

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 12827 (APPLICATION 5644A)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 2,000 ACRE-FEET OF WATER  
FROM GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT  
TO WESTLANDS WATER DISTRICT**

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SOURCE: Pilot Creek

COUNTY: El Dorado

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**BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:**

**1.0 SUBSTANCE OF PETITION**

On June 12, 2020, Georgetown Divide Public Utility District (GDPUD or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change (Petition) involving the transfer of water under water right Permit 12827 (Application 5644A), pursuant to Water Code section 1725 et seq. Under the proposed transfer, up to 2,000 acre-feet (af) of water will be transferred to Westlands Water District (Westlands). The temporary transfer period will begin on August 19, 2020, and is effective through September 30, 2020.

**1.1 Description of the Transfer**

GDPUD proposes to transfer up to 2,000 af of water currently stored in Stumpy Meadows Reservoir on Pilot Creek to Westlands. The transfer water will be released from Stumpy Meadows Reservoir into Pilot Creek which subsequently flows into the Rubicon River, Ralston Afterbay, Oxbow Powerhouse, Middle Fork American River (MFAR), North Fork American River, and finally into Folsom Reservoir.

Subsequent release of the transfer water from Folsom Reservoir will be scheduled by the United States Bureau of Reclamation (Reclamation) in cooperation with Westlands so that the proposed transfer will not disrupt normal Central Valley Project (CVP) or State Water Project (SWP) operations and will adhere to all required flow standards for the Lower American River (LAR).

In the Petition, GDPUD indicated that after release from Folsom Reservoir, the transfer water will flow down the Lower American and Sacramento Rivers and be rediverted at either the SWP's Harvey O. Banks Pumping Plant (Banks Pumping Plant) or the CVP's Bill Jones Pumping Plant (Jones Pumping Plant). However, on July 30, 2020, GDPUD emailed the Division confirmation that the water will be transferred through SWP facilities only. GDPUD indicated that it proposes to initiate the transfer by releasing water from Stumpy Meadows Reservoir from August 19 through September 23, 2020.

## **1.2 Reservoir Reoperation**

The transfer involves water currently stored in Stumpy Meadows Reservoir. Refill criteria developed in conjunction with Department of Water Resources (DWR) and Reclamation are required to ensure that the future refill of the reservoir space made available in Stumpy Meadows Reservoir from this transfer does not adversely impact the SWP or the CVP. The refill criteria provide for an accounting of refill of Stumpy Meadows Reservoir resulting from the proposed transfer. Pursuant to the criteria, any refill occurring during balanced conditions in the Sacramento-San Joaquin Delta Estuary<sup>1</sup> (Delta) is subject to repayment of water to DWR and Reclamation, according to a schedule agreed to by GDPUD, DWR, and Reclamation.

## **2.0 BACKGROUND**

### **2.1 Substance of GDPUD's Permit 12827**

Permit 12827 authorizes direct diversion of up to 100 cubic feet per second (cfs) from November 1 to August 1 of the succeeding year, and 20,000 af per annum by storage to be collected from November 1 to August 1 of the succeeding year. The total annual diversion (direct diversion and diversion to storage) from Pilot Creek is limited to 74,347.9 af. Permit 12827 requires compliance with Exhibit 15 of Decision 893 by the State Water Board for the preservation of fish and wildlife in Pilot Creek, which includes a minimum release requirement varying between 2 and 4 cfs that is determined by the prediction of the unimpaired runoff of the American River at Fair Oaks. Permit 12827 also requires an annual minimal storage pool of 1,200 af year-round.

The existing point of direct diversion is located by California Coordinate System of 1983 (CCS83), Zone 2, North 2,101,786 feet and East 6,949,761 feet, being within SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 4, T12N, R12E, MDB&M. The existing point of diversion to storage at

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<sup>1</sup>The Delta is referred to as in Balanced Condition when the CVP and the SWP are being operated to meet water quality and flow requirements in the Delta.

Stumpy Meadows Reservoir is located by CCS83, Zone 2, North 2,094,086 feet and East 6,958,561 feet, being within SE¼ of NW¼ of Section 11, T12N, R12E, MDB&M.

The existing place of use is the total irrigated area of 14,140 acres within GDPUD's boundaries of 66,500 acres as shown on Appendix B of the Petition submittal and on maps on file with the State Water Board under Application 5644A and include the following power plants: (1) Tunnel Power Plant within Section 26, T13N, R11E, MDB&M; (2) Buckeye Power Plant within Section 1, T12N, R10E, MDB&M; (3) Buffalo Hill Power Plant within Section 10, T12N, R10E, MDB&M; and (4) Kaiser Power Plant within Section 6, T12N, R10E, MDB&M.

The authorized purposes of use are irrigation, domestic, stockwatering, and incidental power.

