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8 BEFORE THE  
9 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
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11 In the Matter of the Department of Water  
Resources' Permit 16482 (License 17512) -  
12 Petition for Long-Term Change Involving  
the Transfer of 10,000 Acre-Feet of Water  
13 Per Year to Areas Within the Westlands  
Water District  
14

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION FOR RECONSIDERATION OF  
ORDER AUTHORIZING LONG-TERM  
CHANGE IN PLACE OF USE (PERMIT  
16482 (LICENSE 17512))**

15 **I. INTRODUCTION**

16 Westlands Water District (Westlands) appreciates the State Water Resource Control  
17 Board's (State Water Board) timely issuance of the November 21, 2011 order in the above-  
18 referenced matter (Order). Through the Order, the State Water Board approves the petition by the  
19 California Department of Water Resources (DWR) to add, from April 1, 2012 through April 30,  
20 2027, portions of land within Westlands to the authorized place of use under Permit 16482  
21 ("DWR Petition" or "Petition"). That approval is important. It facilitates a transfer that will  
22 alleviate some of the harms caused by chronic water shortages faced by the farmers in the San  
23 Joaquin Valley. For the reasons stated herein, the State Water Board must nonetheless reconsider  
24 three discrete findings of fact, which are not supported by the record, and two conditions of  
25 approval, for which there lacks precise and specific reasons founded on tangible record evidence.<sup>1</sup>  
26

27  
28 <sup>1</sup> For the convenience of the State Water Board, Westlands attaches hereto as Exhibit A, a document that reflects the specific changes Westlands requests the State Water Board make to the Order.

1 **II. THE PROPOSED TRANSFER**

2 State Water Project (SWP) water is stored in San Luis Reservoir pursuant to Permit 16482  
3 (Application 17512) and held for use by SWP contractors, including the Tulare Lake Basin Water  
4 Storage District (Tulare) and the Empire West Side Irrigation District (Empire). (Order, p. 1.)  
5 Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in  
6 Tulare and Westlands. Newton Farms and Brooks Farms are farming interests that hold lands in  
7 Empire and Westlands. These farming interests requested that, from April 11, 2012 through April  
8 30, 2027, they be allowed to transfer up to 10,000 acre-feet per year of SWP water from their  
9 lands in Tulare and Empire (up to 8,000 acre-feet from Tulare and up to 2,000 acre-feet from  
10 Empire) to their lands in Westlands. (Order, p. 1.) To expand the place of use under Permit  
11 16482 and allow for the transfers, DWR filed the Petition.

12 **III. BASES FOR RECONSIDERATION**

13 **A. Legal Standards**

14 No later than thirty (30) days after adoption of a decision or order, any person interested in  
15 any application, permit, or license affected by the decision or order may petition the State Water  
16 Board for reconsideration of the matter upon any of the following causes:

- 17 (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by  
18 which the person was prevented from having a fair hearing;  
19 (b) The decision or order is not supported by substantial evidence;  
20 (c) There is relevant evidence which, in the exercise of reasonable diligence,  
21 could not have been produced; and  
(d) Error in law.

22 (23 C.C.R. § 768; Wat. Code, § 1122.) Well established principles of California administrative  
23 law require the State Water Board to reference the administrative record sufficient to inform "the  
24 parties and the reviewing courts of the theory upon which the agency has arrived at its ultimate  
25 finding." (*McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 184.) The State  
26 Water Board must use those findings to "bridge the analytic gap between the raw evidence and  
27 [the] ultimate decision or order." (*Topanga Assoc. for a Scenic Community v. County of Los*  
28 *Angeles* (1974) 11 Cal.3d 506, 515-16.) The State Water Board may only impose conditions of

1 approval "for precise and specific reasons founded on tangible record evidence." (*Bank of*  
2 *America National Trust and Savings Assoc. v. State Water Resources Control Board* (1974) 42  
3 Cal.App.3d 198, 213.)

4 **B. The Erroneous Factual Findings And Conditions Of Approval**

5 The State Water Board made three, similar findings and imposed two conditions of  
6 approval that are not supported by substantial evidence and that do not comport with principles of  
7 California administrative law. The findings are:

- 8 1. "[A]gricultural drainage from Westlands does not discharge directly to the  
9 San Joaquin River." (Order, § 3.1.)<sup>2</sup>
- 10 2. "[A]gricultural drainage from Westlands does not discharge directly to the  
11 San Joaquin River." (Order, § 5.2.)
- 12 3. "[A]reas [to which transfer water will be delivered] are also located such  
13 that they do not directly drain to the San Joaquin River." (Order, § 5.3.)

