

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

DIVISION OF WATER RIGHTS

**IN THE MATTER OF LICENSE 1986 AND PERMITS 11885, 11886, AND 11887
OF THE U.S. BUREAU OF RECLAMATION**

**PETITIONS FOR TEMPORARY CHANGE INVOLVING THE
TEMPORARY TRANSFER OR EXCHANGE OF UP TO 45,000 ACRE-FEET OF
WATER FOR INSTREAM FLOW DEDICATION AND REDIVERSION**

SOURCE: San Joaquin River

COUNTIES: Fresno, Madera, Tulare, Kern, Merced, Stanislaus, Kings, Contra Costa,
Alameda, San Joaquin, and Sacramento

ORDER APPROVING TEMPORARY CHANGES

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 OVERVIEW

On September 22, 2023, the U.S. Bureau of Reclamation (Reclamation) submitted four petitions under Water Code sections 1707 and 1725 et seq. (Change Petitions), to the State Water Resources Control Board (State Water Board, or Board), Division of Water Rights (Division) for temporary change to transfer up to 45,000 acre-feet (af) of dedicated instream flows (Restoration Flows) previously stored in Millerton Reservoir and/or taken under control at Friant Dam pursuant to direct diversion rights. If approved, Restoration Flows could be rediverted through Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID) facilities to the Delta-Mendota Canal (DMC) for reuse by Friant Division Central Valley Project (CVP) contractors (Friant Contractors) through direct delivery, exchange, or transfer. The Change Petitions include a request to modify the Net Delta Outflow Index (NDOI) as currently defined by the State Water Board Revised Water Right Decision 1641 (D-1641), consistent with the purpose of the transfer.

In 2013, to facilitate implementation of the San Joaquin River Restoration Program (SJRRP), the State Water Board approved changes for long-term instream flow dedication of Restoration Flows and the rediversion of those flows at specified locations pursuant to Water Code section 1707. (See Order Approving Change and Instream Flow Dedication, October 21, 2013 [hereinafter “2013 Order”].) The 2013 Order anticipated that recapture and recirculation of Restoration Flows could occur in the future at PID and BCID facilities, if authorized by the State Water Board. The Change Petitions relate to these new points of

rediversion not authorized in the 2013 Order. Approval of the Change Petitions would provide a means to supply water to the Friant Contractors when there is limited or no capacity to red divert Restoration Flows at the Jones Pumping Plant and Banks Pumping Plant (Delta Pumps) in the Delta.

The proposed transfer would assist Reclamation in meeting the two primary goals of the San Joaquin River Settlement Act (Public Law 111-11 Title X § 10001 et seq., 123 Stat 991.1349 (2009)): (1) to restore and maintain fish populations, including salmon, in good condition in the mainstem of the San Joaquin River below Friant Dam; and (2) to reduce or avoid adverse water supply impacts on the Friant Contractors that may result from Restoration Flows. The rediversions proposed in the Change Petitions remain subject to applicable provisions in the 2013 Order, Reclamation's License 1986 and Permits 11885, 11886, and 11887, and Biological Opinions (BO's) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

Based on limits under Water Code 1725.5, the transfer period proposed in the Change Petitions is one year from the date an Order approving the changes is issued. Water subject to the transfer includes Restoration Flows from: (a) water released from Millerton Reservoir that was previously collected to storage and that subsequently remains under Reclamation's dominion and control; and (b) water taken, and subsequently remaining, under Reclamation's dominion and control through the exercise of direct diversion rights at Friant Dam but allowed to pass into the river channel in lieu of being conveyed into and through canals. This Order contains additional monitoring and reporting requirements that build on previous efforts to improve the accounting and tracking of Restoration Flows from Friant Dam to the Delta.

2.0 CRITERIA FOR APPROVING THE TEMPORARY CHANGE

Pursuant to Water Code section 1725, a permittee or licensee may petition the Board to temporarily change the point of diversion, place of use, or purpose of use of water through a transfer or exchange of water. The Board may approve the requested change if the transfer would involve only 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.)

