the proposed term would specifically address those impacts. Without evidence of connection between the proposed dedication and the specific harms a party seeks to remedy, we cannot adopt such a proposal. (See Cal. Code Regs., tit. 23, § 816 [requiring "appropriate" terms and conditions for long-term transfer approvals].) Accordingly, parties who seeks to impose such a

### **5.3 Economic Effects**

Yuba Water has offered uncontroverted evidence that the proposed transfer will have beneficial effects on the economy of the area from which the water is being transferred. Water sales from the Yuba Accord have accounted for as much as 39 percent of Yuba Water's annual revenue in some years. (Hearing Tr., July 14, 2025, at 50:16-19.) Yuba Water has used these revenues to pay local cost-shares for federal and state grant funds and loans for major flood-control projects and capital projects that improve water supply reliability, promote groundwater sustainability, and restore and enhance habitat for fish and wildlife. (Yuba Water-100, ¶¶ 8-13.) According to Yuba Water's general manager, Yuba Water will continue using transfer revenues to fund flood control, water supply reliability, and habitat restoration and enhancement projects. (*Id.* at ¶¶ 10-13.)

No party has disputed Yuba Water's evidence that revenues generated by its transfer operations have benefited, and will continue to benefit, the overall economy within Yuba Water's territory. (See Wat. Code App., § 84-1.) Accordingly, the State Water Board concludes based on the evidence presented that approval of the Petition would not unreasonably affect the overall economy of the area from which the water will be transferred. (See Wat. Code, § 386.)

### **5.4 Public Interest Considerations**

In addition to their concerns about water right injury and environmental impacts, Protestants have raised a variety of concerns that do not map neatly onto the specific criteria set forth in Water Code section 1736 but implicate our discretion to condition the approval of this long-term transfer in the public interest. We address these concerns in detail below, and find that approval of the Petition, as conditioned in this Order, is consistent with the public interest.

#### **5.4.1 The Requested Annual 200,000 AF Limit on Transfers is Appropriate**

Order WR 2008-0014 authorized Yuba Water to transfer up to 200,000 AF of water each year, and the Petition seeks to maintain this annual limit. The 200,000 AF annual limit is based on a calculation of the maximum amount Yuba Water would have available to transfer according to the difference between baseline flow conditions and current instream flow requirements under the Yuba Accord and Order WR 2008-0014, plus an estimated maximum of 90,000 AF in annual groundwater substitution transfers. (See Hrg. Trans. (Jul. 14, 2025), at 06:18:40-06:20:26.)

The NGO Parties contend that the annual limit should be halved to 100,000 AF because the NGO Parties believe the Board's pending Bay-Delta Plan Update will reduce the

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term should be prepared to offer admissible evidence that: (1) establishes the existence of impacts related to the project proponent's proposed action; and (2) explains how the proposed dedication would mitigate or avoid those specific impacts.

amount of water available for transfer. (See CSPA-1c, ¶¶ 41-42.) The NGO Parties also contend that reducing the annual limit on transfers to 100,000 AF will bring the approval in line with Yuba Water's average annual transfers between 2007-2022 but have not articulated how a lower limit would address any particular public interest concern. (NGO Parties' Closing Brief, p. 7:2-3 [citing AHO-002, p. 5-4, Table 5-1].)

We are not persuaded that an annual limit that reflects average historical transfers or attempts to anticipate future regulatory actions we may take will promote the public interest. First, Yuba Water's average annual transfers include transfer amounts significantly greater than 100,000 AF in some years. (See AHO-002, p. 5-4, Table 5-1 [showing total transfers greater than 150,000 AF in 2008, 2009, 2013, and 2014].) In the absence of specific evidence of undesirable impacts of transferring more than 100,000 AF of water in any given year, we are not persuaded that we should limit Yuba Water's ability to transfer Accord water when it is available.

Second, although we are considering the adoption of a Bay-Delta Plan Update that could reduce the amount of water available for transfer, we have not made a final decision about the terms of that update or Yuba Water's responsibilities to achieve its objectives. We are also considering Yuba Water's Healthy Rivers and Landscapes (HRL) proposal which, if approved, may allow Yuba Water to provide additional water to Delta outflow while transferring water in similar quantities as it has in the past.<sup>12</sup> (Yuba Water-200, ¶ 109 [explaining that although Yuba Water's HRL proposal likely will result in "small" reductions in transferable water, the program was designed to "not significantly impact Yuba Accord flows in future years . . ."].) Should adoption of this or any future updates change the amount of water available for transfer under the accounting methodology described here, the accounting methodology to which Yuba Water has committed will act as the limit on the transfer amount.

In the absence of an evidentiary showing that water available for transfer will never exceed 100,000 AF or that reducing the annual limit would address some other impact of the proposed transfer, we decline to grant the NGO Parties' request. If we take future regulatory action that reduces the availability of water for transfer, the maintenance of the 200,000 AF limit will not permit Yuba Water to transfer water in violation of its regulatory obligations. Accordingly, we decline to reduce the annual limit on transfers below the limit requested in the Petition and previously approved under Order WR 2008-0014.

#### **5.4.2 The NGO Parties' Economic Arguments Are Not Persuasive**

The NGO Parties argue that the proposed transfer is not in the public interest for two economic reasons. First, they generally argue against approving a downstream transfer of water that is released to comply with minimum instream flow obligations. (NGO

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<sup>12</sup> The NGO Parties also advance an argument taking issue with Yuba Water's HRL proposal. (NGO Parties' Closing Brief, p. 23:14-24:4.) We have not yet acted on that proposal, nor is it relevant to our decision on the Petition. We encourage the NGO Parties to raise this argument in connection with our consideration of the Bay-Delta Plan Update, but we will not consider it here.