## **2.2 Proposed Temporary Changes**

To facilitate this transfer, GDPUD is requesting the following changes to Permit 12827: (1) the temporary addition of the SWP's Banks Pumping Plant as a point of rediversion; and (2) add the Westlands' service area as additional place of use. The Westlands' service area is shown on the map provided to the Division by GDPUD on July 23, 2020.

## **3.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE**

On June 22, 2020, a public notice of the Petition for temporary change was provided by posting on the Division's website and via the State Water Board's subscription mailing list. In addition, on June 22, 2020, the Petitioner noticed the Petition via publication in the Georgetown Gazette newspaper and mailed the notice via first class mail to interested and downstream parties. The comment deadline was July 22, 2020. Comments were timely received from Mr. Richard Morat, California Department of Fish and Wildlife (CDFW), Reclamation, Mr. Steven Proe, and the Central Delta Water Agency (CDWA). Based on the Division's request, GDPUD provided responses to comments of CDFW, Mr. Steven Proe, and CDWA by letter dated July 29, 2020, and provided responses to the comments of Reclamation by letter dated July 30, 2020. The comments and the responses of both GDPUD and the State Water Board are discussed below.

### **3.1 Comments of Mr. Richard Morat**

By email dated June 22, 2020, Richard Morat commented on the proposed transfer. Mr. Morat requested conditions be included in any order approving the transfer that better protect public trust resources so as to not result in unreasonable effects on fish and wildlife or other instream beneficial uses. Mr. Morat also commented that the transfer should be conditioned for only essential uses in 2020, and that transfer of water

that otherwise would have remained in storage be conditioned “such that conservation storage replenishment of the transferred amount be timed and amounts allowed to be conserved scoped to the affected river’s and the estuary’s capacity to reasonably forego those flows.”

*State Water Board Response:*

The State Water Board is responsible for considering public trust resources, and while it does not anticipate any adverse public trust impacts to result from this transfer, the State Water Board is aware of long-standing challenges with regard to management of flows and maintaining habitat conditions that are suitable for protection of fish and wildlife in the Delta and its tributaries. Current outflow and water quality requirements are established by State Water Board Revised Water Right Decision 1641 (D-1641) and applicable Biological Opinions, which are the responsibility of DWR and Reclamation to fulfill during the entirety of this transfer.

The State Water Board is supportive of transfers to provide water where it is needed. It is anticipated that Westlands will only receive 20 percent of their CVP allocation this year. The Petition seeks to add points of rediversion and place of use through September 2020.

The proposed temporary transfer by GDPUD involves water that would have otherwise remained in storage pursuant to Permit 12827. By approving the transfer, additional water will flow down the American River to the Sacramento River and the Delta. Furthermore, requirement of a refill agreement is included as a term in this Order. In light of the above, it is not anticipated that this transfer will result in unreasonable effects on fish and wildlife, other instream beneficial uses, or other public trust resources.

### **3.2 Comments of California Department of Fish and Wildlife**

By letter dated July 8, 2020, CDFW commented on the proposed transfer. CDFW has concerns over the potential cumulative adverse impacts from changes in the quantity, timing, and duration of seasonal water transfers on the sensitive anadromous and/or resident fisheries within the LAR. CDFW indicated a water transfer into Folsom Reservoir that is completed in early spring may help to build cold-water pool volume, whereas a transfer into Folsom Reservoir completed in late summer may not have this same beneficial effect for temperature management. Similarly, increasing reservoir releases in spring may encourage emigration of juvenile salmonids and improve survival, whereas a transfer completed in summer or fall may cause rearing steelhead to redistribute to less desirable habitat. CDFW recommended GDPUD work closely with Reclamation and regulatory agencies to optimize releases to provide stable flows across summer and fall months at a targeted release rate that minimizes warming in Lake Natoma.

CDFW indicated the alteration of volume, timing, and temperature of streamflow associated with the marginal increase of water released into Pilot Creek and downstream hydrography under the proposed transfer could impact Foothill Yellow Legged Frog (FYLF) during vulnerable life stages. Tadpole rearing sites require some level of protection from unpredictable scouring flows and appropriate ramp down rates to prevent stranding and desiccation. Lower water velocity and shallower water depth habitats are more suitable for tadpole rearing sites. CDFW stated that GDPUD will not commit to delaying or potentially reducing the transfer volume if FYLF eggs or tadpoles are observed during pre-transfer monitoring, nor will GDPUD identify specific parameters that would result in transfer release deferral.

To mitigate potential impacts from the water transfer on aquatic and terrestrial species, including sensitive species and life stages of concern such as metamorphosing FYLF, CDFW requested that GDPUD adhere to the following conditions:

1. Coordinate FYLF survey locations with CDFW and the U.S. Forest Service (USFS);
2. Adaptively manage water transfer releases based on pre-transfer monitoring by postponing transfer releases until no FYLF egg or tadpole life stages are observed; and
3. Develop the flow schedule and ramping rates in coordination with CDFW and USFS.

