

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF PERMIT 11360 (APPLICATION 12622)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 3,658 ACRE-FEET OF WATER FROM  
CITY OF SACRAMENTO  
AND SACRAMENTO SUBURBAN WATER DISTRICT TO  
STATE WATER CONTRACTOR AGENCIES**

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

**Description of the Transfer**

On May 10, 2013, the City of Sacramento (Sacramento) and Sacramento Suburban Water District (SSWD) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), a Petition for Temporary Change under Water Code section 1725, et seq. Sacramento and SSWD petition to transfer of up to 3,658 acre-feet (af) of water to participating State Water Contractor (SWC) agencies. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

Sacramento and SSWD propose to transfer up to 3,658 af of water under Sacramento's Permit 11360 (Application 12622) to participating SWC agencies in order to provide additional water for irrigation. The participating SWC agencies are Kern County Water Agency, Dudley Ridge Water District, and Empire-West Side Irrigation District (hereinafter collectively referred to as SWC Agencies). To facilitate this transfer, Sacramento is requesting the following changes to its Permit 11360: (1) the temporary addition of the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) as a point of rediversion; (2) the temporary addition of the service area of the SWP as an additional place of use. Sacramento will make surface water available for transfer via groundwater substitution; and (3) the temporary addition of irrigation as a purpose of use. The groundwater substitution will involve the use of groundwater in exchange for up to 24 cubic feet per second (cfs) of surface water that will remain in the Lower American River for diversion at the proposed additional downstream point of diversion (Banks Pumping Plant). Absent the proposed temporary transfer Sacramento would divert the entire quantity of surface water proposed for transfer from its E.A. Fairbairn Water Treatment Plant on the American River for treatment and delivery to SSWD under the 2004 *Wholesale Water Supply Agreement Between the City of Sacramento and Sacramento Suburban Water District* (Wholesale Agreement). Under the Wholesale Agreement, SSWD uses treated surface water provided by Sacramento for municipal uses within SSWD's South Service Area.

**1.2 Groundwater Substitution**

Sacramento proposes to transfer water to the SWC Agencies through groundwater substitution. SSWD proposes to pump groundwater to provide a municipal supply within its South Service Area in lieu of delivering the equivalent amount of treated surface water from the City. SSWD will pump groundwater that has been actively banked through the operation of a conjunctive use program, which has resulted in the in-lieu banking of over 200,000 af of water since 1998.

Sacramento and SSWD indicate that their groundwater substitution program is consistent with the Draft Technical Information for Preparing Water Transfer Proposals, dated February 2013 published by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation). Only wells which have been approved by DWR and Reclamation will be used for the proposed transfer. DWR and Reclamation well criteria used to evaluate groundwater substitution transfers is intended to minimize impacts to streamflow during balanced conditions and potential impacts to the SWP and CVP. DWR and Reclamation have estimated streamflow impacts resulting from SSWD's pumping to replace transferred water to be 8%. To account for those impacts, Sacramento will only transfer 92% of the total quantity pumped by SSWD in exchange for the surface water released. The conditions identified in item 3.4 require compliance with DWR's and Reclamation's well construction, location and monitoring requirements as well as the application of the streamflow depletion factor, which are intended to ensure that the groundwater substitution transfer will not unreasonably affect the surface streamflow.

SSWD is located within the North Area Groundwater Basin, which includes all of Sacramento County north of the American River. The North Area Groundwater Basin is managed by the Sacramento Groundwater Authority (SGA), which is a joint powers authority created by Sacramento County and the cities of Citrus Heights, Folsom and Sacramento and is composed of 14 local water purveyors, including SSWD. SSWD indicates that the proposed transfer is consistent with the conjunctive management principles in SGA's Groundwater Management Plan (GMP).

## **2.0 BACKGROUND**

### **2.1 Substance of Sacramento's Permit**

Permit 11360, issued on May 7, 1958, authorizes Sacramento to divert 500 cfs from the Rubicon River, 500 cfs from South Fork Rubicon River, 200 cfs from Rock Bound Creek, 75,000 af annually (afa) by storage collected from Rubicon River, 200,000 afa by storage collected from South Fork Rubicon River, 14,000 afa by storage collected from Rock Bound Creek and 25,000 afa by storage collected from Gerle Creek. The primary points of rediversion under Permit 11360 are the Fairbairn Water Treatment Plant on the lower American River and the Sacramento River diversion and water treatment plant at the confluence of the American and Sacramento Rivers. Permit 11360 authorizes direct diversion and storage of water between November 1 of each year and August 1 of the succeeding year. The authorized purpose of use under Permit 11360 is municipal.