14 And, the conditions of approval are:

- 15 1. "Westlands shall implement all reasonable measures to prevent the  
16 movement of poor quality subsurface drainage water into the downslope  
17 area outside of Westlands's service area. Reasonable measures shall  
18 include water conservation, recapture and reuse of water, and use of  
19 groundwater to reduce hydraulic pressure in appropriate' areas to the extent  
20 feasible." (Order, Condition 5.)
- 21 2. "By May 31,2013, and on a yearly basis thereafter, the permittee shall  
22 provide to the Deputy Director for Water Rights a report describing the use  
23 of the water transferred pursuant to this Order. The report shall include a  
24 summary showing the monthly amounts of water actually transferred under  
25 this Order.

26 The report should also include the following information:

- 27 a. Specific locations where the transferred water was used;
- 28 b. The monthly amounts of water each location received; and
- c. The average application rate of water at each location."

(Order, Condition 6.)

<sup>2</sup> For the reasons explained below, Westlands requests that the State Water Board also delete from section 3.1 the following statement: "This Order requires Westlands to implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area."

1           C.     Findings in Section 3.1, 5.2, And 5.3 Create Presumptions Unsupported By  
2                    Substantial Evidence And Conditions 5 And 6 Are Presented Without  
3                    Reasoned Support By Record Evidence

4           In sections 3.1, 5.2 and 5.3, the State Water Board finds that Westlands does not discharge  
5 drainage water directly to the San Joaquin River. While it is true that Westlands does not directly  
6 discharge to the San Joaquin River, use of the adverb "directly" perpetuates the myth that  
7 Westlands *indirectly* discharge to the San Joaquin River. Further, there is no basis to impose, as  
8 conditions of approval, requirements that (1) Westlands implement measures "to prevent the  
9 movement of poor quality subsurface drainage water into the downslope area outside of  
10 Westlands's service area" or (2) DWR report on locations where the transferred water is used,  
11 monthly amounts of water each location receives, or the average application rate of water at each  
12 location. Nothing in the record before the State Water Board establishes that Westlands  
13 discharges to the San Joaquin River, directly or indirectly. And, nothing in the Order provides the  
14 reasoning for Westlands to implement measures to prevent movement of subsurface drainage  
15 water or for DWR to provide heightened reporting. Just the opposite is true. The record before  
16 the State Water Board evidences Westlands' superb water management practices. The record  
17 reflects multiple efforts by Westlands and its farmers to ensure water use within Westlands is  
18 highly efficient and results in the beneficial use of water to grow crops of significant value to the  
19 State and Nation and to ensure that the irrigated lands are not discharging drainage water,  
20 tailwater, or tile water outside of the Westlands' boundaries, including into the San Joaquin River.

21                   1.     **Westlands Does Not Collect Or Discharge Outside Of Its Boundaries**

22           When Congress authorized the unit of the Central Valley Project (CVP) in which  
23 Westlands is located, the San Luis Unit, Congress directed the U.S. Bureau of Reclamation to  
24 provide drainage service. (Testimony of Tom Glover, Exh. WWD-1 (Glover Test.), p. 6.) The  
25 purposed "Drainage Collection System" would have provided drainage service to about 250,000  
26 acres on the Westlands' eastern side, but was never completed. (Glover Test., p. 6.)  
27 Subsequently in 1985, the State Water Board adopted Order No. WQ 85-1 and Cleanup and  
28 Abatement Order No. 85-1, which ordered stoppage of drain-water delivery and closure of  
Kesterson Reservoir by June 1986. (Glover Test., p. 6.)

1 To satisfy the State Water Board's orders, Westlands plugged the Drainage Collection  
2 System. (Glover Test., p. 6.) The plugging project involved installation of an extensive system  
3 of plugs and slide gates, and slide gates were installed on three farms for recycling of subsurface  
4 drain water within each farm's tailwater return system. (Glover Test., p. 6.) As part of the  
5 plugging process, Westlands installed 547 observation wells in and around the plug sites, and 60  
6 float wells at the plug sites to give the water users a visual reference of the depth to shallow  
7 groundwater. (Glover Test., p. 6.) Westlands installed an additional 204 observation wells in  
8 1986 within and around the 42,000 Acre Drainage Service Area. (Glover Test., p. 6.) The  
9 plugging project was completed in mid-May 1986. (Glover Test., p. 6.) Since that time,  
10 Westlands has not collected or discharged drainage water to areas outside of its boundaries.  
11 (Glover Test., p. 6.)

