

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

DIVISION OF WATER RIGHTS

In the Matter of Specified Permits of

**THE STATE WATER PROJECT AND
THE CENTRAL VALLEY PROJECT**

**ORDER APPROVING A PETITION FOR LONG-TERM TRANSFER BETWEEN THE
CALIFORNIA DEPARTMENT OF WATER RESOURCES AND
UNITED STATES BUREAU OF RECLAMATION**

SOURCE: Sacramento – San Joaquin Delta

COUNTIES: Merced, San Joaquin, and Stanislaus

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 INTRODUCTION

On May 1, 2020, the Department of Water Resources (DWR) and the United States Bureau of Reclamation (Reclamation) (hereinafter jointly referred to as Petitioners) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Long-Term Transfer under Water Code section 1735, et seq. With the petition, DWR requests a 15-year modification of Permit 16479 and Reclamation requests a 15-year modification of Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, and 12364 to make a long-term transfer that requires changes to the authorized place of use of: (1) DWR's permit to include the Central Valley Project (CVP) authorized place of use downstream of Jones Pumping Plant (Jones); and (2) Reclamation's permits to include the State Water Project (SWP) authorized place of use downstream of Harvey O. Banks Pumping Plant (Banks).¹ The Petitioners use the term "downstream" to identify that portion of the SWP and CVP that is served by water diverted from the Jones and Banks Pumping Plants. These areas are served via a system of canals and holding reservoirs that is within the Petitioners' control. The maximum total exchange quantity requested is up to 5,616 acre-feet (af) per year.

¹ This order uses the terms "long-term transfer" and "long-term exchange" interchangeably based on the reciprocal nature of the transfers at issue in this order.

The changes requested will consolidate, for up to 15 years, the SWP's and CVP's (hereinafter jointly referred to as the Projects) respective authorized places of use for the permits that are the subject of the Petition. Petitioners indicate that the changes will more effectively and efficiently utilize the operational flexibility of the combined Projects to supply water south of Banks and Jones (collectively, the Delta Pumps). The Petitioners state that the requested changes will facilitate the delivery of available Project supplies that already have been exported south of the Sacramento-San Joaquin Delta (Delta) and will maximize the beneficial use of available supplies. The Petition indicates that approval will not increase the quantity or alter the timing of diversions from the Delta or San Joaquin River.

The long-term transfer would become effective upon order issuance and would remain in effect for up to 15 years from the date of approval. The total quantity to be transferred each year consists of the exchanges detailed in section 2.3. The SWP and CVP permits covered by the proposed changes are listed in the following table.

SWP Water Rights Subject to Long-Term Change

Application Number	Permit (P) Number	Description
14443	P16479	Oroville Project

CVP Water Rights Subject to Long-Term Change

Application Number	Permit (P) Number	Description
5626	P12721	Shasta Project
5628	P11967	Trinity Project
9363	P12722	Shasta Project
9364	P12723	Shasta Project
9368	P12727	Jones Pumping Plant
13370	P11315	Folsom Project
13371	P11316	Folsom Project
15374	P11968	Trinity Project
15375	P11969	Trinity Project
15764	P12860	San Luis Reservoir
16767	P11971	Trinity Project
17374	P11973	Trinity Project
17376	P12364	Whiskeytown Lake

2.0 SUBSTANCE OF LONG-TERM TRANSFER PETITION

2.1 Existing Place of Use of Petitioners Water Rights

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

2.2 Place of Use under the Proposed Long-Term Transfer Petition

In order to consolidate the SWP and CVP authorized places of use, the Petitioners have requested:

- 1) The long-term addition of the CVP service area downstream of Jones to the place of use under DWR's Permit 16479; and
- 2) The long-term addition of the SWP service area downstream of Banks to Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, and 12364.

These long-term additions would be solely for the purpose of completing the exchanges described below and would be effective for up to 15 years following the date of Petition approval. The areas to be added to the SWP are shown on Figure 1 and the areas to be added to the CVP are shown on Figure 2, submitted with the Petition.

2.3 Exchanges Proposed

The Petition identifies the following exchanges and corresponding justification for each. On July 9, 2020, DWR and Reclamation submitted a memorandum with information regarding the use of water in the absence of proposed temporary exchanges, per Petitioners' May 8, 2020 temporary transfer submittal on which an Order was issued July 15, 2020. The North of O'Neill exchanges that were included within the temporary transfer are also encompassed within this long-term transfer, with some modifications to the quantities. Therefore, the information in the memorandum pertinent to the North of O'Neill exchanges is applicable and has been incorporated into the descriptions of each long-term exchange. All long-term exchanges covered by this Petition will occur south of the Delta and the total amount of water exchanged will not exceed 5,616 af per year over the 15-year transfer period.