### **2.2 Proposed Temporary Changes**

The proposed transfer would temporarily add the SWP's Banks Pumping Plant as a point of rediversion under Permit 11360. A portion of the service area of the SWP would be temporarily added to the place of use of Permit 11360 to facilitate the temporary water transfer to the participating SWC Agencies. This portion of the service area of the SWP is shown on Maps 1878-2 and 1878-3 on file with the Division under Application 5630. Irrigation would also be temporarily added as a purpose of use under Permit 11360.

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

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

uses. The State Water Board and DWR were also directed to make all efforts to coordinate with relevant federal agencies, water districts, and water agencies to expedite the review and approval of water transfers in California.

### **3.0 PUBLIC NOTICE AND COMMENT TO THE PROPOSED TEMPORARY CHANGE**

On May 17, 2013, public notice of the petition for temporary change was provided as follows: 1) via first class mail to interested parties; 2) by posting on the Division's website; 3) via the State Water Board's Lyris email notification program; and 4) by publication in the Sacramento Bee on May 18, 2013.

The State Water Board received timely comments regarding the proposed temporary change from the following: 1) SGA; 2) a joint comment by California Water Impact Network (C-WIN), California Sportfishing Protection Alliance (CSPA) and AquAlliance; 3) Richard Morat; and 4) Reclamation. The State Water Board received late comments from Department of Fish and Wildlife (DFW). These comments and the State Water Board's responses are summarized below.

#### **3.1 Comments by SGA**

On May 28, 2013, SGA provided comments on Sacramento's and SSWD's proposed transfer. SGA indicated that SSWD's 2013 proposal for pumping groundwater to compensate for transferred surface water will be within the sustainable safe yield of the North Area Basin. SGA also provided data from SSWD's groundwater substitution transfers in 2009 and 2010, when groundwater demand conditions were similar to 2013. SGA's data shows that following each of those transfers, groundwater elevations recovered to pre-transfer conditions. SGA concluded that SSWD's proposed 2013 water transfer is consistent with SGA's long-term groundwater management objectives.

#### State Water Board Response

The State Water Board thanks SGA for its comments.

#### **3.2 Joint Comments by C-WIN, CSPA, and AquAlliance (Environmental Commenters)**

On June 3, 2013, the environmental commenters indicated their concerns regarding the transfer proposal. The concerns extend beyond the scope of the current transfer, and encompass all pending 2013 water transfers being processed by the State Water Board. To expedite transfer processing, the concerns are not repeated herein; however, the State Water Board response letter dated June 27, 2013 is incorporated by reference. The response letter details the issues raised by the environmental commenters. On June 18, 2013, Sacramento and SSWD also provided a response to the environmental commenters as discussed below.

#### State Water Board Response:

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

In addition, the response letter indicates that use of the Banks Pumping Plant for transfer purposes should be conditioned on compliance by DWR with Decision 1641, all applicable biological opinions and court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

The objection is addressed upon a finding that: (a) no change in return flows is occurring, and (b) the transfer only involves water that would have been consumptively used or stored. Approval of the petition is also contingent on inclusion of condition 7 of this order. The required evaluations are found in Section 5 of this order.

Sacramento and SSWD Response:

On June 14, 2013, Sacramento and SSWD joined in a joint response letter by nine transfer petitioners to address the issues raised by the environmental commenters. On June 18, 2013, Sacramento and SSWD also independently provided to the State Water Board details of SSWD's compliance with SGA's GMP.

SSWD has also applied to Sacramento County for approval of SSWD's 2013 groundwater substitution transfer pursuant to the requirements of Section 3.40.090 of Title 3 of the Sacramento County Water Agency (SCWA) Code, which governs the export of groundwater and surface water from Sacramento County. On June 12, 2013, SCWA found that SSWD's 2013 groundwater substitution transfer would be in conformance with County policy and therefore approved SSWD's application for a water export permit.