Parties' Closing Brief, pp. 2:18-24, 9:1-10:2, 12:1-3, 12:16-14:12.) Second, they appear to argue that the revenue generated by Yuba Water's transfer and power generation operations is excessive compared to its environmental impacts. (*Id.* at 14:21-16:2.)

Both arguments lack merit. The only clear legislative direction regarding the Board's consideration of economic issues in determining whether to approve a proposed transfer is whether the transfer will "unreasonably affect the overall economy of the area from which the water is being transferred." (Wat. Code, § 386.) Section 5.3 of this Order contains our analysis of this issue. In all other respects, the Legislature has directed us to "facilitate" and "encourage" voluntary water transfers. (Wat. Code, § 109.) Such transfers generally involve compensation for the water being transferred and encourage the use of water markets as a potentially effective way to ensure the various water needs of the state can be met.

We also disagree that the subsequent redirection and use of water released from storage to meet instream flow objectives after those objectives are met is unique or requires heightened scrutiny. Multiple projects—including Placer County Water Agency's Middle Fork Project, the SWP, El Dorado Irrigation district's Project 184, and Turlock Irrigation District's New Don Pedro Project—operate in this manner. (See Yuba Water-700C ¶¶ 32-36; Yuba Water-714 to Yuba Water-717.)

The NGO Parties' attempt to distinguish these examples from transfers is unavailing. (See NGO Parties' Closing Brief, p. 13:1-14:12.) As Mr. Grinnell testified, a water transfer is, at its core, a water rights change that allows for the use of water at a different location. (Hrg. Trans. (Aug. 19, 2025), 00:47:19 – 00:47:43.) In the absence of adverse impacts caused by the change, it makes no functional difference whether the use is made by the water right holder, a contractor, or a transferee.<sup>13</sup> This is not to say that the Board must always approve the transfer of water originally released to meet instream flow objectives. But where a transfer of such flows is consistent with their purpose—here, the maintenance of adequate flows and water temperatures in the lower Yuba River—there is no legal basis to evaluate such transfers differently from more traditional arrangements. Regardless of how transfer water is made available, our duty is to evaluate the effects of each transfer on other legal users of water and instream beneficial uses on a case-by-case basis. (See, Wat. Code, § 1736.)

Large, multi-use storage projects are expensive to build, maintain, and operate. Such projects can provide significant benefits to water users, mitigate flood risk, and be operated in a manner that minimizes or mitigates ecological impacts. Here, the Yuba River Development project operates for flood control, power generation, irrigation, and fisheries purposes. The Yuba Accord increases certainty and balances the fishery, irrigation, and flood control needs of various parties. This agreement is predicated in part on allowing the transfer of water released from storage for fishery purposes in the

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<sup>13</sup> Contrary to the NGO Parties' arguments, Yuba Water does bear some cost associated with DWR's and Reclamations burden to meet water quality requirements because of the reservoir refill and carriage water requirements it must satisfy to avoid adverse water quality impacts attributable to its transfers. (See NGO Parties' Comments on Draft Proposed Order, p. 9:1-2.)

lower Yuba River or made available through conjunctive use operations. In this situation—where the proposed transfer is a key facet of a collaboratively developed program designed to protect and enhance fisheries and aquatic resources while also improving local and statewide water supply reliability—we will not upset the balance established by the Yuba Accord by denying the Petition. (See AHO-002, p. 2-1.)

#### **5.4.3 Prioritization of North-of-Delta Transfers Would Not Promote the Public Interest**

The NGO Parties initially requested that we condition any approval of the Petition on a requirement that Yuba Water prioritize water transfers to EBMUD and CCWD over transfers through CVP and SWP export facilities. The NGO Parties base this request on an argument that it is in the public interest to “prioritize limited transfer water to urban water agencies with infrequent transfer water demands” to discourage reliance on inherently unreliable water supplies. (NGO Parties’ Closing Brief, pp. 22:1-23:12.)<sup>14</sup> Recognizing that it would be challenging—if not impossible—for the Board to effectively modify water transfer contracts between Yuba Water, DWR, CCWD, and EBMUD as a condition of approval, the NGO Parties have adjusted their approach. They now ask that the Board prioritize north-of-Delta transfers by not constraining them when a TUCO is in effect, and by excluding such transfers from their requested prohibition on transfers between December 1 and June 30. (NGO Parties’ Closing Brief, p. 23:1-8.)

To the extent that the NGO Parties argue that we should deny the Petition based on their expressed concerns about the water supply portfolios of south-of-Delta transferees, we disagree. A general preference for deliveries to water users that have more secure supplies over those of water contractors whose supplies are most at risk is not in the public interest. (See Yuba Water-400 ¶¶ 8–11, 13.) This is particularly true here, where denial of the transfer would not necessarily prohibit the export of Accord water to south-of-Delta water users. (See CSPA-1c, ¶¶ 34, 37.)

As we have explained above, we will not adopt the NGO Parties’ requested term regarding the transfer of water pursuant to future TUCOs, so their request for a carve-out from that term for north-of-Delta transfers is moot. We agree, however, with their assertion that north-of-Delta transfers between December 1 and June 30 pose fewer risks to fish and wildlife in the Delta, and will permit transfers to EBMUD and CCWD within that time frame. (See *supra*, p. 15.)

#### **5.4.4 A Shorter Term of Approval Would Not Promote the Public Interest**

The NGO Parties urge us to reject Yuba Water’s request to approve the transfer for a term of 25 years and limit our approval to 15 years because the status of “public interest resources in the Delta are undergoing rapid change driven by water management practices.” (NGO Parties’ Closing Brief at 24:6-15.)