Byron Bethany Irrigation District – Musco Family Olive Company

Byron Bethany Irrigation District (BBID) is a CVP contractor. Musco Family Olive Company (Musco) has a water service contract with BBID and is within the CVP place of use. Pursuant to this contract, BBID is to provide up to 800 af per year of CVP water to Musco for Municipal and Industrial (M&I) purposes of use. BBID and Reclamation are physically unable to convey CVP water to Musco without construction of additional temporary or permanent infrastructure. Musco is located near Reach 2A on the California Aqueduct (north of the O'Neill Forebay). DWR will deliver up to 800 af of SWP water to Musco for BBID. Reclamation will return an equal amount of CVP water to DWR at the O'Neill Forebay for use within the SWP service area south of the O'Neill Forebay.

Absent the exchange, BBID would provide the CVP water it cannot deliver to Musco to its other irrigation customers within its service area, bank it, or transfer it under the CVP's Accelerated Water Transfer Program.

U. S. Department of Veterans Affairs, San Joaquin Valley National Cemetery

The U.S. Department of Veterans Affairs, San Joaquin Valley National Cemetery (National Cemetery) contracts with Reclamation for up to 850 af of CVP supply annually for M&I purposes. The National Cemetery is located near Reach 2B on the California Aqueduct. Absent construction of new or temporary infrastructure, Reclamation is unable to directly convey CVP water to the National Cemetery when the use of Joint Points of Diversion (JPOD) operations authorized under Water Right Decision 1641 (D-1641) or the Delta-Mendota Canal/California Aqueduct Intertie are not available. DWR has provided water to the National Cemetery under short-term agreements among DWR, Reclamation, and the National Cemetery since 1990. DWR would deliver up to 850 af of SWP water to the National Cemetery in exchange for an equivalent amount of CVP water delivered by Reclamation to DWR at the O'Neill Forebay.

Reclamation is mandated by Congress to provide water service to the National Cemetery. Absent the exchange, Reclamation would seek to use Banks directly as approved by the State Water Board in 1993, explore other exchange options and seek water rights changes as needed, or explore the feasibility of installing infrastructure to serve the National Cemetery directly. The SWP water to be exchanged would be supplied to other SWP contractors within their existing allocations in the absence of the exchange.

Oak Flat Water District-Del Puerto Water District Exchange

Oak Flat Water District (Oak Flat), a SWP contractor, and Del Puerto Water District (Del Puerto), a CVP contractor, are adjacent districts located north of the San Luis

Reservoir in San Joaquin, Stanislaus, and Merced counties along the Delta-Mendota Canal and the California Aqueduct. Del Puerto contracts with Reclamation for CVP water for agricultural and incidental M&I purposes. This exchange will facilitate the delivery of CVP water to Oak Flat and SWP water to Del Puerto for the purposes of efficiently delivering water to landowners with contractual access to both supplies of water. Additionally, a portion of the lands within Del Puerto adjacent to Oak Flat are more efficiently served from Oak Flat's turnouts on the California Aqueduct by gravity flow to reduce energy consumption. With the approval of the Petition, DWR will deliver up to 3,966 af of SWP water to Del Puerto through Oak Flat's turnouts on the California Aqueduct to Oak Flat's distribution system. Reclamation will return an equal amount of CVP water to DWR at the O'Neill Forebay for use within the SWP service area south of the O'Neill Forebay. DWR has facilitated this type of exchange since 2013. This exchange will increase Del Puerto's operational flexibility and reliability by providing an alternate point of delivery of CVP water to Del Puerto.

Absent the exchange, Del Puerto's CVP water would be consumptively used within Del Puerto's service area, banked, or transferred to other CVP contractors under the CVP's Accelerated Water Transfer Program. Oak Flat's SWP water would be consumptively used within Oak Flat's service area in the absence of the exchange.

Additional Information Submitted by Petitioners

As previously mentioned, on July 9, 2020, DWR and Reclamation submitted a memorandum regarding the use of water in the absence of proposed temporary exchanges (July 15, 2020 Order), as requested by the State Water Board. The portion of the memorandum that pertains to the proposed North of O'Neill exchanges (Musco, National Cemetery, and Del Puerto) per the temporary transfer is applicable to the North of O'Neill exchanges per the subject long-term change petition. The memorandum included both general information, which is summarized below, and information specific to each exchange, which has been incorporated above into the description of each proposed exchange.