**3.3 Comments of Richard Morat**

On May 17, 2013, Richard Morat commented on the proposed transfer. The Morat comments were similar to, but not as extensive as, the environmental commenters concerns.

State Water Board Response:

The State Water Board response letter, dated June 27, 2013, refers Mr. Morat to the more extensive responses provided to the environmental commenters. The information identified in item 3.2 also addresses the Morat objection.

**3.4 Comments of Reclamation**

By letter dated June 13, 2013, Reclamation commented on the proposed transfer. To protect Reclamation's water rights and operations for the American River, Reclamation requested that the transfer be conditioned as follows:

- If flow at Sacramento's Fairbairn Water Treatment Plant is less than the applicable Hodge Flow Criterion, no water will be transferred to the SWC Agencies.
- Petitioners' water transfer proposal will not harm other groundwater pumpers in in the North Area Basin due to additional pumping for the transfer in that region.
- The amount of transferable water credited to Petitioners' groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
- Before commencing the groundwater substitution operation, Petitioners shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.
- The proposed water transfer shall be carried out in compliance with all existing regulatory constraints in the Delta and shall cause no harm to other legal water users or impact on water quality.
- Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

State Water Board Response:

In order to avoid injury to Reclamation's water rights, the transfer is conditioned based on the criteria listed above.

**3.5 Comments of DFW**

By letter dated June 27, 2013 DFW provided comments. DFW's comments were received after the 30-day deadline.

State Water Board Response:

The State Water Board is not required to evaluate or take into consideration comments that were not timely filed. Moreover, DFW has not presented any information to demonstrate that this particular transfer will have an unreasonable impact on fish and wildlife. Instead, the DFW comments express concern that there will be a cumulative impact of this and other transfers. That issue is addressed in the Division's June 27, 2013 response to the environmental commenters.

**4.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Petitioners filed the petition for temporary transfer of water pursuant to Water Code section 1725, et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of CEQA. (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for the transfer.

In addition to any obligation the State Water Board may have under CEQA, the Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board may approve a temporary change due to a transfer of water only if it determines that the proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The independent evaluation of impacts to public trust resources was conducted concurrent with the Water Code Section 1727 evaluation.

**5.0 REQUIRED FINDINGS OF FACT**

**5.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the right holders in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion." The water proposed for transfer consists of surface water made available through increased groundwater pumping. To the extent that the additional groundwater pumped does not affect streamflow, this water represents water which would not be available for use in the downstream water supply. DWR and Reclamation have reviewed the proposed groundwater pumping and determined that 8% of the additional groundwater pumping will affect streamflow. This Order limits the amount of water available for transfer to 92% of the groundwater pumped.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

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

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

Petitioners may not transfer water through Banks Pumping Plant prior to obtaining approval from DWR and Reclamation for its groundwater substitution operation. Compliance with well construction, location and monitoring requirements as well as the application of the streamflow depletion factor are intended to ensure that the groundwater substitution transfer will not unreasonably affect the surface stream. DWR and Reclamation have reviewed the proposed transfer and determined that, with inclusion of the 8% depletion factor described in Section 1.2 of this Order, the SWP and CVP will not be injured by impacts resulting from the additional groundwater pumping associated with the transfer. Under this operating scenario, the transfer will not result in increased diversion of stream flow or reduction in return flows. Since there will be no increase in diversion of stream flow, there will be no injury to other legal users of water.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed transfer will not injure any legal user of the water. I also find that the transfer of surface water that is replaced with groundwater pursuant to this Order meets the requirement of Water Code section 1745.10 subdivision (a). That section requires that the groundwater substitution transfer be consistent with a groundwater management plan adopted pursuant to state law for the affected area.

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

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The petition states that the flow downstream of Sacramento's current point of diversion may increase by up to 3,658 af during the period of the transfer due to the temporary change. The increased flows may provide benefits to fisheries, wildlife or other instream beneficial uses.

Diversion of water at Banks Pumping Plant pursuant to this Order is subject to compliance by the SWP project operator with the objectives set forth in Tables 1, 2 and 3 on page 181 to 187 of Decision 1641 (D-1641), including compliance with the various plans required under D-1641. Diversion at these facilities pursuant to this Order is also subject to compliance by the operator with all applicable biological opinions and any court orders applicable to these operations.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(2) that the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## **6.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2012-0029.