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<sup>14</sup> Although the NGO Parties’ closing brief also relies on the greater potential harm to fisheries of exporting water through SWP and CVP facilities in the Delta, CSPA’s oral testimony at the hearing makes it clear that this is a secondary concern. (Hrg. Trans. (Aug. 21, 2025), at 2:02:52 – 2:06:04.)

There are several potential benefits associated with a relatively longer term of approval for water transfers. These benefits include the conservation of public resources necessary to process more frequent transfer petitions, greater water supply certainty for transferees, and more predictable revenues for transferors. On the other hand, longer-term transfers can, as the NGO Parties point out, complicate the Board's ability to address potential future changes in conditions that may be affected by transfer operations. Our determination of a term of approval should seek to balance these potential risks and benefits.

In granting the Petition, this Order requires Yuba Water to comply with all applicable future regulatory requirements that may constrain their transfer operations and reserves jurisdiction to prohibit or re-examine the conditions of transfer operations that may have unforeseen environmental effects. (See *infra*, ¶¶ 11, 24.) In the absence of any concrete evidence suggesting negative externalities associated with a 25 year-long approval, we conclude these conditions are sufficient to account for unforeseen changes that may occur in the Delta ecosystem.

#### **5.4.5 Past Permit Violations Do Not Outweigh the Public Interest in Approving the Petition**

The Delta Parties argue that approval of the Petition would not be in the public interest because Yuba Water and DWR have transferred water through the Delta when EC at OLD exceeded the standards of Table 2 in D-1641. (Delta Parties Closing Brief, p. 6:1-23.) They contend that if our “water right permitting process is to have meaning, condoning chronic violations of an express permit term, by extending the very same program by twenty-five years, cannot be considered anything but adverse to the public interest.” (*Ibid.*)

Although we have found that there is insufficient evidence in the record to conclude the Delta Parties have been or will be injured by exceedances of the D-1641 Table 2 standards applicable at OLD, Yuba Water and DWR's track record of compliance with this condition of Order WR 2008-0014 initially appears troubling. There is no dispute that DWR has regularly exported water from the Delta when EC at OLD has exceeded 0.7 mmhos/cm, and there is also no dispute that transfers have occasionally occurred when EC at OLD exceeded 1.0 mmhos/cm. (See SDWA-004; Yuba Water-220.)

However, there are mitigating circumstances to Yuba Water's apparent lack of concern for complying with the Table 2 standards for OLD. First, as we noted in section 5.1 of this Order, we determined in adopting the Water Quality Control Plan in 2018 that a year-round standard of 1.0 mmhos/cm at OLD would “attain the highest quality of water that is reasonable, considering all the demands being made on waters in the Estuary watershed.” (Yuba Water-504, pdf p. 22.) Second, some of the apparent violations have occurred in periods in which we issued TUCOs to relax Delta water quality requirements applicable to the CVP and SWP under D-1641. (See Hrg. Trans. (Jul. 15, 2025), 02:40:00-02:44:21; see also CSPA-9, pp. 23-24 [“The exemption of all transfers from

the export constraints is also considered urgent as transfers . . . are a critical source of supply for south of Delta water users . . . during dry conditions.”]; CSPA-10, p. 33 [excluding transfers from export limits when D-1641 water quality requirements are not met]; Order WR 2014-0029, p. 53 [“These limitations do not apply to water transfers under non-SWP or CVP water rights . . . .”].) Finally, in 2010, the Board issued an order in which it determined that strict enforcement of the 0.7 mmhos/cm EC standard would not be warranted while it was reviewing the “salinity objectives and associated program of implementation contained in the [2006 Bay-Delta Plan] . . . .” because there was a reasonable possibility that the objectives, or DWR and Reclamation’s responsibility for meeting them, would change. (Order WR 2010-0002, pp. 2, 15.) In doing so, the Board authorized the Executive Director to require DWR to implement “any additional salinity control measures” that he determined were “reasonable and feasible.” (*Id.* at p. 2.)

We decline to hold that these developments justify exports of Accord water when the D-1641 EC objective for OLD was exceeded in violation of our approval of the transfer. We find, however, that they do not weigh against our approval of the Petition when combined with the absence of evidence of specific harm to the Delta Parties’ water rights and the apparent lack of a causal connection between Yuba Water’s transfers and salinity conditions at OLD.

Yuba Water’s transfers in September 2021 are more problematic. (See SDWA-004; Yuba Water-220.) For at least eight days, Yuba Water transferred, and DWR re-diverted, water when the applicable 1.0 mmhos/cm EC objective for OLD was exceeded. (*Ibid.*) During this period, the above-discussed factors that cut against the Delta Parties’ public interest argument did not apply, and the re-diversion of Accord transfer water violated the terms of Order WR 2008-0014.

Although this violation concerns us, it was relatively short in duration and does not outweigh the significant benefits to the public interest that will result from the continuation of the Yuba Accord. (See Yuba Water-100, 300, 400; see also *supra* section 5.4.2.) We therefore reject the Delta Parties’ public interest argument. However, we reserve the right to exercise our enforcement authority against Yuba Water and DWR to address similar violations in the future, and encourage interested parties to notify us if transfers under this Order occur when EC at OLD exceeds 1.0 mmhos/cm.