Pursuant to Water Code section 1707, a permittee or licensee may petition the Board for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code § 1707, subd. (a)(1).) The petition may be submitted for any of the purposes described above and may be submitted in combination with a petition to make any other change authorized pursuant to part 2 of division 2 of the Water Code [concerning water right permit and license program]. (Wat. Code § 1707, subd. (a)(2).)

Water Code section 1707, subdivision (b) sets the conditions for the Board's approval:

The board may approve the petition filed pursuant to [Water Code section 1707] subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements: (1) Will not increase the amount of water the person is entitled to use; (2) Will not unreasonably affect any legal user of water; and (3) Otherwise meets the requirements of this division.

3.0 PROPOSED TEMPORARY CHANGE

Reclamation's Change Petitions for transfer have been reviewed by Division staff to ensure that the transfer quantities and season are within the scope of Reclamation's existing rights and that the source of transfer water is authorized under those water rights. The Change Petitions request the temporary addition of these points of rediversion:

Intake facility for PID, located N. 2,004,071 ft. and E. 6,392,678 ft. California Coordinate System, Zone 3, NAD 83, being within SW $\frac{1}{4}$ of Section 15, T5S, R8E, M.D.B.&M.

Intake facility for BCID, located N. 2,083,018 ft. and E. 6,327,281 ft. California Coordinate System, Zone 3, NAD 83, being within SE $\frac{1}{4}$ of Section 33, T2S, R6E, M.D.B.&M.

A total maximum rediversion rate of 40 cfs is proposed for transfer of Restoration Flows at the PID facility. A total maximum rediversion rate of 90 cfs is proposed for transfer of Restoration Flows at the BCID facility. The maximum combined rediversion rate at PID and BCID will be 105 cfs as this was the rediversion rate analyzed in the San Joaquin River Restoration Program (SJRRP) Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/R).

Reclamation has filed, and the State Water Board has approved, temporary change petitions to add points of rediversion for Restoration Flows in 2016, 2017, 2018, 2019, 2020, 2021, and 2022. The State Water Board expects that petitions to request long-term recirculation of Restoration Flows through PID and BCID will be submitted at a future date.

4.0 NOTICING PROCESS

On October 2, 2023, the Division posted public notice of the Change Petitions on the Division's website and sent notice through the State Water Board's e-mail notification system. The comment deadline was November 1, 2023. No comments were received.

5.0 THE CHANGE INVOLVES A TRANSFER OR EXCHANGE OF WATER OR WATER RIGHTS

Although the transfer does not reduce water deliveries to CVP contractors, it expands public trust resources by dedicating water to instream use, and thus amounts to a transfer to the public. As such, Reclamation has included new users of the water as follows: 1) the public, through the protection and enhancement of instream beneficial uses held in the public trust, and 2) the California Department of Fish and Wildlife (CDFW), whose mission is to manage California's diverse fish, wildlife, and plant resources, and habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

The additional points of diversion at PID and BCID will provide water for instream beneficial uses in the San Joaquin River downstream of the confluence with the Merced River and enable flows to be captured and recirculated to CVP contractors at times when there is limited or no available capacity at the Delta Pumps. The instream flows would remain protected and removed from use in the downstream water supply. Regardless of whether the transfer/exchange is characterized as a transfer to instream use, or a transfer back to Reclamation from instream uses, this operation can be properly accommodated under Water Code sections 1725 and 1707.

6.0 THE CHANGE INVOLVES WATER THAT WOULD HAVE BEEN CONSUMPTIVELY USED OR STORED

When reviewing a petition for temporary change, Water Code section 1725 provides that a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use through 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. (Wat. Code, § 1725; see also § 1726 [proposed change must be submitted to Board]; §1011 [conserved water may be transferred].) Water Code section 1725.5 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."

Restoration Flows from Millerton Reservoir released or bypassed in accordance with the terms and conditions of the 2013 Order approving the SJRRP's dedication of Restoration Flows would have either remained in storage or have been directly diverted at Friant Dam for delivery and consumptive use by the Friant Contractors or used in the CVP service area. Further, in the absence of this temporary change, the Restoration Flows, as authorized in the 2013 Order, would continue to remain under the dominion and control of Reclamation as currently authorized under the subject permits and license.