CDFW stated that water released from Stumpy Meadows Reservoir would also contribute to greater flow downstream of Ralston Afterbay related to the additional 20,000 af temporary water transfer by the Placer County Water Agency (PCWA), and thus recommended GDPUD coordinate their proposed 2,000 af transfer with PCWA to align with new MFAR Federal Energy Regulatory Commission (FERC) Project # 2079 069 license conditions.

*GDPUD Response:*

GDPUD responded that it had fully addressed the potential issues CDFW raised. GDPUD met with CDFW and USFS in mid-July 2020 to address concerns raised in CDFW's comment letter. GDPUD agreed to the monitoring locations for FYLF. In addition, GDPUD agreed to the adaptive management of water releases based on pre-transfer monitoring, as recommended. Furthermore, GDPUD developed a revised ramping rate and flow schedule satisfactory to both CDFW and USFS to mitigate negative impacts to FYLF due to the release of water from Stumpy Meadows Reservoir.

*State Water Board Response:*

Consistent with CDFW's recommendation, the Order is conditioned to require GDPUD to coordinate with Reclamation on the release timing of transfer water out of Folsom Reservoir and Lake Natoma. Releases would be made consistent with all applicable regulations for flow and temperature within the LAR to protect instream resources. This Order is conditioned to require GDPUD operate the transfer in accordance with the release ramping rate schedule GDPUD developed with CDFW and USFS. Furthermore, this Order is conditioned to require GDPUD to coordinate and obtain confirmation from PCWA that the proposed 2,000 af transfer will not impact PCWA's hydropower operations and compliance with their FERC license conditions.

### **3.3 Comments of U.S. Bureau of Reclamation**

By letter dated July 21, 2020, Reclamation commented on GDPUD's proposed water transfer. Reclamation stated that the timing of the GDPUD's August and September release will adversely impact Folsom Reservoir cold water pool operations needed to meet requirements associated with the LAR temperature objectives. Reclamation adds that the warm water released from Stumpy Meadows Reservoir will enter into the upper reaches of Folsom Reservoir, while Reclamation will have to release water for the transfer from the hypolimnion of Folsom Reservoir, thereby impacting the volume of cold water pool. Reclamation also stated that cold water pool releases bypass power generation equipment, creating a loss of hydropower generation.

In order to protect Reclamation's water rights and operation of the CVP, Reclamation requested the Division condition GDPUD's transfers as follows:

1. If GDPUD proposes use of Jones Pumping Plant as a point of redirection for water delivered to CVP Contractors south of Delta, one or more Warren Act contracts between Reclamation and GDPUD are necessary for Reclamation to convey the water being transferred by GDPUD.
2. The transfer is contingent upon a refill agreement being signed and adopted between Reclamation and GDPUD. Any order approving the transfer should include a term requiring the transfer be conducted consistent with that refill agreement.
3. 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.
4. Transferable water may be credited only during balanced conditions in the Sacramento-San Joaquin River and Delta.

*GDPUD Response:*

GDPUD responded to Reclamation's concerns as follows.

*Water temperature and Hydropower*

GDPUD indicated that the transfer volume of 2,000 af accounts for about 0.6 percent of the approximate August and September storage volume of Folsom Reservoir, which is statistically insignificant to the expected volume of Folsom Reservoir and will have no measurable effect on the temperature of the cold water pool.

GDPUD indicated that the 2020 transfer is a pass-through transfer and will not cause adverse impacts on hydropower production at Folsom Dam. GDPUD indicated that an agreement will be reached regarding a power loss surcharge between GDPUD and Reclamation prior to release of water for the 2020 transfer. GDPUD also indicated that any potential generation impacts in the fall will be negotiated in an agreement for power loss surcharges in the form of a Power Letter of Agreement (PLOA). If the PLOA is necessary, GDPUD anticipates that no loss of hydropower generation will occur due to the transfer and that Reclamation will refund the surcharge payment to GDPUD.

*Jones Pumping Plant*

GDPUD indicated that the Jones Pumping Plant will not be used for the 2020 transfer and water will instead be delivered to Westlands via the Banks Pumping Plant.

*Warren Act Contract*

GDPUD indicated that a Warren Act contract with Reclamation is not necessary for the 2020 transfer because no water will be stored in Folsom Reservoir and the Jones Pumping Plant will not be used for this transfer; therefore, no federal facilities will be used to store or convey the water. GDPUD also indicated that if a Warren Act contract were necessary, it would be the responsibility of Westlands and not GDPUD.

GDPUD indicated that it is in the process of developing a refill agreement associated with the 2020 transfer with Reclamation and DWR. GDPUD also indicated that the Delta is forecasted to be in balanced conditions during the transfer and that the transfer will occur within the existing regulatory constraints on CVP and SWP operations in the Delta.