#### **5.4.6 NID’s Public Interest Arguments**

NID has raised concerns that additional releases pursuant to potential future regulatory requirements (Upstream Regulatory Releases) could be transferred by Yuba Water, and that any transfers of such releases would injure the public interest and have adverse environmental impacts. Although Yuba Water witness Stephen Grinnell testified that the Water Purchase Agreement’s Scheduling and Accounting Principles would prohibit the transfer of Upstream Regulatory Releases, he also acknowledged that they are “complex and detailed, and required calculations each year to determine” the amount of transferrable water. (Yuba Water-700, ¶ 39.) To address this complexity, Yuba Water proposed a permit term to clarify that future releases required of NID’s Yuba-Bear



Project or PG&E's Drum-Spaulling Project will not be transferrable under the Water Purchase Agreement's Scheduling and Accounting Principles.

This Order makes minor modifications to Yuba Water's proposed term, clarifying that NID releases required by FERC or "any other regulatory order issued by a federal or state agency" may not be transferred. (See *infra*, ¶ 14.). This includes any releases that may be made to comply with future Bay-Delta Water Quality Control Plan requirements, including releases that may be made pursuant to the Healthy Rivers & Landscapes approach currently under consideration. (See NID Closing Brief, p. 7:3-7; *infra*, ¶ 14.)

We decline to grant NID's request that the Scheduling and Accounting Principles must be incorporated directly into the Order as a permit term and to include NID's definition of "Upstream Regulatory Releases" in the term. (*Id.* at p. 7:11-25.) This Order already effectively incorporates the Scheduling and Accounting Principles by limiting transfers to "Released Transfer Water" and clarifying that Upstream Regulatory Releases fall within the definition of "Baseline Conditions." (See *infra*, ¶ 14.)

We agree, however, that Yuba Water should be required to provide accounting information sufficient for the State Water Board and NID to review and verify the source and amount of water transferred each year. Accordingly, this Order directs Yuba Water to provide an accounting of all Accord transfers to the State Water Board and interested parties such as NID on an annual basis. As regulatory releases by NID will not be transferred, we need not further address their comments as to the public interest and environmental impacts of such a transfer.

NID also argues that, as a matter of public interest, we should require Yuba Water to dedicate a portion of its transfer revenues to the construction and operation of the Narrows II intake extension project. (NID Closing Brief, p. 8:10-9:15.) In Revised Decision 1644, we directed Yuba Water to "diligently pursue development of the Narrows II Powerhouse Intake Extension Project at Englebright Dam to address concerns about water temperature impacts on anadromous in the lower Yuba River. (Revised Decision 1644, p. 87.) Then, in Order WR 2008-0014, we considered Yuba Water's argument that the change in river flows under the Fisheries Agreement obviated the need for the Narrows II intake extension project. Instead of resolving the issue with finality, we delegated to the Deputy Director the authority to relieve Yuba Water of its obligation to "diligently pursue" the Narrows II intake extension process on an annual basis based on information submitted by Yuba Water. (AHO-015, pp. 25, 58.)

There is no evidence in the record before us that shows that requiring funds to be spent on the Narrows II intake extension project would provide significantly greater public benefit than the other uses for which the funds may be expended (e.g. flood control and habitat restoration projects). Should the need to require diligent pursuit of the intake extension project arise, the Deputy Director retains the authority to require such pursuit. Accordingly, we see no reason to deviate from the approach we took to the Narrows II intake extension project in Order 2008-0014 and thus decline NID's request.

### **5.5 The Accord Transfers Are Not Inconsistent with Article X, Section 2 or the Human Right to Water**

The proposed transfer extension is not inconsistent with Article X, Section 2 of the California Constitution. The transfer makes stored water available during critical periods to meet municipal, agricultural, and environmental needs while maintaining environmental protections. (Yuba Water-100, ¶¶ 9-13.) The transfer promotes conjunctive use of surface and groundwater resources in furtherance of state policy, and also furthers state policy encouraging water transfers and efficient water use. (Water Code, §§ 109, 475, 1011.5.) The municipal and agricultural uses served by the transfer are beneficial, and this Order includes environmental protections to ensure instream beneficial uses are not unreasonably affected. (AHO-015, pp. 40-41, 55.) Statewide, the transfer provides critical water supplies when other sources are restricted. (Hearing Tr., July 14, 2025, at 50:16-19; Yuba Water-100, ¶¶ 10-13; see generally Yuba Water-300, Yuba Water-400.)

There is no evidence that the potential benefits of *not* transferring the water to downstream users would provide a benefit to the state that outweighs the above-outlined benefits. Similarly, there is no indication that the ultimate end use of the water, for municipal or agricultural uses, will be so inefficient as to constitute waste.

Finally, there is no evidence that approval of the Petition would negatively affect the human right to water as set forth in Water Code section 106.3. On the contrary, approval of the Petition may well promote the human right to water by making water available to urban water agencies during times of extreme shortage. (See e.g., Yuba Water-400, ¶¶ 4-6, 10, 13.)

Thus, our approval of the Petition as conditioned in this Order is not inconsistent with Article X, Section 2 of the California Constitution or the human right to water as set forth in Water Code section 106.3.

### **5.6 Public Trust Considerations**

The public trust doctrine generally requires the State Water Board to consider the impact of water diversions on public trust resources, including fisheries and wildlife habitat and other instream uses, to protect such resources to the extent feasible, and to exercise continuing supervision over water allocations. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) Water Code, section 1736's requirement to only approve transfers where there is "no unreasonable impact on fish, wildlife or other instream uses" requires explicit public trust findings, as described above in section 5.2. Our approval of the proposed transfer as conditioned in this Order protects those resources to the extent feasible.

This Order's terms and conditions include protections for public trust resources and maintain supervision of the transfer to address potential future impacts to such resources. For example, this Order:

1. Prohibits transfers through the SWP and CVP's export facilities during the period in which the operation of those facilities has the greatest effect on instream resources (*infra*, ¶ 5);
2. Prohibits the redirection of transfer water unless all regulatory requirements that apply at the point of re-diversion are met (*infra*, ¶ 11); and
3. Reserves jurisdiction for the Board to modify the terms and conditions of approval as necessary to protect public trust resources (*infra*, ¶¶ 23-24).