7.0 NO INJURY TO OTHER LEGAL USERS OF THE WATER

Before approving a petition for temporary change, the State Water Board must find that the temporary change 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, § 1728, subd. (b)(1).) As explained above, in the absence of the Change Petitions, Reclamation would continue to retain dominion and control of all instream flows downstream of the PID and BCID facilities for consumptive use as currently authorized under the subject permits and license and the 2013 Order. The instream flows would remain protected and removed from use in the downstream water supply. Water released from storage is not available to downstream users. (See e.g. *North Kern Water Storage Dist. V. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 570 [When the stored water is released for use, it is not part of the river's natural flow and rediversion of this water does not count toward the appropriator's current allocation of river water]; see *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 737-745 [a riparian or appropriator has no legally protected interest in other appropriators' stored water or in the continuation of releases of stored water].) Similarly, water allowed to pass into the river channel in lieu of being conveyed into and through canals through the exercise of direct diversion rights at Friant Dam would remain protected and removed from use in the downstream water supply.

In addition, injury during flood management activities at Friant Dam would not occur if Restoration Flows were released concurrent with flood releases. The 2013 Order includes a condition specifically stating that the approved change in no way modifies the obligations and rights under the San Joaquin River Exchange Contract and other contracts. The conditions of that Order remain in force and effect.

8.0 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, § 1728, subd. (b)(2).) Reclamation provided CDFW and the Central Valley Regional Water Quality Control Board (Central Valley Water Board) with copies of the petitions in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW and the Central Valley Water Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

The purpose of the SJRRP is to protect instream beneficial uses in the San Joaquin River. Recapture pursuant to the Change Petitions would occur only at screened facilities. The

transfer will be subject to provisions of Reclamation's License 1986 and Permits 11885, 11886, and 11887, the 2013 Order, and existing BO's issued by the USFWS and the NMFS under the federal ESA. Consistent with Condition 19 in the 2013 Order, redirection of SJRRP flows are subject to terms and conditions of D-1641 that require achieving water quality and flow objectives in Tables 1, 2, and 3 (p. 181 – 187) of D-1641. SJRRP flows should not be redirected or recaptured under this transfer order when terms and conditions of D-1641 are not being met or if real-time monitoring or forecast information suggests that the objectives may not be met (see Condition 11.d, p. 149, D-1641). Condition 4 of this order ensures that redirection of SJRRP flows by PID and BCID will not occur when D-1641 terms and conditions are not being achieved or available monitoring data or forecasts show that terms and conditions will not be achieved.

9.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Reclamation filed the current Change Petitions under Water Code sections 1707 and 1725 et seq. Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000, et seq.) The State Water Board will issue a Notice of Exemption for these Change Petitions.

The 2013 Order approved Instream flow dedication for the SJRRP under Water Code section 1707. Terms and conditions addressing the availability, modification, and recapture of instream flows for implementation of the SJRRP are currently contained in the subject permits and license. The proposed action involves the addition of two points of redirection at PID and BCID to the ongoing implementation of the SJRRP pursuant to the 2013 Order and the subject permits and license.

Reclamation has prepared a Final Environmental Assessment (FEA), dated July 2016, covering the recapture of Restoration Flows at PID and/or BCID from March 23, 2016 through March 22, 2017 (*One Year Recapture of San Joaquin River Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District*) and issued a Finding of No Significant Impact (FONSI) (Number 16-03-SJRRP) on July 29, 2016. The FEA incorporates the affected environment and the environmental analysis in the SJRRP Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/R) finalized in July 2012 and for which a corresponding Record of Decision was issued on September 28, 2012. The recapture of Restoration Flows at existing facilities on the lower San Joaquin River is included among actions analyzed at the program-level in the PEIS/R.

The recirculation of recaptured water at existing facilities back to Friant Contractors, using CVP, Department of Water Resources, and private facilities, was covered in the Recirculation of Recaptured Water Year 2013-2017 SJRRP Flows Environmental Assessment (Recirculation EA) which, along with its corresponding Recirculation FONSI, is dated April 2013. Reclamation has determined that at this time none of the conditions underlying the Recirculation EA has changed, and therefore it intends to rely upon the existing Recirculation EA. In addition, Reclamation issued a new FONSI for recapture on

February 27, 2018 for the Short-Term Recirculation of Recaptured SJRRP Restoration Flows as analyzed in the Recirculation EA. In November 2023, Reclamation signed a FONSI to continue the recapture of San Joaquin River Restoration Flows at PID and BCID, as analyzed in the 2016 One Year Recapture of Restoration Flows at PID and/or BCID Environmental Assessment.