*State Water Board Response:*

There is a potential to adversely impact water temperatures in Folsom. Therefore, this Order includes a condition requiring GDPUD to obtain regular confirmation from Reclamation during the transfer period that the cold water pool in Folsom Reservoir is

not being negatively impacted by GDPUD's transfer. Also, to avoid injury to the water rights and operations of the CVP, this Order includes a condition requiring GDPUD to obtain a reservoir refill agreement with Reclamation and DWR prior to initiating the transfer. Further, this Order includes conditions requiring that the transfer take place only during balanced conditions in the Delta, and that when rediverting GDPUD's water for transfer, the Banks Pumping Plant operate in compliance with all existing regulatory constraints in the Delta.

### **3.4 Comments of Mr. Steven Proe**

By email dated July 21, 2020, Mr. Steven Proe commented on the proposed transfer. Mr. Proe indicated that GDPUD is noncompliant under the Ralph M. Brown Act (Brown Act), and improperly obtained services of a water consultant without entering a formal bidding process. Mr. Proe requested that the proposed transfer be subject to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act to evaluate potential impacts, including insignificant impacts that may occur as a result of the water transfer. Mr. Proe further commented that Stumpy Meadows Reservoir may not have sufficient capacity to implement the water transfer due to the water needed for the fires.

#### *GDPUD Response:*

GDPUD indicated that it complied with all the requirements of the Brown Act in discussing the proposed transfer in closed session, as well as provided many opportunities for public comments in open session. GDPUD indicated that it did not have to engage in a formal bidding process as the proposed transfer project does not meet the requirements of a formal bidding process.

GDPUD indicated that Water Code section 1729 exempts all temporary water transfers proposed under Water Code section 1725 et seq. from the requirements of CEQA.

#### *State Water Board Response:*

The concerns raised by Mr. Proe regarding the Brown Act and formal bidding processes are not part of the State Water Board's approval process. The State Water Board concurs with GDPUD response related to the CEQA issue. The Petition is being processed pursuant to Water Code section 1725 et seq., which exempts proposed water transfers from the requirements of CEQA (see Water Code section 1729). Attachment 1 of the Petition indicates that there is sufficient water available to implement the water transfer. Furthermore, the proposed transfer amount would have been consumptively used or stored in the absence of the temporary change. In approving the proposed transfer, the State Water Board has complied with the Water Code.



### **3.5 Comments of the Central Delta Water Agency**

By letter dated July 22, 2020, CDWA provided comments regarding the proposed transfer as described below.

#### *Comment 1 – Notice of Petition and Posting of Pertinent Documents*

CDWA commented on the State Water Board's public notice procedures for petitions for temporary transfer as follows: 1) CDWA stated that the State Water Board should post temporary transfer petitions and supporting documentation along with the public notice on the State Water Board's website to better facilitate public review of proposed transfers; 2) CDWA indicated that Water Code section 1726 requires that water right holders who may be affected by the proposed transfer be notified in writing of the proposed transfer, however none of the members within CDWA were notified; and 3) CDWA believes that the State Water Board should re-notice the proposed transfer to additional parties, including CDWA member agencies, and allow additional time for processing the transfer.

#### *GDPUD Response:*

GDPUD indicated that CDWA did not list any water right holders that will be affected by the transfer but did not receive the public notice. Given the lack of specific information provided by CDWA and the other forms of public notice that were available, GDPUD believes the State Water Board should not adjust the timeline for processing the proposed transfer. GDPUD further indicated that it sent the public notice to all water right holders provided by the State Water Board.

#### *State Water Board Response:*

The State Water Board posted the public notice on its website and provided an email notice to its electronic email list for transfers, which includes over two thousand recipients who have requested to be notified of all proposed water right transfers. The State Water Board is limited to what documents can be posted on its website based on the requirements for all State agencies to satisfy Priority 1, 2, and 3 guidelines for "AA" compliance of the World Wide Web Consortium, Web Content Accessibility Guidelines 1.0. The State Water Board's website is also required to comply with Section 508, Subpart B, Subsection 1194.22, Guidelines A-P of the Rehabilitation Act of 1973 as revised in 1998. Therefore, in order to comply with web accessibility requirements, the State Water Board was not able to post the petition on its website. However, the State Water Board provided a copy of the petition and supplemental information to all parties who requested the documents.

Further, the notice was published in the Georgetown Gazette newspaper and mailed to applicable counties, interested parties, and downstream diverters who Division staff

believed could be harmed by the transfer. The Division and GDPUD have complied with the public notice requirements in Water Code section 1726 subdivision (d); therefore, the State Water Board declines to adjust the timeline of the proposed transfer and the timeline for processing the petition will not be extended. CDWA referenced several water right holders in the Delta who they believed should have been provided a copy of the notice of the Petition as CDWA believes those water right holders could be injured by the transfer. Initially, as is stated throughout this Order, the water transferred has already been diverted to storage and the release of previously stored water cannot injure downstream water right holders. State Water Board staff compiled a list of water right holders downstream of Stumpy Meadows Reservoir to receive the notice who could potentially have concerns when GDPUD refills the reservoir. However, the three water rights CDWA listed allow for diversions in the San Joaquin River system and therefore cannot be injured from a refill of the reservoir made pursuant to Permit 12827, which allows diversion from the American River system. CDWA also requested a copy of the mailing list that was provided to GDPUD for the purpose of noticing; this list will be emailed to CDWA's representative.