Accordingly, we find that approval of the Petition as conditioned in this Order is consistent with our obligations under the public trust doctrine.

## **5.7 CEQA Findings**

Before approving a project, a responsible agency must make findings under sections 15091 and 15093 of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 *et seq.*), if applicable. (CEQA Guidelines, § 15096, subd. (h).) Under section 15091, for every significant effect of the project, a responsible agency must make one of the following findings: (1) changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR; (2) such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency; or (3) specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines § 15091, subd. (a).) If approval of the project will cause an unmitigable significant impact, CEQA Guidelines section 15093 requires the approving agency to make a statement of overriding considerations, before approving the project. A responsible agency's role in considering alternatives and mitigation measures is limited to only the direct or indirect environmental effects of those parts of the project it decides to carry out, finance or approve. (CEQA Guidelines § 15096, subd. (g)(1).)

The State Water Board has reviewed the SEIR for the proposed extension. (AHO-001, AHO-002.) The SEIR analyzed the environmental impacts of extending the Yuba Accord Transfer Program through 2050 and concluded that the proposed extension would not result in any new significant environmental impacts beyond those previously analyzed and mitigated in the 2007 EIR for the original Yuba Accord. (AHO-002, pp. 3.1-3 to 3.1-4.) The SEIR concluded that the proposed extension, when combined with other projects, would not result in significant cumulative environmental effects. (AHO-002, pp. 4-1 through 4-32.). Pursuant to CEQA Guidelines section 15091, we find that the potentially significant environmental impacts identified in the 2007 EIR have been mitigated by incorporating mitigation measures into the project as follows:

### **5.7.1 A change in groundwater pumping that could impact local groundwater users in the Yuba Region**

The 2007 EIR found that the groundwater substitution portion of the Yuba Accord would result in increased groundwater pumping in some years. As a mitigation measure for this impact, Yuba Water implemented a Groundwater Monitoring and Reporting Program to guide decisions regarding discretionary groundwater pumping under the Yuba Accord and a Third Party Impacts Action Plan that will address third-party impacts related to the Yuba Accord's groundwater substitution program. These mitigation measures have been incorporated into the project description in the SEIR. (AHO-002, pp. 2-12 – 2-13.) Further, the State Water Board will reserve jurisdiction to reopen the proceedings at any time in which the groundwater levels in the North and South Yuba groundwater basins go below the minimum threshold levels identified in the Yuba Water Agency Groundwater Sustainability Plan, or at any time in which lowered groundwater levels in the North Yuba groundwater basin cause or threaten to cause injury to legal groundwater users, if the State Water Board determines such changes to be necessary or appropriate to protect legal users of water. Accordingly, the State Water Board finds that the effect will be avoided or substantially lessened.

#### **5.7.2 A change in salinity and chloride concentrations that could degrade water quality conditions in the Delta**

The 2007 EIR found that the project could result in a change in salinity and chloride concentrations that could degrade water quality in the Delta. To mitigate this potential impact, Yuba Water will include “carriage water” with water transferred under the Water Purchase Agreement. (AHO-002, p. 2-11.) “Carriage water” is an amount of water released in addition to that which will be exported through SWP and CVP facilities. This additional water will be used as Delta outflow to maintain baseline Delta salinity conditions to prevent water quality degradation. The required carriage water is estimated annually using the Delta Simulation Model II (DSM2). Carriage water requirements typically range from 0-35 percent of the total transfer volume. Because YCWA will release additional water for Delta outflows, calculated at an amount to cause no increase in salinity or chloride concentrations in the Delta, and has incorporated its prior mitigation measure into the project description, the State Water Board finds that this effect will be avoided or substantially lessened.

#### **5.7.3 A change in reservoir refilling could impact water quality in the Delta or in the export service areas south of the Delta**

The Yuba Accord allows New Bullards Bar Reservoir (NBBR) to be drawn down farther than it would under RD-1644 as it currently stands. Therefore, during the time in which NBBR is refilling, less water may be released into the Lower Yuba River, which could in turn affect water quality in the Delta. Operational flexibility will be utilized to ensure that refilling NBBR will not adversely affect water quality in the Delta. (AHO-002, pp. 2-1 – 2-12.) Yuba Water will use the water accounting mechanisms described in Appendix E2, Exhibit 5 of the 2007 EIR to ensure that any refill that occurs when the Delta is in balanced conditions will be released again when the Delta is in balanced conditions to compensate the CVP and SWP for additional releases or foregone exports needed to meet water quality obligations during such refill operations. This mitigation measure has

been incorporated into the project description. Therefore, the State Water Board finds that this potentially significant effect will be avoided or substantially lessened by Yuba Water's use of operational flexibility to not refill at times when Delta water quality would be impacted, and by the release of additional water to improve Delta water quality, should refill occur at these times.

In addition to the findings made in sections 5.7.1 through 5.7.3, the State Water Board will provide oversight of Yuba Water's implementation, monitoring, and reporting obligations by requiring Yuba Water to submit the reports required by Section 6 of the 2007 EIR to the State Water Board.