Reclamation is in the process of preparing the *Long-Term Recapture and Recirculation of SJRRP Restoration Flows Environmental Impact Statement/Environmental Impact Report (EIS/R)* for the SJRRP that will support the filing of permanent water right change petitions for the subject permitted and licensed applications under Water Code section 1701. Reclamation has indicated it expects to submit the EIS/R for public comment sometime in 2025.

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, § 1728, subd. (b)(2).) The State Water Board conducted an independent evaluation of impacts to public trust resources concurrent with the Water Code section 1707 and 1725 evaluations. The purpose of the SJRRP is to protect instream beneficial uses in the San Joaquin River. Facilitating rediversion further downstream will enable the restoration flows to better support the instream beneficial uses of the San Joaquin River by maintaining connectivity below Mendota Pool. Recapture would occur only at screened facilities. The transfer will be subject to provisions of Reclamation's License 1986 and Permits 11885, 11886, and 11887, and BO's issued by the USFWS and the NMFS under the federal ESA, compliance with the 2013 Order, and D-1641.

10.0 WATER CODE SECTION 1707 FINDINGS

For the reasons already explained above, and further articulated in the 2013 Order, the proposed changes meet all of the requirements under Water Code section 1707, subdivision (b).

11.0 ACCOUNTING AND REPORTING

Condition 8 is included in this order to detail the accounting methods that are needed to accurately track Restoration Flows as they are conveyed downstream to each of the proposed points of rediversion. The 2013 Order provides conditions describing required release amounts and related schedules consistent with the Base Flow Restoration Hydrographs in Exhibit B of the 2006 Settlement (Condition 4, 2013 Order); monitoring to track the protected instream flows (Condition 5, 2013 Order); and documentation to be included with annual reports of water diversion that quantify storage and direct diversion at

Millerton Reservoir, quantities bypassed or released at Friant Dam for instream use pursuant to Water Code 1707, and amounts of dedicated flows diverted downstream (Condition 20, 2013 Order). The accounting conditions set forth in the 2020, 2021, and 2022 Orders have generally been satisfied by Reclamation and progress continues to be made.

Reclamation was previously required to submit a proposed accounting method for quantifying SJRRP flows to all points of rediversion, including at PID and BCID. Over the past three years Reclamation has updated and improved this accounting method, including through technical coordination between Reclamation and State Water Board staff. In June 2020, Reclamation shared an accounting method in the form of a spreadsheet titled, "SJRRP Operations 06-16-2020" (Operations Spreadsheet) and supporting documentation "Restoration Flows Accounting method June 2020" that quantified SJRRP flows between Friant Dam and "Lower SJR Recapture." Following discussions between Reclamation and Board staff, the remaining questions of Board staff were addressed through an amended Operations Spreadsheet and accompanying accounting review proposed by Board staff and provided to Reclamation in October 2020. Additional conditions were added to the 2021 and 2022 Orders, including requirements to integrate metered and reported water diversion information pursuant to Senate Bill SB 88, as well as other specific technical requests to support the accounting of Restoration Flows.

As of November 2023, the data in the Operations Spreadsheet receives ongoing updates and is distributed by email daily via Reclamation's Friant Dam Operations LISTSERV. The latest version of the Operations Spreadsheet submitted to the State Water Board at the time of this order is titled SJRRP Operations 2023-10-31.xlsb.

Condition 9 is also included in this order to ensure Reclamation and the State Water Board staff develop a common understanding of Reclamation's exercise of its license, permits, and any other rights that are being exercised at Friant. Comments received on previous Change Petitions brought to light ambiguities in how and when Reclamation exercises its water rights at Friant Dam, and when Friant Dam is serving as a point of diversion for other right holders such as the Exchange Contractors. Determining when Restoration Flows are released from Friant Dam, and when releases from Friant are for the purpose of other beneficial uses downstream of Friant Dam, are necessary for evaluating when flows are available for rediversion at PID and BCID. A proper accounting of when and how Reclamation's License 1986 and Permits 11885, 11886, and 11887 are being exercised is also important context for evaluating the findings described in this order.