*Comment 2 – Demonstration that the Transferred Water is Surplus to the Delta and Areas of Origin*

CDWA stated that Water Code section 11460 (the Watershed Protection Act) and section 12204 (the Delta Protection Act of 1959) “expressly prohibit the export of water that is not surplus to the needs of the Delta or areas where the water originates.” CDWA further commented that GDPUD’s petition did not demonstrate that the water proposed to be transferred was truly surplus and would not be needed to meet requirements in the Delta such as the State Water Board’s Revised Water Right Decision 1641 (D-1641). CDWA also stated that Petitioner should demonstrate that the proposed transfer would not injure water right holders subject to Term 91.<sup>2</sup>

*GDPUD Response:*

See GDPUD response to Comment 5.

*State Water Board Response:*

The proposed temporary transfer involves water that has already been diverted to storage from Pilot Creek tributary to the Rubicon River pursuant to GDPUD’s permit. By approving the transfer, water normally held in storage will flow in the American and

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<sup>2</sup> The State Water Board has included Term 91 in permits and licenses issued after August 16, 1978 that authorize the diversion of water within the Sacramento-San Joaquin River Delta watershed at a rate greater than one cubic foot per second or authorize the collection to storage within the Delta of more than 100 acre-feet of water per year. There are 119 active water right permits and licenses that include Term 91.

Sacramento Rivers to the Delta. Absent the transfer, this water would not be released by GDPUD and would not be available instream to meet temperature or other requirements, such as those established by State Water Board Revised Water Right D-1641. Reclamation and DWR cannot require release of water previously diverted to storage by another right holder to assist in establishing compliance with water quality and flow standards in the Delta.

The State Water Board disagrees with CDWA's assertions that the Watershed Protection Act applies to the water that is the subject of the proposed transfer and that the proposed transfer would result in the export of non-surplus water from the Delta. Water Code section 11460 applies to DWR and Reclamation. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 754.) Further, CDWA failed to explain how the proposed transfer would "deprive" the Delta of flows it would receive absent the transfer (Wat. Code, § 11460) or otherwise result in diminished flows to the Delta or to CVP or SWP operations compared to the without-transfer scenario. As discussed above, the proposed transfer would increase the flow of water to the Delta. In addition, the Delta Protection Act provides the State Water Board with discretion to "balance in-Delta needs and export needs." (*State Water Resources Control Bd. Cases, supra*, 136 Cal.App.4th at pp. 770-771, quotation marks and citation omitted.)

GDPUD's permitted point of diversion and diversion to storage are on Pilot Creek and Stumpy Meadows Reservoir, respectively, tributary to Rubicon River, eventually tributary to the American and Sacramento Rivers. The waterways from GDPUD's diversion area to the Project pumps are currently controlled by Term 91, which restricts diversions from streams tributary to the Sacramento-San Joaquin Delta and the Delta.

With the proposed temporary transfer, GDPUD would transfer water that has already been diverted to storage under their permit. The transfer of previously stored water will not decrease the flow in streams tributary to the Delta, and therefore, will not impact whether or when Term 91 will apply during the transfer period. The amount of water available for transfer by GDPUD is determined by their water rights and established diversion and beneficial use histories. Normal river operation and the application of Term 91 will ensure that the water entering the project facilities will be similar to that absent the proposed transfer.

*Comment 3 – Demonstration of "Potential Hydrologic Conditions" Under Which Injury Could Occur from the Transfer*

CDWA requests clarification from GDPUD, and ultimately from the State Water Board, as to which set of "potential hydrological condition(s)" were considered in making the no-injury determinations under Water Code section 1727. In addition, CDWA requests clarification of whether GDPUD's and the State Water Board's analysis of those conditions is limited to the 37-day transfer window in the Petition, or extrapolated further into the future.

*State Water Board Response:*

The water being transferred under Permit 12827 has been previously diverted to storage in accordance with water right priority on the stream system, and is being released from storage in Stumpy Meadows Reservoir to supply water to a specific downstream transferee. The water would have been stored absent the transfer and the transfer is not being effectuated through a change in GDPUD's consumptive use. While the transferred water may be new water in the downstream system during the transfer period, the water is not being abandoned, and thus is not subject to legal appropriation or diversion by any downstream party other than the transferee. Therefore, the release of stored water cannot injure any legal user of water, regardless of the type of hydrologic year. Additionally, Water Code section 1727, subdivision (b) states the State Water Board shall determine that a preponderance of the evidence shows the findings referenced by CDWA. CDWA has not submitted any evidence showing potential injury to any legal user of water under any hydrologic condition due to the transfer.