12 In fact, in 2000 and after holding extensive adjudicatory hearings, the State Water Board  
13 evaluated the evidence related to drainage within Westlands and concluded:

14 Lands within [the District]'s service area do not discharge drainage water,  
15 tailwater, or tile water outside the boundary of [the District].

16 (State Water Board Decision 1641, p. 110 (Exhibit SWRCB-2).) Conditions within Westlands  
17 since the State Water Board issued D-1641, as reflected by the record now before the State Water  
18 Board, serve to reinforce that conclusion.

19 **2. Westlands Has Permanently Retired Or Fallowed Approximately**  
20 **88,000 Acres Of Previously Drainage Impacted Land**

21 Since 2000, Westlands permanently retired from irrigated agriculture approximately  
22 40,000 acres and fallowed approximately 48,000 acres of drainage-impacted land. (Glover Test.,  
23 p. 6.)

24 **3. Water Use On The Approximate 500,000 Acres Of Land Within**  
25 **Westlands That Remain In Production Is Highly Efficient**

26 Since 2000, Westlands and its farmers have continued to undertake dramatic efforts to  
27 maximize irrigation efficiencies and on-farm water use. In 1985, of the lands within Westlands,  
28 approximately 63 percent (322,785 acres) was surface irrigated (furrows or border strips), 15

1 percent (80,696 acres) was irrigated with a combination of sprinklers/furrows, 21 percent  
2 (112,975 acres) was irrigated by sprinklers alone, and 1 percent (5,380 acres) was irrigated by  
3 drip. Today the land served by surface irrigation has decreased to 11 percent (41,122 acres), the  
4 combination sprinkler/furrow irrigation decreased to 11 percent (41,879 acres), the irrigation only  
5 by sprinklers decreased to 11 percent (42,354 acres) and the irrigation only by drip has increased  
6 to 67 percent (254,750 acres). Westlands-wide Seasonal Application Efficiency now averages  
7 approximately 83 percent.

8 **4. The Lands Within Westlands That Will Receive Water Under The**  
9 **Transfer Do Not Cause The Discharge Of Drainage Water, Tailwater,**  
10 **Or Tile Water Outside Of Westlands**

11 All the lands to receive water from the transfer are located in the central and southern  
12 portions of Westlands at least 20 (and up to 40) miles from the San Joaquin River. (Testimony of  
13 Maureen Sergent, Exh. DWR-01 (Sergent Test.), pp. 1-2; Glover Test., pp. 5-6.) They are not  
14 classified as drainage impaired and have no subsurface tile drains. (Sergent Test., p. 1.) And, the  
15 expert witness for DWR was prepared to testify that "the continued irrigation of these lands will  
16 not contribute to the San Joaquin River *through surface or subsurface* flows." (Sergent Test., p. 2  
17 (emphasis added).)

18 **5. The Center For Biological Diversity, California Water Impact**  
19 **Network, California Sportfishing Protection Alliance, And Aqualliance**  
20 **Present Nothing That Refutes A Finding That Westlands Does Not**  
21 **Discharge Drainage Water, Tailwater, Or Tile Water Outside Of**  
22 **Westlands**

23 The protest filed by the California Water Impact Network, California Sportfishing  
24 Protection Alliance, and AquAlliance (Protestants) reflected their concerns. Those concerns,  
25 however, were completely unsubstantiated. The language of the protest reflects their  
26 equivocation. The Protestants postulate that the transfer "**may** increase leaching", irrigation water  
27 "**may** percolate to shallow aquifers and **may** find its way into the San Joaquin River system."  
28 (Protest, p. 1 (emphasis added).) They draw their conclusions based upon appearances. (See,  
e.g., Protest, p. 3 ("it **appears** to us that the Empire Westside and Tulare Lake Basin...), p. 4 ("it  
**appears** from Map 6-2 that..."), p.4 ("[t]he Newton Farms site east of Huron **appears** to be  
located..."), p. 5 ("[t]he northernmost portion of Brooks Farms' sites along State Route 33

1 **appear** to be potentially..."), p. 5 ("while the remaining Brooks Farms and Hansen Ranches sites  
2 closer to Interstate 5 **appear** to be located..."), p. 5 ("it **appears** that one result of this proposed  
3 long-term transfer...").<sup>3</sup>) None of the documents the Protestants and the Center for Biological  
4 Diversity submitted on July 22, 2011 substantiate their position or reduce the uncertainty  
5 reflected in the Protest documents. They simply provide nothing that demonstrates Westlands is  
6 discharging outside of its boundaries.