Petitioners stated that Project allocations are based on the annual water supply available to SWP and CVP contractors. These allocations are focused on the ability to meet summer irrigation demands while meeting regulatory requirements and accounting for upstream storage and hydrologic conditions. Petitioners also stated that the Delta Pumps are operated at their maximum allowable rates and that this rate is always insufficient to meet peak summer irrigation demand. This is addressed by operating San Luis Reservoir to augment Delta pumping to meet these demands. SWP has 21 south-of-Delta contractors that have contract amounts totaling 4,056,205 af, while the CVP has contracts with 43 entities south-of-Delta that total 2,988,521 af. The amounts proposed to be exchanged for Musco, National Cemetery, and Del Puerto are significantly less than the south-of-Delta demands under either the CVP or SWP. Lacking approval of the proposed exchanges, the exchange amounts would be used within the currently approved places of use for the SWP and CVP.

The Petitioners also stated that JPOD was approved in 2001 as a means for Reclamation to use the Banks pumping plant to supply entities, however JPOD is subject to capacity availability in the California Aqueduct. The proposed exchanges are an alternative pathway under Reclamation's water rights to deliver water. This alternative pathway of relying on exchanges applies to Musco, National Cemetery, and Del Puerto. Petitioners stated Reclamation has an Accelerated Water Transfer Program for all CVP contractors included in this Petition. The Accelerated Water Transfer Program allows unused allocations to be transferred to other CVP contractors within the same basin.

3.0 CRITERIA FOR APPROVING THE PROPOSED LONG-TERM CHANGES

Petitioners have applied for long-term changes involving an exchange of water pursuant to Water Code section 1735. The State Water Board shall approve long-term changes involving the exchange of water under Water Code section 1735 et seq. if it determines both of the following:

- a. The proposed changes would not result in substantial injury to any legal user of water; and
- b. The proposed changes would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1736.)

Long-term changes pursuant to Water Code section 1735 may be effective for any period in excess of one year.

The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1736. The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)

4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Under the California Environmental Quality Act (CEQA), DWR is the lead agency for preparation of environmental documentation for the proposed long-term transfer. On January 8, 2020, DWR filed an Initial Study/Negative Declaration (IS/ND) with the State Clearinghouse (SCH # 2020019024) pursuant to the provisions of CEQA. These documents indicate the proposed long-term transfer will not have a significant environmental impact 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 the agency is required by law to carry out or approve.

As a responsible agency under CEQA, the State Water Board has reviewed and considered the IS/ND for this long-term transfer. Based upon 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 PUBLIC NOTICE AND PROTEST

On September 18, 2020, a 30-day public notice of the Petition for long-term change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; and 3) via the State Water Board's electronic subscription mailing list. A protest was received on September 22, 2020 from Mr. Richard Morat.

5.1 Protest by Mr. Richard Morat

Mr. Morat expressed concern about potential adverse environmental impacts caused by the long-term transfer, however did not fulfill the requirements for filing a protest, as specified in Water Code section 1703.2 and California Code of Regulations, title 23, sections 745 et seq. Specifically, the protest did not include a statement of facts supporting an allegation that the proposed transfer would: (a) not be in the State Water Board's jurisdiction; (b) not best conserve the public interest or public trust uses; (c) have an adverse environmental impact; or (d) be contrary to law. Additionally, the protest was not responsive to the change requested by the Petition. Pursuant to Water Code section 1703.2, protests filed as a result of a petition notice must clearly and specifically set forth the protestant's objections to the approval of the petition and state the bases for the objections.

Mr. Morat was informed by the Division of the deficiencies in his protest by letter dated October 30, 2020 (the Deficiency Letter) and provided an opportunity to remedy the deficiencies within 30 days of the date of the letter. The Deficiency Letter also identified that DWR had prepared an IS/ND that analyzed the potential effects of the project. Pursuant to Water Code section 1703.3, Mr. Morat was asked to include the following information in his response to the Deficiency Letter: (1) Identification of the specific allegation(s) raised in the protest that are not adequately resolved by information contained in the IS/ND; and (2) a statement of facts, supporting his allegation(s), which he believed would provide substantial evidence that, despite the information and conclusions contained in the IS/ND, the proposed transfer would not be in the public

interest, would adversely affect public trust uses, or would have an adverse environmental impact.

Mr. Morat sent a response by electronic mail on November 10, 2020. However, the response did not provide the requested remedies to the protest deficiencies or the supplemental information. Mr. Morat did not request additional time for preparing a further response. Therefore, the protest is deemed deficient pursuant Water Code section 1703.6 and is canceled.