The SEIR's analysis of the No Project Alternative concluded that if the transfer extension is not approved, Yuba Water would continue to operate under existing permit terms, and water would still be available for other forms of transfer, though potentially with different delivery mechanisms and purchasers. (AHO-002, pp. 5-3 to 5-7.) According to the SEIR, under the No Project Alternative, Yuba Water likely would still transfer water to willing buyers. They would probably be different buyers than those that currently purchase Yuba Accord transfer water with potentially different points of diversion and places of use. However, Yuba Water reasoned that because the transfer water would be of a similar amount, for the same purposes of use, and would likely occur consistently with the same environmental and regulatory requirements, the impacts would be substantially similar to the proposed extension. (AHO-002, p. 5-7.)

Accordingly, the State Water Board, as a responsible agency, concludes that the proposed extension, as analyzed in the SEIR, will not result in any new or substantially more severe significant environmental impacts beyond those described in the certified 2007 EIR. No statement of overriding considerations is required under CEQA Guidelines section 15093.

## **6.0 SUMMARY AND CONCLUSIONS**

The State Water Board finds that approval of the Petition, as conditioned by this Order, will not result in injury to any legal user of water, will not unreasonably affect fish, wildlife, or other instream beneficial uses, and is in the public interest. Given our analysis and findings in section 5 above, the following terms will be added to those required under Order WR 2008-0014 and the terms requested by Yuba Water.

- No diversion of water at Clifton Court Forebay or the Jones Pumping Plant shall occur between December 1 and June 30. This condition does not apply to diversions of water by EBMUD and CCWD, provided that diversions by CCWD between April 1 and June 30 shall be at a rate no greater than 500 cubic feet per second and a volume no greater than 20,000 AF. The State Water Board reserves the authority, delegated to the Deputy Director, to order Yuba transfer diversions by EBMUD and CCWD between December 1 and June 30 to be reduced or eliminated at any time that the effects of the diversions cause or threaten to cause a negative impact on fisheries in the Delta.

- No rediversion at the Clifton Court Forebay or Jones Pumping Plant shall occur unless the water quality objectives in the operative Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary are met.
- No rediversion of transfer water shall occur unless all regulatory requirements for the protection of public trust resources that apply at that point of rediversion are met.
- Any additional releases of water above the releases currently required from NID's Yuba-Bear Project or PGE&E's Drum-Spaulding Project which may be required by a new license issued by the Federal Energy Regulatory Commission, or by any other regulatory order issued by a federal or state agency, are not transferable. Yuba Water shall submit to the Deputy Director and NID the documents referenced in Section 10 of Exhibit 1 (Scheduling and Accounting Principles) of the Water Purchase Agreement on the same schedule set forth in Section 10. The accounting of the quantities of Released Transfer Water and Delivered Transfer Water provided to the Deputy Director and interested parties shall additionally identify the quantities of Upstream Regulatory Releases accounted for by Yuba during the accounting period.
- The streamflow depletion factor (SDF) applicable to groundwater substitution transfers will be agreed to by Yuba and DWR, in consultation with Reclamation and the Deputy Director or their designee. The SDF amount shall be based on consideration of all "relevant factors" described on pages 4 and 5 of Exhibit AHO-004, *Appendix B – Technical Memorandum, Streamflow Depletion Effects on Downstream Water Supplies*. The transfer quantity under a groundwater substitution water transfer will be reduced by application of the SDF.
- All rights and privileges under this Order are subject to the continuing authority of the State Water Board. The State Water Board specifically reserves jurisdiction to add, amend, revise, supplement, or delete terms and conditions of this Order for the protection of vested rights, fish, wildlife, and other instream beneficial uses as future conditions may warrant.

## ORDER

**IT IS HEREBY ORDERED** that the petition of Yuba County Water Agency (Yuba Water) for long-term transfer of up to 200,000 acre-feet per calendar year (afy) of water under Permit 15026 (Application 5632) until December 31, 2050, is approved, subject to the following terms and conditions.

All existing terms and conditions of Permit 15026 as modified by the State Water Resources Control Board Revised Decision 1644 and Corrected Order 2008-0014 remain in effect, except the transfer provisions of Corrected Order 2008-0014 are replaced by the following provisions:

1. The water right changes approved by this Order are limited to the period commencing on the date of this Order through December 31, 2050.
2. The place of use of Permit 15026 is temporarily amended as follows: The authorized place of use is expanded to include the service areas of the State Water Project (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5630) and the Central Valley Project (as shown on map 214-208-12581 on file with Application 5626).
3. Municipal use, salinity control, and water quality control are temporarily added as purposes of use under Permit 15026.
4. The following points of diversion (POD) are temporarily added to Permit 15026:

*Clifton Court Forebay*

Located as follows: California Coordinate System of 1983 (CCS), Zone 3, North American Datum of 1983 (NAD 83), North 2,126,440 feet and East 6,256,425 feet, being within NW¼ of SE¼ of projected Section 20, T1S, R4E, Mount Diablo (MD) Base and Meridian (B&M)

*Jones Pumping Plant*

Also known as the Tracy Pumping Plant, located as follows: CCS, Zone 3, NAD 83, North 2,121,505 feet and East 6,255,368 feet, being within SW¼ of SW¼ of projected Section 31, T1S, R4E, MDB&M

*Sisk Dam (San Luis Reservoir)*

Located on San Luis Creek as follows: CCS, Zone 3, NAD 83, North 1,848,478 feet and East 6,393,579 feet, being within SW¼ of SE¼ of projected Section 15, T10S, R8E, MDB&M

*Castaic Dam*

Located on Castaic Creek as follows: CCS, Zone 5, NAD 83, North 2,012,680 feet and East 6,378,993 feet, being within N½ of SW¼ of Section 18, T5N, R16W, San Bernardino (SB) B&M

*Perris Dam*

Located at the terminus of the East Branch of the California Aqueduct as follows: CCS, Zone 6, NAD 83, North 2,254,478 feet and East 6,275,612 feet, being within N½ of SE¼ of Section 4, T4S, R3W, SBB&M.