## **7.0 CONCLUSIONS**

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

I conclude that, based on the available evidence:

1. The proposed temporary changes will not injure any legal user of the water.
2. The proposed temporary changes will not unreasonably affect fish, wildlife, or other instream beneficial uses.
3. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
4. An increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for transfer of up to 3,658 acre-feet of water is approved.

All existing terms and conditions of Permit 11360 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this order and continuing for one year.
2. The maximum transfer quantity authorized under Permit 11360 is 3,658 af.
3. Sacramento shall reduce its diversion rate at the original point of diversion authorized under Permit 11360 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 92% of the rate of additional groundwater pumping, and shall in no case exceed 24 cfs.
4. The place of use under Permit 11360 is temporarily expanded to include a portion of the service area of the SWP as shown on Maps 1878 - 2 and 1878 - 3 on file with the Division under Application 5630. Water transferred pursuant to this order shall only be delivered to the following: 1) Kern County Water Agency; 2) Dudley Ridge Water District; 3) and Empire-West Side Irrigation District.
5. The Banks Pumping Plant is temporarily added as an authorized point of diversion under Permit 11360.
6. Irrigation is temporarily added as an authorized purpose of use under Permit 11360.
7. Diversion of water at Banks Pumping Plant pursuant to this Order is subject to compliance by the SWP project operator with the objectives set forth in Tables 1, 2 and 3 on page 181 to 187 of State Water Board's Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at the point of diversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Banks Pumping Plant by DWR. Diversion of water at the Banks Pumping Plant pursuant to this Order is subject to compliance by the pumping plant operator with all applicable biological opinions, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
8. Water may not be transferred through the Banks Pumping Plant until Petitioners have obtained the approval of Reclamation and DWR for its groundwater substitution operation. Such approval shall include the following elements:
  - a. If flow at Sacramento's Fairbairn Water Treatment Plant is less than the applicable Hodge Flow Criterion, no water will be transferred to the SWC Agencies.
  - b. SSWD's water transfer proposal will not harm other groundwater pumpers in in the North Area Basin due to additional pumping for the transfer in that region.
  - c. The amount of transferable water credited to Petitioners' groundwater substitution water transfer operation is subject to the determination of Reclamation and DWR.
  - d. Before commencing the groundwater substitution operation, Petitioners shall submit a Monitoring Program Plan and Mitigation Program Plan to DWR and Reclamation for evaluation and prior approval.



- e. The proposed water transfer shall be carried out in compliance with all existing regulatory constraints in the Delta and shall cause no harm to other legal water users or impact on water quality.
- f. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River Delta.

Documentation that an acceptable groundwater substitution operation has been approved by Reclamation and DWR shall be submitted to the Division within 15 days of the date such approval is granted by those entities.

- 9. During the period of transfer, Petitioners shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered into by the Petitioners.
- 10. Within 90 days of the completion of the transfer, but no later than October 1, 2014, Permittee shall provide to the Deputy Director for Water Rights a report describing the transfer authorized by this Order. The report shall include the following information.
  - a. General locations where the transferred water was used;
  - b. The daily average rate water is made available for transfer pursuant to this Order;
  - c. The daily average diversion rate for water diverted pursuant to Permit 11360 during the transfer period;
  - d. The average daily streamflow measured at the nearest representative gaging station on the Sacramento River;
  - e. The daily average pumping rate of groundwater pumped by Permittee in excess of that which would have been pumped in the absence of this transfer; and
  - f. Groundwater elevations within the vicinity of the SSWD prior to the proposed transfer.

Permittee shall also develop and submit to the Deputy Director for Water Rights, by July 1 of each year following 2014, a map defining the groundwater elevations within the vicinity of SSWD, until such time as these elevations correspond to pre-transfer levels.

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

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

12. 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 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 temporary transfer, the Petitioners shall obtain authorization for an incidental take permit prior to construction or operation. The Petitioners shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
  
13. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:  
JAMES W. KASSEL FOR

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

Dated: JUL 03 2013