6.0 REQUIRED FINDINGS OF FACT FOR PROPOSED LONG-TERM TRANSFERS IN PETITION

The following discussion and findings are applicable to the following exchanges proposed in the Petition: (a) 800 af to Musco; (b) 850 af to the National Cemetery; and (c) 3,966 af to Del Puerto.

According to the Petition and the additional information provided by the Petitioners, and as conditioned, the long-term changes proposed will not result in the diversion of additional water from the Delta or the delivery of more water to any individual water supplier or user than has been delivered historically. The exchanges proposed by the Petition involve water that will be part of the SWP or CVP contractors allocated supplies. Additionally, for each exchange, the Petitioners have represented to the State Water Board that there are no operational constraints to divert and use the exchanged water in the existing place of use in the absence of the Petition.

The water proposed for exchanges consists of either:

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

The direct diversion and collection of water to storage under the permits held by Petitioners may be subject to curtailment notices during the term of this Order. However, releases of water collected to storage prior to issuance of the curtailment notices are not subject to curtailment.

6.1 No Injury to Other Legal Users of Water

Before approving a long-term change due to a transfer or exchange of water pursuant to Article 2 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not result in substantial injury to any legal user of water. (Wat Code, § 1736.)

As conditioned, the changes approved in this Order will not result in any measurable changes to streamflow, water quality, timing of diversion or use, or return flows. The water to be exchanged is diverted out of the watershed from which it originates in conformance with the provisions of the respective water right permits governing those diversions. There are no other legal users downstream of the points of diversion that would be affected by the exchanges.

The quantity and timing of diversions from the Delta will not change, however the delivery rates from San Luis Reservoir may differ. The scheduling of the deliveries will be coordinated between Petitioners so as not to adversely impact any SWP or CVP contractor deliveries. The Petitioners indicate that capacity of the California Aqueduct and the Delta-Mendota Canal will not be adversely impacted as a result of the exchanges.

The exchanges are not expected to result in a measurable change in the quantity or quality of return flows. As conditioned, there will be no increase in either SWP or CVP diversions or allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP supplies that already have been exported from the Delta. Temporary exchanges similar to those proposed above occurred in 2009, 2010, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020 consistent with the provisions of Order WR 2009-0033, Order WR 2010-0032-DWR, and the July 6, 2012, July 1, 2013, March 28, 2014, April 27, 2015, May 17, 2016, June 8, 2017, July 2, 2018, July 15, 2019, and July 16, 2020 State Water Board Orders approving DWR's and Reclamation's petitions for change to consolidate the authorized places of use of the SWP and CVP. No measurable effects on other legal users of water were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1736, that the proposed long-term change of DWR's Permit 16479 and Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, and 12364 will not injure any legal user of water.

6.2 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a long-term transfer of water pursuant to Article 2 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1736.)

Pursuant to CEQA, DWR has prepared an IS/ND for this transfer. The IS/ND does not identify any significant effects on the environment from the proposed long-term transfer. In accordance with California Code of Regulations, Title 23, section 794 (c), Petitioners provided California Department of Fish and Wildlife (CDFW) and the applicable Regional Water Quality Control Boards (Regional Boards) with a copy of the Petition. CDFW and the Regional Boards did not respond with any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

As conditioned, there will be no change in the amount of SWP or CVP water diverted at Banks or Jones. Therefore, no associated change in flow or water quality conditions in the Delta should result from the changes proposed in the Petition. All water exported at Banks and Jones is required to be pumped consistent with the applicable regulatory restrictions and court orders governing SWP and CVP operations.

The exchanges will not result in a measurable change in quantity or quality of return flows. There will be no increase in either SWP or CVP allocations as a result of the proposed exchanges. There could be some shift in the timing of deliveries of SWP and CVP allocated supplies that already have been exported south of the Delta; however, this will not significantly affect streamflow.

Exchanges similar to those proposed above have been implemented in previous years by both DWR and Reclamation. No measurable effects on fish, wildlife or other instream beneficial uses were noted from those exchanges.

In light of the above, I find in accordance with Water Code section 1736, that the proposed long-term change of DWR's Permit 16479 and Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973 and 12364 will not unreasonably affect fish, wildlife, or other instream beneficial uses.

7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for long-term change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in Section 4.4.3 of Resolution 2012-0029 and the Deputy Director for Water Rights redelegation of authority dated October 19, 2017.