Relative to potential injury to downstream water right holders following the transfer period, DWR and Reclamation were the only two parties indicating specific concerns that refill of the reservoir could impact their downstream water rights, and thus proposed conditions to the State Water Board to alleviate their concerns. Therefore, subsequent to completion of the transfer, GDPUD's compliance with the required refill agreement as described in the State Water Board's response in Comment 4 will ensure that refill of Stumpy Meadows Reservoir will occur in a manner to prevent injury to downstream water rights, considering hydrologic conditions at the time of refill.

*Comment 4 – Reservoir Storage Release Information*

CDWA indicated that GDPUD should have provided the same reservoir storage release information to the State Water Board that is required by DWR's and USBR's *Draft Technical Information for Preparing Water Transfer Proposals* (Water Transfer White Paper).

*State Water Board Response:*

DWR and Reclamation require parties proposing stored water transfers to provide historical reservoir operation information in order to develop a reservoir refill agreement with the transferor. DWR and Reclamation require a refill agreement to ensure that the stored water that is transferred will not be replaced at a time when operations of the SWP and CVP could be injured. In order to protect SWP and CVP water rights, this Order requires GDPUD obtain and comply with a reservoir refill agreement with DWR and Reclamation.

*Comment 5 – Analysis of Potential Effects to Fish, Wildlife, or Instream Beneficial Uses in the Delta*

CDWA indicated that GDPUD's Petition lacks analysis of potential effects to fish, wildlife, or instream beneficial uses in the Delta. CDWA indicated that GDPUD should have analyzed the proposed transfer's potential impacts to aquatic or terrestrial species that inhabit the Delta, since movement of water through the Delta (including increased deliveries and exports by the SWP and CVP, resulting in increased reverse flows and decreased Delta outflows) has a potential to impact these species.

*GDPUD Response:*

GDPUD indicated that their proposed water transfer will increase water in the Delta as a portion of the water will be left in the Delta due to carriage loss, which in some years can exceed 25 percent of the transfer amount. GDPUD also indicated that their proposed transfer is subject to numerous State and federal environmental regulations and requirements protecting Delta fish and wildlife. Further, GDPUD stated that DWR will be delivering the transferred water through the Delta to Westlands, and DWR's delivery operations will comply with all State and federal environmental regulations and requirements protecting Delta wildlife and habitat.

GDPUD also stated that they met with CDFW and USFS and made changes to the proposed transfer flow schedule and ramping rates to address concerns regarding potential impacts to FYLF.

*State Water Board Response:*

Water released from Stumpy Meadows Reservoir pursuant to the transfer is new water in the system that would not have been available in downstream systems if not for the transfer. However, the increase in flows tied to the release of water for the transfer has a potential negative impact on fish and wildlife immediately downstream of Stumpy Meadows Reservoir, as well as the cold water pool in Folsom Reservoir, and this Order will be conditioned to mitigate those potential negative impacts.

State Water Board staffs' comment letter on the Draft Environmental Impact Report for the Long-Term Operation of the SWP discusses the proposed increased transfer period tied to changes in long term operations of the SWP. However, the referenced State Water Board comment letter does not discuss impacts from SWP operations related to the current transfer window. This transfer is being operated under SWP's current transfer window.

*Comment 6 – Quantification of Losses from Transferred Water Source to Export Pumps and Transferee's Place of Use*

CDWA commented that an accurate analysis and quantification of losses that occur is required to prevent injury to legal users of water. CDWA requested that this analysis

include losses from the source of the transferred water to the export pumps, carriage losses, and losses from the export pumps to the ultimate places of use.

*GDPUD Response:*

See GDPUD response to Comment 5.

*State Water Board Response:*

The Draft Technical Information requires a conveyance agreement between GDPUD, Reclamation, and DWR as the transferred water is non-project water being conveyed through CVP and SWP facilities. According to the Draft Technical Information, only that portion of the proposed transfer that is determined to represent new water to the system is transferable using CVP or SWP facilities. This water, frequently referred to as "new water or real water," is the net addition of water to the downstream system that would not be available absent the transfer.

Reclamation and DWR have a shared responsibility for meeting Delta water quality and environmental requirements. Appendix A of the Draft Technical Information addresses potential adverse effects of transfers on the CVP and SWP. If water transferred is not new water to the system, it will instead come out of the supply for CVP and SWP contractors. The Draft Carriage Water Overview for Non-Project Water Transfers (Carriage Water Overview) dated October 2019, describes how Reclamation and DWR account for the losses of water as it is transferred from the seller to the buyer. The document provides a methodology for determining carriage losses through the Delta. The transfer proposed by GDPUD will be subject to this accounting as part of the conveyance agreement between GDPUD and DWR. Once the water has been conveyed through the Delta, the SWP is responsible for delivering the transferred quantities and making up any potential conveyance losses to the final place of use for the transfer.