7 **IV. REQUEST FOR RELIEF**

8 As demonstrated above, the record before the State Water Board now is as clear, if not  
9 more clear, than the record before the State Water Board when it issued D-1641. The evidence  
10 before the State Water Board today, as it was when D-1641 issued, reflects the fact that  
11 Westlands does not discharge water outside of its boundaries. The State Water Board should not  
12 suggest otherwise. Westlands therefore respectfully requests that the State Water Board  
13 reconsider the Order and revise it to delete portions of its findings in section 3.1, 5.2 and 5.3, and  
14 to remove the conditions contained in ordering paragraphs 5 and 6. (See Exhibit A for specific  
15 changes Westlands requests the State Water Board make to the Order.)

16 Dated: December 20, 2011

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

17  
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19 By:   
20 JON D. RUBIN

21 ATTORNEYS FOR WESTLANDS WATER  
22 DISTRICT

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28 <sup>3</sup> Emphasis added to each of the quotations.

# EXHIBIT A



**Exhibit A: Westlands Water District's  
Proposed Revised Order**

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

**DIVISION OF WATER RIGHTS**

**ORDER**

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**IN THE MATTER OF THE DEPARTMENT OF WATER RESOURCES'  
PERMIT 16482 (APPLICATION 17512)  
PETITION FOR LONG-TERM CHANGE  
INVOLVING THE TRANSFER OF 10,000 ACRE-FEET OF WATER PER YEAR  
TO AREAS WITHIN THE WESTLANDS WATER DISTRICT**

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**ORDER AUTHORIZING LONG-TERM CHANGE IN PLACE OF USE**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On February 16, 2010,

Department of Water Resources  
c/o Nancy Quan, Chief  
Program Development and Water Supply and Transfers  
P.O. Box 942836  
Sacramento, CA 94236-0001

filed with the State Water Resources Control Board (State Water Board), a Petition for Long-Term Change (Petition) under Water Code section 1735, et seq. If approved, the Petition would add portions of the Westlands Water District (Westlands), the majority of which is served solely by the U.S. Bureau of Reclamation's Central Valley Project (CVP), to the authorized place of use under the Department of Water Resources' (DWR) permitted Application 17512, and would be effective from April 1, 2012 through April 30, 2027. This transfer/exchange, per the Petition, was scheduled to commence on May 1, 2011, and continue through April 30, 2027. There was a delay in processing the Petition due to preparation for a public hearing (explained in Section 3.2 of this Order), which was later canceled. In the interim, a temporary transfer order was issued for a 10,000 acre-feet (af) transfer from DWR to Westlands, which commenced on April 1, 2011, and continues through March 31, 2012.

**1.1 Description of the Transfer.** State Water Project (SWP) water is stored in San Luis Reservoir under the provisions of Permit 16482 (Application 17512) and held for use in the service areas of SWP contractors including the Tulare Lake Basin Water Storage District (Tulare) and the Empire West Side Irrigation District (Empire). Newton Farms and Hansen Ranches/Vista Verde Farms are farming interests that hold lands in both Tulare and Westlands. Newton Farms and Brooks Farms are farming interests that hold lands in both Empire and Westlands. These farming interests have requested that a total of up to 10,000 af of SWP water currently scheduled for use on their lands in Tulare or Empire (8,000 af from Tulare and 2,000 af from Empire) be transferred for use on their lands located within Westlands. The Petition indicates that no additional groundwater will be pumped within Tulare or Empire as a result of this transfer. DWR submitted the Petition to facilitate this exchange. The proposed long-term change would be in effect from April 1, 2012 through April 30, 2027.

In the absence of the proposed long-term change, the water would be used by the aforementioned parties on their lands located within Tulare or Empire. Additional groundwater would be pumped by the aforementioned parties for their lands located in Westlands.