8.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1736, and therefore I find as follows regarding DWR's Permit 16479 and Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315,

11316, 11968, 11969, 12860, 11971, 11973 and 12364, for each of the following exchanges proposed in the Petition: (a) 800 af to Musco; (b) 850 af to the National Cemetery; and (c) 3,966 af to Del Puerto:

I conclude that, based on the available evidence:

1. The proposed long-term change will not result in substantial injury to any legal user of water.
2. The proposed long-term change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition filed for long-term change in the place of use under DWR's Permit 16479 and Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, and 12364 for exchange of up to 5,616 af of water per year is approved.

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

1. The approvals in this Order shall remain effective for 15 years from the date of this Order.
2. For the duration of this Order, the authorized place of use under DWR's Permit 16479 is expanded to include portions of the CVP service area shown on the Petition map titled *Figure 1. Areas to be Added to Place of Use in SWP Water Rights Permits*.
3. For the duration of this Order, the place of use under Reclamation's Permits 12721, 11967, 12722, 12723, 12727, 11315, 11316, 11968, 11969, 12860, 11971, 11973, and 12364 is expanded to include portions of the SWP service area as shown on the Petition map titled *Figure 2. Areas to be Added to Place of Use in CVP Water Rights Permits*.
4. Upon the expiration of the approvals in this Order, the water rights subject to this Order shall revert to the original water right holders, DWR and Reclamation, without any further action by the State Water Board. (Wat. Code, § 1737.)
5. Water transferred pursuant to this Order shall be limited to a maximum quantity of 5,616 af per year as follows: (a) 800 af to Musco; (b) 850 af to the National Cemetery; and (c) 3,966 af to Del Puerto.

6. This approval is limited to the exchanges described in this Order and does not extend to any transfers or exchanges under DWR's or Reclamation's water rights in excess of the total of 5,616 af per year authorized under this Order. The exchanges identified in this Order are limited as follows: 1) The exchanges shall not result in any increase in the amount of water diverted from the Delta or in an increase in Project contract allocations; 2) The water to be exchanged shall be part of available Project allocations, or water currently stored in San Luis Reservoir; 3) The total quantity of water delivered to SWP or CVP contractors as a result of the change shall not exceed historic average deliveries; 4) The transfer or exchange shall not result in the net loss of San Joaquin River or Sacramento River flow or Delta outflow; and 5) The transfer or exchange shall not result in an increase in saline drainage to the San Joaquin River or to the Delta.
7. If, at any time while this Order remains effective, the State Water Board issues a notice of water unavailability applicable to the water rights covered by this Order, only water collected to storage prior to issuance of the notice of water unavailability may be exchanged.
8. Diversion of water at the Delta Pumps is conditioned upon compliance by the operators with the objectives currently required of Petitioners set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives applicable to the water rights involved in this petition. In addition, the approvals in this Order are conditioned on compliance with all applicable requirements for use of Stage 1 Joint Points of Diversion (JPOD) by Petitioners under D-1641. Diversion and rediversion of water also is conditioned upon Petitioners' compliance with all applicable water right permit requirements as well as federal and California Endangered Species Act (ESA) requirements, including applicable Biological Opinions (BOs), and Incidental Take Permits (ITP); court orders; and any other conditions imposed by other regulatory agencies applicable to these operations.
9. Diversion of water at the Delta Pumps also is conditioned upon compliance with applicable State Water Board Orders establishing temporary or interim operating conditions during the transfer period, unless the State Water Board has specifically exempted conveyance of transfer water from the Order.
10. Within 60 days from the date of this Order, the Petitioners shall develop a method acceptable to the Deputy Director of the Division of Water Rights to track and report by water right the monthly amounts of water delivered under the transfer to Musco, the National Cemetery, and Del Puerto. At least annually, or more often as requested by the Deputy Director, the Petitioners shall submit an electronic report as an attachment to the Report of Permittee for each water right relied upon to provide water for the transfers. The reports shall identify the monthly quantities of SWP and

CVP deliveries under the transfer and any other amounts of water each user received through SWP or CVP facilities. The reports shall also include documentation that the water exchanged did not result in any increase in water diverted by the SWP and CVP beyond the quantities that would otherwise have been diverted absent the transfer.

11. 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 use and quantity of water diverted, are subject to the continuing authority of the State Water Board 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.

12. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California ESA (Fish & G. Code, §§ 2050-2097) or the federal ESA (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any action authorized under this Order, the Petitioners shall first obtain authorization for an incidental take permit prior to undertaking that action. Petitioners shall be responsible for meeting all applicable California ESA and federal ESA requirements for the temporary change authorized under this Order.

13. The State Water Board reserves authority to supervise the exchange and use of water under this Order and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: DEC 30 2020