*Comment 7 – Potential Effects of Return Flows*

CDWA indicated that GDPUD did not include analysis of potential impacts caused by changes in timing, quality, and volume of return flows as a result of the proposed transfer. CDWA also mentioned the potential for increased selenium runoff in the San Joaquin River as a result of the transfer.

*GDPUD Response:*

GDPUD stated that CDWA's issues regarding return flows and transfers of irrigation water are not relevant to GDPUD's currently proposed transfer of 2,000 af of stored water from Stumpy Meadows Reservoir. GDPUD indicated its transfer will add water to the Delta and provide temperature and water quality benefits to the Delta's aquatic environment and downstream water users.

*State Water Board Response:*

Senior water right diverters downstream of Stumpy Meadows Reservoir will not be affected by the transfer. The water under Permit 12827 is diverted to storage in accordance with water right priority on the stream system. Senior rights cannot be injured by the release of water previously stored under a junior water right.

The article referenced by CDWA indicated that historic irrigation practices have contributed to high selenium concentrations in the San Joaquin River, but did not specifically mention that water transfers exacerbated the problem. As mentioned above, Westlands is only slated to receive 20 percent of their contracted CVP allocation; consequently, even with the proposed transfer, Westlands will likely have a net reduction in agricultural runoff to the San Joaquin River this year.

*Comment 8 – Compliance with Federal Law*

CDWA indicated that GDPUD's proposed transfer appears to be inconsistent with the Central Valley Project Improvement Act (CVPIA), as they contend that the CVPIA considers any water delivered by the CVP to be considered CVP water. CDWA indicated that CVPIA limits the transfer of CVP water to only water that would have been consumptively used and does not allow the transfer of previously stored water as is allowed under Water Code section 1725. Therefore, CDWA indicates that in order for GDPUD to transfer water via the CVP, GDPUD must have an equivalent decrease in the amount of water beneficially used under Permit 12827.

*GDPUD Response:*

GDPUD indicated that the proposed transfer water is available under GDPUD's water right Permit 12827 and is not CVP water. In addition, GDPUD is utilizing SWP facilities to deliver the transfer water, not CVP facilities.

*State Water Board Response:*

The State Water Board concurs with GDPUD's response. The CVPIA does not preclude the use of non-CVP facilities to facilitate a transfer of non-CVP water supplies, which is what the Petition proposes.

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

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

## 5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES

Pursuant to Water Code section 1725, “a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses.” (Wat. Code, § 1725.)

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change.  
(*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) “The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2).



## **6.0 REQUIRED FINDINGS OF FACT**

### **6.1 Transfers Only Involve Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.”

In absence of the proposed transfer, GDPUD would have stored the transfer water in Stumpy Meadows Reservoir.

Accordingly, pursuant to Water Code section 1726, subdivision (e), I find that the water proposed for transfer under to this Order would be consumptively used or stored in the absence of the proposed temporary change.

### **6.2 No Injury to Other Legal Users of the 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).)

The water proposed for transfer pursuant to this temporary change consists of water previously stored in Stumpy Meadows Reservoir pursuant to Permit 12827. In the absence of the proposed transfer, the water would remain in storage for future use by GDPUD and would not be available to other water users. Further, the release of the water from storage at Stumpy Meadows Reservoir pursuant to the temporary transfer will not reduce the available supply to any other legal user of water downstream.

In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water.

GDPUD will enter into a reservoir refill agreement with DWR and Reclamation ensuring that future refill of any storage space in Stumpy Meadows Reservoir created by the

transfer will not reduce the amount of water that Reclamation, or other water users could otherwise divert under their water rights. Therefore, no injury to other legal users of the water would occur due to the transfer.

Accordingly, pursuant to Water Code section 1727, subdivision (b)(1), I find that the proposed temporary change would not injure any legal users of the water.

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

Before approving a temporary change in order to facilitate a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding protections for FYLF, and mitigating the potential negative impacts to FYLF by controlling the rate and timing of water released from Stumpy Meadows Reservoir during the transfer. Specific conditions, including operating the transfer in compliance with a water release schedule developed between CDFW, USFS, and GDPUD, have been included in this Order based on CDFW's comments, all of which are discussed above in Section 3.2. The Regional Board did not provide any comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

The transfer will also be subject to all applicable federal and State Endangered Species Act requirements, including applicable Biological Opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversion and exports of water at the SWP and CVP Delta pumps.

Accordingly, pursuant to Water Code section 1727, subdivision (b)(2), I find that the proposed transfer 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 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.

## 8.0 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 transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not injure any legal user of the water.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change for the transfer of up to 2,000 acre-feet (af) of water under Georgetown Divide Public Utility District's (GDPUD or Petitioner) Permit 12827 is approved.