**1.2 Additional Information.** DWR submitted information with the Petition which, using the current CVP and SWP allocations, details the water application rates (in acre-feet per acre) for each of the transferees, including both their CVP supplies and the transferred SWP water. The current CVP and SWP allocations (based on the April 2011 snow survey) are 80% of their contract deliveries. However, this allocation could change as hydrologic conditions change in subsequent years.

## **2.0 BACKGROUND**

**2.1 Substance of DWR's Permit.** Permit 16482 was issued to DWR on September 26, 1972, and it authorizes DWR to divert to storage up to 1,100,000 af of water between January 1 and December 31 of each year. Authorized sources under Permit 16482 are the Sacramento-San Joaquin Delta Channels, Italian Slough, and San Luis Creek. The water may be used for irrigation, domestic, municipal, industrial, salinity control, recreation, and fish and wildlife enhancement purposes, and to generate incidental power. The subject 10,000 af of SWP water has been stored in San Luis Reservoir under provisions of DWR's permit (set forth in State Water Board Revised Decision 1641 (D-1641)) and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). In the absence of the proposed transfer, water would remain in storage in San Luis Reservoir until it is released for use within Tulare's and Empire's service areas. Therefore, the transfer will not result in an increase in diversions from the Sacramento-San Joaquin Delta or any other source. Thus, the transfer of up to 10,000 af to Westlands will have no effect on any natural streamflow or hydrologic regime in the Delta or San Luis Creek. Release rates from San Luis Reservoir may increase due to the proposed transfer.

**2.2 Place of Use under the Proposed Transfer.** DWR's Petition requests the long-term addition of areas within Westlands to the place of use of Permit 16482. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR available for viewing with the copy of the notice for this Petition on the Division of Water Rights' website at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/).

## **3.0 PUBLIC NOTICE AND PROTEST TO THE PROPOSED LONG-TERM CHANGE**

Public notice of the Petition (dated September 28, 2010) was provided via first class mail to interested parties and by posting on the Division of Water Rights' website at:  
[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/). California Water Impact Network, California Sportfishing Protection Alliance, and AquAlliance (collectively protestants) jointly submitted a timely protest letter to the proposed long-term change. Protestants' protest cites concerns regarding environmental impacts due to the shift of irrigation water supply from an area of lower to higher soil and shallow groundwater selenium concentration. Protestants' protest letter, as well as additional correspondence submitted subsequent to the protest letter, is posted with the copy of the notice for this Petition on the Division of Water Rights' website as shown above in Section 2.2 of this Order.

**3.1 State Water Board Response.** The area of Westlands where the transfer will occur is currently in production, primarily with permanent crops. The transfer will reduce the amount of groundwater required to irrigate the permanent crops and provide a supply of better quality surface water for irrigation. Westlands's map, Generalized Depth of Shallow Groundwater Surface, April 2009, indicates that the areas intended for transfer within Westlands have depths to groundwater of greater than 15 feet below the ground surface. DWR states in the Petition that "Lands to receive increased water deliveries due to this transfer have not been shown to have drainage or selenium problems." Also, agricultural drainage from Westlands does not discharge **directly** to the San Joaquin River. Westlands has programs to encourage water conservation and reduce deep percolation. DWR has petitioned for temporary changes (effective for up to one year) similar to the proposed long-term change on an annual basis every year since 2001. There have not been any identifiable impacts from these temporary transfers. The water proposed for transfer in the instant Petition consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482 which is currently stored in San Luis Reservoir under provisions of DWR's permit, as amended by D-1641 and BOs issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would be stored in San Luis Reservoir until released for use within Tulare's and Empire's service areas. Therefore, the delivery of this water to Westlands would have no significant adverse effect on any natural streamflow or hydrologic regime.

~~This Order requires Westlands to implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area.~~