The accounting conditions from the 2022 Order are included in this order so that Board and Reclamation staff can continue ongoing efforts to clarify availability of Restoration Flows for rediversion, and to evaluate the impacts of other diversions on Restoration Flows.

12.0 ADDITIONAL PROPOSED TERMS

12.1 Net Delta Outflow Index

The Net Delta Outflow Index (NDOI) is a water balance equation used for implementation of certain D-1641 provisions. Net Delta outflow is determined using measured inflows of major rivers and streams, exports by the major water projects, and estimates of other water agencies' diversions, channel depletions, and precipitation. Without the proposed term, Restoration Flows measured at Vernalis would be included as inflow but not subtracted as export, even though it is subsequently rediverted at BCID. This would incorrectly increase the calculated Delta outflow. This can be resolved by subtracting BCID flows from the inflow part of the D-1641 equation. Accordingly, Condition 6 has been added to this order to reflect the modification to the NDOI calculation for this transfer.

12.2 San Joaquin River Inflow to Export Ratio

D-1641, Table 3, footnote 18 limits the combined exports by the Banks and Jones Pumping Plants to the greater of 1,500 cfs or the three-day running average San Joaquin River flow at Vernalis from April 15 to May 15, subject to minor variation in the start and end of the period approved through consultation with state and federal fish agencies to coincide with the spring pulse flow. Without modification, Restoration Flows measured at Vernalis would be included in the calculation of San Joaquin River inflow, even if rediverted at BCID. Therefore, Restoration Flows rediverted at BCID must be subtracted from San Joaquin River flow during the spring pulse flow period. Accordingly, Condition 6 also reflects the modification of the SJR inflow to combined export ratio noted above.

12.3 Clarification Regarding Points of Rediversion Authorization

In 2018, a previous and separate correspondence brought to light confusion regarding the scope of the 2013 Order authorizing new points of rediversion in Permits 11885, 11886, and 11887 and License 1986. Upon adoption of the 2013 Order, a column of new points of rediversion was added to Reclamation's permits and license that included, inter alia, Canal Intakes Off Mendota Dam, and the Jones and Banks Pumping Plants. Consistent with the 2013 Order, the added points of rediversion are authorized solely for the purpose of implementing the Settlement Agreement and recirculating Restoration Flows. This order includes a term that adds a minor amendment to this provision to ensure that there is no ambiguity on this point.

13.0 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 and the Deputy Director for Water Rights redelegation of authority dated April 20, 2023.

14.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code sections 1707 and 1727.

The State Water Board concludes that, based on the available information:

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 increase the amount of water Reclamation is entitled to use.
3. The proposed temporary change will not injure any legal user of the water.
4. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
5. The proposed temporary change otherwise meets the requirements of Division 2 of the Water Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitions filed for temporary change for the transfer/exchange of instream flow dedication of up to 45,000 af of water under License 1986 and Permits 11885, 11886, and 11887 are approved.

All existing terms and conditions of the water rights remain in effect, including the terms and conditions of the 2013 Order, except as temporarily amended by the following provisions:

1. The totality of the transferred water will be limited to Restoration Flows from:
(a) water released from Millerton Reservoir that was previously collected to storage and that subsequently remains under Reclamation's dominion and control, and
(b) water taken, and subsequently remaining, under dominion and control through the exercise of direct diversion rights at Friant Dam but allowed to pass into the river channel in lieu of being conveyed into and through canals.
2. The points of rediversion for Restoration Flows under Reclamation's License 1986 and Permits 11885, 11886, and 11887 et al. are temporarily amended to add:

Intake Facility for Patterson Irrigation District (PID), located N 2,004,071 ft and E 6,392,678 ft California Coordinate System, Zone 3, NAD 83, being within SW $\frac{1}{4}$ of Section 15, T5S, R8E, M.D.B.&M.