All existing terms and conditions of Permit 12827 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing August 19, 2020 through September 30, 2020.
2. The following point of diversion is temporarily added to Permit 12827:  

Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay located as follows:  
California Coordinate System of 1983, Zone 3, North 2,126,440 feet and East 6,256,456 feet, being within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 20, T1S, R4E, MDB&M.
3. The place of use under Permit 12827 is temporarily expanded to include the service area of Westlands Water District (Westlands) as shown on the map accompanying the July 23, 2020 GDPUD email to the Division.
4. Diversion of water at the Banks Pumping Plant is subject to compliance by the operator (California Department of Water Resources (DWR)) with the objectives currently required of operators set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Revised Water Right Decision 1641 (D-1641), or any future

State Water Board Order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Banks Pumping Plant by DWR. Diversion of water is also subject to compliance by DWR with all applicable federal and State Endangered Species Act requirements, including applicable Biological Opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.

Rediversion of water at the Banks Pumping Plant is also subject to compliance with any State Water Board Orders establishing temporary or interim operating conditions during the transfer period, except if the State Water Board has specifically exempted conveyance of transfer water from the Order.

5. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
6. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
7. Water may not be transferred through the Banks Pumping Plant until GDPUD has executed a refill criteria agreement for the 2020 water transfer between DWR, U.S. Bureau of Reclamation (Reclamation), and GDPUD to address potential refill concerns in Stumpy Meadows Reservoir. Documentation that an acceptable Refill Agreement has been agreed to by DWR, Reclamation, and GDPUD shall be submitted to the Deputy Director for Water Rights within 15 days of the date of execution of the agreement. The terms of the Refill Agreement shall be binding until such time as all the storage vacated for the transfer has been refilled during periods consistent with the terms of the Refill Agreement. The refill period may span multiple years if the hydrologic conditions in the year following the transfer are not consistent with the terms of the Refill Agreement. GDPUD may be required to relinquish for downstream release any reservoir storage collected in violation of the Refill Agreement (up to the transfer quantity), in accordance with a schedule acceptable to DWR and Reclamation.
8. If at any time prior to, or during the period of the transfer, the State Water Board issues notification that water is unavailable for diversion pursuant to Permit 12827, only water collected to storage prior to issuance of the notification may be transferred.
9. No water can be transferred under this Order unless Reclamation concurs that the transfer will not result in increased risks of negative impacts to the cold water pool at Folsom Reservoir resulting from incoming transfer water. Such approval

may be given on a weekly basis or other time-step acceptable to Reclamation. GDPUD shall provide documentation to the Deputy Director for Water Rights by email of any Reclamation approvals issued after the date of issuance of this Order. GDPUD shall coordinate with Reclamation on the Folsom operations schedule as part of on-going real-time operations for the CVP.

10. For the protection of Foothill yellow-legged frog (FYLF), GDPUD shall implement the monitoring described in the Petition and adhere to the monitoring locations attached to GDPUD's July 29, 2020 response to the California Department of Fish and Wildlife's (CDFW) comments. GDPUD shall also adaptively manage the water releases based on pre-transfer monitoring by postponing transfer releases until no FYLF egg or tadpole life stages are observed, as agreed upon on by CDFW and U.S. Forest Service (USFS).
11. GDPUD must operate the release of water pursuant to this transfer in compliance with the proposed transfer schedule that was developed in consultation with CDFW and USFS. The transfer release is included as an attachment to GDPUD's July 29, 2020 response to CDFW's comments. GDPUD shall coordinate with CDFW and USFS for review and approval prior to any deviations from the transfer schedule. Revisions to the transfer schedule shall be submitted to the Deputy Director for Water Rights within five (5) days of approval by CDFW.
12. GDPUD shall coordinate and obtain confirmation from Placer County Water Agency (PCWA) that the transfer will not impact PCWA's hydropower operations or compliance with the conditions of the Federal Energy Regulatory Commission license for Project # 2079-069. GDPUD shall provide documentation to the Deputy Director for Water Rights by email of any PCWA approvals issued after the date of issuance of this Order.
13. GDPUD shall provide data describing the transfer of water pursuant to this Order as an attachment to its annual Report of Permittee. The information shall include the following:
  - a. The daily average release rates and corresponding volumes of water released from Stumpy Meadows Reservoir and Folsom Reservoir as a result of this transfer (reported on a daily basis);
  - b. The daily amounts of water delivered to Westlands pursuant to this Order; and
  - c. Recognizing that reservoir refill will occur after the transfer ends, GDPUD shall provide reservoir refill reporting in its Report of Permittee by April 1 of each year on monthly reservoir refill until the reservoir Refill Agreement has been satisfied. This occurs when the value of the Refill Reservation, as

defined in the Refill Agreement, equals zero. These reports shall include the daily values of the Refill Reservation.

If any of the above required information is in the possession of DWR and Reclamation and has not been provided to GDPUD in time for inclusion the report, GDPUD shall provide the information to the Deputy Director for Water Rights within 30 days of receipt.

14. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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.

15. 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 Petitioner shall obtain authorization for an incidental take permit prior to construction or operation. The Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

16. The State Water Board reserves 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:

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: AUG 17, 2020