### **3.2 NOTICE OF PUBLIC HEARING**

A Notice of Public Hearing was issued on June 10, 2011, pursuant to California Code of Regulations, title 23, section 814, regarding a proposed long-term transfer hearing scheduled for August 22, 2011, to address issues in the protestants' unresolved protest. The State Water Board received Notice of Intent to Appear statements from DWR, South Delta Water Agency, Tulare, Empire, Westlands, and the Center for Biological Diversity (CBD), representing the protestants (CBD et al.). Evidence was submitted by DWR, Tulare, Westlands, and CBD et al. by July 22, 2011. On July 26, 2011 CBD submitted a letter to the State Water Board indicating they no longer intended to present a case-in-chief at the hearing. The State Water Board, Division of Water Rights, sent a letter to CBD on August 4, 2011, asking for a response regarding their intent to participate in the hearing. In follow-up discussions with CBD et al.'s representative, Adam Lazar, on August 16, 2011, the hearing team advised Mr. Lazar that, at the hearing officer's direction, the hearing would be canceled if no representative(s) of the protestants notified the hearing team by close of business on August 17, 2011, that they intended to participate at the hearing. Per a letter dated August 17, 2011, Mr. Lazar advised the hearing officer that neither CBD nor the protestants had the resources sufficient to appear at the evidentiary hearing. Because there was no longer a requirement to hold the hearing, the State Water Board issued a Notice of Cancellation of Public Hearing on August 19, 2011. Cancellation of the hearing did not affect the protestants' protest, which still remained active and is addressed in this Order. Also, all materials submitted for the hearing and subsequent comments were considered in processing of the Petition.

### **4.0 COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Under the California Environmental Quality Act (CEQA), Tulare is the lead agency for preparation of environmental documentation for the proposed long-term transfer. In February of 2010, Tulare issued an Initial Study and Negative Declaration (NegDec), pursuant to the provisions of CEQA. These documents indicate the proposed long-term transfer will not have a significant effect on the environment and that mitigation measures are not required.

The State Water Board is a responsible agency for purposes of this transfer. Under Public Resources Code section 21002.1, subdivision (d), when issuing an approval for an aspect of a project for which a lead agency has performed CEQA review, a responsible agency considers only the aspects of the project that the agency is required by law to carry out or approve.

As responsible agency under CEQA, the State Water Board has reviewed and considered the NegDec for this transfer (State Clearinghouse Number 2009121084) prepared by Tulare. Based on its independent review of the record, the State Water Board agrees that approval of this transfer will not have a significant effect on the environment and that mitigation measures are not required for the proposed long-term transfer. The State Water Board will file a Notice of Determination (NOD) concurrent with the issuance of this Order.

## 5.0 REQUIRED FINDINGS OF FACT

**5.1 Availability of Water for Transfer.** The water available for the transfer consists of a portion of either Tulare's or Empire's SWP entitlement under Permit 16482 and currently is or will be stored in San Luis Reservoir under provisions of DWR's permit as amended by D-1641 and BOs issued by the USFWS and the NMFS under the ESA. In the absence of the proposed transfer, the water would remain in storage until it is delivered for use within Tulare's and Empire's service areas. Accordingly, the water would be removed from use in the downstream water supply as a result of direct diversion under DWR's permit regardless of approval of this transfer.

**5.2 No Injury to Other Legal Users of Water.** Before approving a long-term change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not result in substantial injury to any legal user of water. (Wat. Code, § 1736.) The water proposed for transfer consists of a portion of Tulare's and Empire's SWP entitlement under Permit 16482. In the absence of the proposed transfer, the water would be diverted at Banks Pumping Plant and stored in San Luis Reservoir until released for use within Tulare's and Empire's service areas. Therefore, the transfer will not result in an increase in diversions from the Sacramento-San Joaquin Delta or any other source. There were no identifiable impacts from the temporary transfers to Westlands approved by the State Water Board between 2001 and 2011, many of which were in amounts similar to the yearly amount of the proposed long-term transfer. Accordingly, there should be no identifiable impacts from the proposed long-term transfer. The delivery of SWP water to Westlands in lieu of groundwater pumping may improve the quality of the groundwater in the areas of the transfer. The areas to receive the transfer water have not been shown to have drainage or selenium problems. Also, agricultural drainage from Westlands does not discharge directly to the San Joaquin River. In addition, the State Water Board will require as a condition of approval that Westlands implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area.

In light of the above, I find that, in accordance with Water Code section 1736, that the proposed transfer would not injure any legal user of water.

**5.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses.** Before approving a long-term change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1736.) Pursuant to CEQA, Tulare has prepared a NegDec for this transfer. The NegDec does not identify any significant effects on the environment from the proposed long-term transfer.



## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for long-term change in the place of use under the Department of Water Resources' (DWR) Permit 16482 (Application 17512) for the transfer of up to 10,000 acre-feet (af) of water per year is approved.