*Pyramid Dam*

Located on Piru Creek as follows: CCS, Zone 5, NAD 83, North 2,057,463 feet and East 6,331,046 feet, being within SW¼ of NW¼ of Section 2, T6N, R18W, SBB&M.

*Freeport Regional Water Project (FRWP)*

Located on the Sacramento River as follows: CCS, Zone 2, NAD 83, North 1,934,251 feet and East 6,702,930 feet, being within the NE¼ of SE¼ of Section 11, T7N, R4E, MDB&M.

*Contra Costa PORDs:*

*Rock Slough Intake*

Located on Rock Slough as follows: CCS, Zone 3, NAD 83, North 2,179,904 feet and East 6,232,668 feet being within SE¼ of NE¼ of projected Section 33, T2N, R3E, MDB&M.

*Old River Intake*

Located on Old River as follows: CCS, Zone 3, NAD 83, North 2,147,455 feet and East 6,250,918 feet being within NW¼ of SE¼ of projected Section 31, T1N, R4E, MDB&M.

*Middle River Intake*

Located on Middle River as follows: CCS, Zone 3, NAD 83, North 2,139,610 feet and East 6,259,970 feet being within NE¼ of NW¼ of projected Section 9, T1S, R4E, MDB&M.

5. No redirection at Clifton Court Forebay or the Jones Pumping Plant shall occur between December 1 and June 30.
6. Between July 1 and November 30, the maximum combined rate of redirection at the Clifton Court Forebay, the Jones Pumping Plant, the FRWP, and the Contra Costa PORDs (collectively, the Delta PORDs) is 1,500 cubic feet per second.



7. The total quantity of water to be rediverted at the FRWP PORD shall not exceed 34,000 acre-feet per year (afy) and is also limited to 9,600 acre-feet (af) per month.
8. The total quantity of water to be rediverted at the Contra Costa PORDs shall not exceed 25,000 afy, including 10,000 af to be transferred during the summer transfer window of July 1 through November 30. Rediversions during the spring period of April 1 to June 30 shall be at a rate no greater than 500 cubic feet per second and a volume no greater than 20,000 af.
9. During the time period between December 1 and June 30, the State Water Board reserves the authority, delegated to the Deputy Director, to order Yuba Water transfer diversions at the Delta PORDs to be reduced or eliminated at any time that the effects of the diversions cause or threaten to cause a negative impact on fisheries in the Delta. Because this reservation of authority is intended to protect the Delta fishery in the face of uncertainty, it is limited to those times in which a cessation of the transfer will reduce cumulative pumping from the Delta PORDs.
10. No rediversion at the Clifton Court Forebay or Jones Pumping Plant (collectively, the Export Facilities) shall occur while the numeric Water Quality Objectives of the operative Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary are not being achieved. Rediversions of transfer water shall also comply with the various plans, including but not limited to the water level response plan and the water quality response plan, required under D-1641 as prerequisites for use of the Joint Points of Diversion by the Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR). Should new plans addressing the effects of operating the Export Facilities on water levels or water quality be developed in the future, Yuba Water shall be consulted in the development and implementation of the plans, and transfers pursuant to this Order will be subject to the plans' provisions.
11. No rediversion of transfer water shall occur unless all regulatory requirements for the protection of fish, wildlife, and other instream beneficial uses that apply at that point of rediversion are being met, including but not limited to Condition 10 of this Order, biological opinions; court orders; lake and streambed alteration agreements; and incidental take permits.
12. This Order does not authorize any physical use of the Central Valley Project (CVP) or State Water Project (SWP) facilities absent independent agreements with DWR or Reclamation for the use of those facilities.
13. Only Released Transfer Water, as defined in Exhibit 1 (Scheduling and Accounting Principles) to the *Agreement for the Long-Term Purchase of Water from Yuba County Water Agency By the Department of Water Resources* (Water Purchase Agreement), may be transferred through the PORDs authorized by this Order.

14. This Order reaffirms that under Exhibit 1 (Scheduling and Accounting Principles) to the Water Purchase Agreement, any additional releases of water from Nevada Irrigation District's Yuba-Bear Project or PG&E's Drum-Spaulding Project that are above the releases currently required of those projects, which may be required by a new license issued by the Federal Energy Regulatory Commission, or by any other regulatory order issued by a federal or state agency (Upstream Regulatory Releases), will be included as part of the "Baseline Conditions" for purposes of calculating "Baseline Flows" under Exhibit 1, which are the flows that are not transferable by Yuba Water. Yuba Water shall submit to the Deputy Director and any interested party the documents referenced in Section 10 of Exhibit 1 (Scheduling and Accounting Principles) of the Water Purchase Agreement on the same schedule set forth in Section 10. The accounting of the quantities of Released Transfer Water and Delivered Transfer Water provided to the Deputy Director and interested parties shall additionally identify the calculations and data used to determine the quantities of any Upstream Regulatory Releases and how those releases are accounted for as Baseline Conditions by Yuba Water during the accounting period.
15. The criteria delineated in the Reservoir Refill Account Provisions, Exhibit 2 to the Water Purchase Agreement, as amended by agreement with DWR, shall govern the conditions under which future refill of the reservoir space that results from water transferred from storage pursuant to this Order may take place.
16. Groundwater substitution (increases in the amount of groundwater pumped from the North and South Yuba Groundwater Basins in excess of that which would have been pumped in the absence of the transfer) shall be performed in accordance with the provisions contained in the Conjunctive Use Agreement portion of the Yuba Accord and in compliance with any applicable requirements resulting from the Sustainable Groundwater Management Act or the implementation of a Groundwater Sustainability Plan.
17. The streamflow depletion factor (SDF) applicable to groundwater substitution transfer will be agreed to and amended by Yuba Water and DWR, in consultation with Reclamation and the Deputy Director or their designee. The SDF amount shall be based on consideration of all "relevant factors" described on pages 4 and 5 of Exhibit AHO-004, *Appendix B – Technical Memorandum, Streamflow Depletion Effects on Downstream Water Supplies*. The transfer quantity under a groundwater substitution water transfer will be reduced by application of the SDF.
18. YCWA shall comply with the Mitigation Measures 6-1 (Yuba Region groundwater monitoring and reporting program), 6-2 (third-party impacts plan for groundwater substitution), 9-1 (carriage water for Delta water quality), and 9-2 (exercise of operational flexibility on reservoir refill), summarized in Table 6-1 of the Final EIR/EIS for the Lower Yuba River Accord, a copy of which was filed in the 2007

Hearing as exhibit YCWA-2 (2007 EIR), and with the monitoring and reporting programs for those mitigation measures, as set forth in Chapter 6 of the 2007 EIR. To ensure compliance with Mitigation Measure 9-1, Yuba Water shall not redivert water from any Delta PORD unless done so is in compliance with carriage water requirements for the applicable point of redirection as determined by DWR and Reclamation, under Mitigation Measure 9-1, as continued by Yuba Water's 2024 supplemental EIR.

19. Yuba Water shall comply with all applicable requirements ordered by Revised Decision 1644, as amended by Corrected Order 2008-14.
20. If, at any time during the period of this transfer, the State Water Board curtails Permit 15026, only water collected to storage during a period when Permit 15026 was not required to cease diversions may be transferred.
21. Yuba Water shall provide, with the annual electronic report of water diversion and use (annual report) for Permit 15026, a report describing redirection of water at each of the Delta PORDs, the storage of water in SLR, reservoir refill impacts, and groundwater substitution pursuant to this Order for the preceding calendar year. This report shall include the following information:
  - a. The average and daily rates of redirection of water at each of the Delta PORDs under Permit 15026; and
  - b. The daily and monthly volumes of water rediverted at each of the Delta PORDs under Permit 15026.
  - c. The monthly amounts of groundwater pumped to meet the needs of users within the YCWA service area in excess of that which would have been pumped in the absence of this transfer.
  - d. Documentation that water was made available by New Bullards Bar Reservoir releases for transfer above those required to meet applicable minimum flows and deliveries to YCWA member units using the Scheduling and Accounting Principles described in Exhibit 1 to the Water Purchase Agreement.
  - e. Monthly average rates and monthly volumes of water rediverted at Sisk Dam and the annual total volume of transfer water placed in storage at Sisk Dam.
  - f. An accounting of the Impact Account completed under paragraph 11 of the Reservoir Refill Accounting Principles and the dates and volumes of any impact account adjustments agreed to under the Reservoir Refill Account Provisions.

- g. The reports required by Section 6 of the 2007 EIR.

The deadline for providing the report shall be the same as for the annual report for Permit 15026. The Deputy Director may temporarily or permanently amend the deadline for all or a portion of the reporting information described above provided Yuba Water is notified at least 30 days prior to the amendment taking effect. If the same information is submitted as part of an annual report for a different water right, Yuba Water may identify that annual report in lieu of submitting duplicate information.

22. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a “take” will result from any act authorized under this transfer, the permittee shall obtain authorization for incidental take prior to commencing transfer of water. Permittee shall be responsible for meeting all requirements of the state and federal Endangered Species Acts for the transfer authorized under this order.
23. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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.
24. The State Water Board specifically reserves jurisdiction to add, amend, revise, supplement, or delete terms and conditions in the portions of this Order that concern Yuba Water’s transfer petition, for the protection of vested rights, fish, wildlife, and other instream beneficial uses as future conditions may warrant, including at the following times:
- a. Upon issuance of any Biological Opinion for the Central Valley Operations Criteria and Plan, if the State Water Board determines that changes are appropriate.
  - b. Upon receipt of evidence demonstrating a reasonable likelihood that transfer operations pursuant to or in conjunction with a Temporary Urgency Change Order have caused or may cause unreasonable harm to fish, wildlife, or other instream beneficial uses.

- c. Upon issuance of a new license for the Yuba River Development Project by the Federal Energy Regulatory Commission, if the State Water Board determines such changes to be necessary or appropriate in light of any changes to the release, bypass, reservoir capacity, fish protection or related requirements in the Federal Energy Regulatory Commission license.
  - d. At any time in which the groundwater levels in the North and South Yuba groundwater basins go below the minimum threshold levels identified in the Yuba Water Agency Groundwater Sustainability Plan, or at any time in which lowered groundwater levels in the North Yuba groundwater basin cause or threaten to cause substantial injury to legal groundwater users, if the State Water Board determines such changes to be necessary or appropriate to protect legal users of water.
  - e. Upon a change in listing status for any species in the Delta, if such change is appropriate to ensure that the actions approved in this order do not adversely impact the species, or that the protections specified in the order do not unduly interfere with the beneficial transfer of water.
  - f. When appropriate to coordinate the operations of this project with (1) water quality objectives adopted to protect the beneficial uses of the San Francisco Bay/Sacramento- San Joaquin Delta Estuary (Bay-Delta Estuary) or (2) water right decisions or orders implementing the order. The State Water Board will make such additions or modifications to this order only when reasonably necessary to achieve the water quality objectives or protect the beneficial uses of water in the Bay-Delta Estuary.
25. This Order does not modify the terms and conditions of DWR's water rights as set forth in D-1641.