All existing terms and conditions of Permit 16482 remain in effect, except as amended by the following provisions:

1. The transfer/exchange is limited to the period commencing on April 1, 2012, and continuing through April 30, 2027.
2. Prior to commencing the transfer, DWR shall provide to the Deputy Director for Water Rights a copy of the agreements between Westlands Water District (Westlands) and Tulare Lake Basin Water Storage District and Empire West Side Irrigation District, who are foregoing the delivery of the subject water.
3. The place of use under Permit 16482 is expanded to include 1,319 acres located on Brooks Farms, 3,461 acres located on Hansen/Vista Verde Farms, and 875 acres located on Newton Farms. These areas are located within Township 16S, Range 15E, Township 17S, Range 14E, Township 17S, Range 15E, and Township 19S, Range 18E, MDB&M, and are shown on a map prepared by DWR for this transfer and titled SWP Table A Water from Tulare Lake Basin Water Storage District and Empire West Side Irrigation District to Westlands Water District (on file with the State Water Resources Control Board (State Water Board) under Application 17512).
4. On May 1, 2027, this change of place of use under Permit 16482 shall automatically expire, and the water subject to the change shall revert to the original water right holder, DWR, without any action by the State Water Board.
5. Water made available pursuant to this Order shall be used in a method consistent with good water management practices. **Furthermore, Westlands shall implement all reasonable measures to prevent the movement of poor quality subsurface drainage water into the downslope area outside of Westlands's service area. Reasonable measures shall include water conservation, recapture and reuse of water, and use of groundwater to reduce hydraulic pressure in appropriate areas to the extent feasible.**
6. By May 31, 2013, and on a yearly basis thereafter, the permittee shall provide to the Deputy Director for Water Rights a report describing the use of the water transferred pursuant to this Order. The report shall include a summary showing the monthly amounts of water actually transferred under this Order.

**The report should also include the following information:**

- a. **Specific locations where the transferred water was used;**
- b. **The monthly amounts of water each location received; and**
- c. **The average application rate of water at each location.**

7. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and long-term change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the State Water Board also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

8. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 to 1544). If a "take" will result from any act authorized under this long-term transfer, the petitioner shall obtain authorization for an incidental take permit prior to construction or operation. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the long-term transfer authorized under this Order.
9. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated:

*Nov 21, 2011*

1 **PROOF OF SERVICE**

2 I, Gilberto J. Castro, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is Brownstein Hyatt Farber Schreck, LLP, 1415 L Street, Suite 800, Sacramento, California  
6 95814. On December 20, 2011, I served a copy of the within document(s):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR  
8 RECONSIDERATION OF ORDER AUTHORIZING LONG-TERM CHANGE IN PLACE  
9 OF USE (PERMIT 16482 (LICENSE 17512))**

- 9  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
10 forth below on this date before 5:00 p.m.
- 11  by placing the document(s) listed above in a sealed envelope with postage thereon  
12 fully prepaid, the United States mail at Sacramento, California addressed as set  
13 forth below.
- 13  by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and  
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a  
15 \_\_\_\_\_ agent for delivery.
- 15  by personally delivering the document(s) listed above to the person(s) at the  
16 address(es) set forth below.
- 17  by transmitting via e-mail or electronic transmission the document(s) listed above  
18 to the person(s) at the e-mail address(es) set forth below.

19 I am readily familiar with the firm's practice of collection and processing correspondence  
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
21 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
22 motion of the party served, service is presumed invalid if postal cancellation date or postage  
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 I declare under penalty of perjury under the laws of the State of California that the above  
25 is true and correct.

26 Executed on December 20, 2011, at Sacramento, California.

27   
28 \_\_\_\_\_  
Gilberto J. Castro



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**SERVICE LIST**

<p>Erick D. Soderlund Department of Water Resources 1416 Ninth Street, Room 1104 Sacramento, CA 95814 esoderlu@water.ca.gov</p>	<p>John Howe Empire West Side Irrigation District P.O. Box 66 Stratford, CA 93266 jnhowe@att.net</p>
<p>Mark Gilkey Tulare Lake Basin Water Storage District 1001 Chase Ave. Corcoran, CA 93212 mgilkey@tlbwsd.com</p>	<p>Adam Lazar Center for Biological Diversity 351 California St. #600 San Francisco, CA 94104 alazar@biologicaldiversity.org</p>
<p>John Herrick, Esq. South Delta Water Agency 4255 Pacific Avenue Stockton, CA 95207 Jherrlaw@aol.com</p>	