Intake Facility for Banta-Carbona Irrigation District (BCID), located N 2,083,018 ft and E 6,327,281 ft California Coordinate System, Zone 3, NAD 83, being within SE $\frac{1}{4}$ of Section 33, T2S, R6E, M.D.B.&M.

3. The maximum redirection rate at PID will be up to 40 cfs and the maximum redirection rate at BCID will be up to 90 cfs. The combined maximum redirection rate at PID and BCID will be up to 105 cfs. A maximum of 45,000 af of Restoration Flows may be redirected at PID and BCID facilities during the transfer period.
4. Redirection of water at BCID and PID is subject to the same requirements as pumping of SJRRP flows at the Jones Pumping Plant and Banks Pumping Plant provided in Condition 19 of the 2013 Order, and any future State Water Board order or decision implementing Bay-Delta water quality objectives. Condition 19 of the 2013 Order states that pumping of SJRRP flows is subject to compliance with water quality and flow objectives in Water Rights Decision 1641 Tables 1, 2, and 3 (D-1641, pp. 181 – 187). D-1641 also requires immediate reporting to the State Water Board if water quality and flow objectives are not being achieved or available information indicates that water quality and flow objectives may not be achieved (Id., Term 11.d p. 150). Consistent with Condition 19 of the 2013 Order, redirection of SJRRP water at BCID and PID is not authorized if terms and conditions of D-1641 are not being achieved or are anticipated to not be achieved based on available information.
5. Redirection of water is subject to compliance by Reclamation with all existing Biological Opinions and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
6. During the times that water is being redirected at the BCID facility pursuant to this Order, San Joaquin River flows used to inform NDOI conditions as well as the three-day running average of San Joaquin River flows during the April-May pulse flow period in D-1641 will be reduced by the quantity of Restoration Flows redirected at the BCID facility pursuant to this temporary transfer order. Reclamation shall notify the Deputy Director for Water Rights three days in advance of commencement of redirections at BCID and provide planned rate and duration of redirections.
7. Redirection of Restoration Flows at BCID and PID intake facilities shall only occur at times when redirection is not possible at the Delta Pumps due to insufficient capacity or other constraints. Prior to commencing any redirections at BCID or PID facilities, Reclamation shall provide evidence documenting insufficient capacity or other constraints exist at the Delta Pumps to the Deputy Director for Water Rights.
8. Reclamation shall maintain and update an Operations Spreadsheet to track Restoration Flows and account for flows into and from Friant Dam to each point of redirection, including PID and BCID. The Operations Spreadsheet shall:

- A. Include the gages identified in Condition 5 of the 2013 Order, as well as all other active gages in the flow path of the San Joaquin River between Friant and the added points of rediversion as well as all gages that measure the flow of any water body contributing to river flow to the flow path of the San Joaquin River referred to as "SJRRP Operations flow gages" to measure, monitor, and calculate Restoration Flow;
- B. Include a daily tally for Restoration Flow as it becomes available due to inflow to Millerton Reservoir, volumes stored in Millerton Reservoir and released from Millerton Reservoir, as well as Restoration Flow available for rediversion at each point of rediversion, and Restoration Flow flowing past each point of rediversion after rediversions;
- C. Calculate unexpected seepage losses in exceedance of Exhibit B for each reach downstream of Friant Dam to the confluence with the Merced River. The calculations shall use appropriately time-lagged Quality Assurance/Quality Control (QA/QC) flow measurements, without adding unmeasured or Exhibit B gains or losses, or measured gains. The calculations shall also include unexpected seepage losses in the routing of the San Joaquin River through Sand Slough to the Eastside Bypass and Bear Creek before the Restoration Flows return to the mainstem of the San Joaquin River, should the routing of flows through the Eastside Bypass persist;
- D. Include real-time gaging, QA/QC gaging, and diversion gaging, with appropriate time lags and interpolation of missing measurements such that there is an estimate of the Restoration Flow allocation that has been released to the San Joaquin River to date, the Restoration Flow allocation that has not been released to date, and the amount of Restoration Flow at each of the SJRRP Operations flow gages in the flowpath of the San Joaquin River based on QA/QC gaged measurements. Separately, estimate the Restoration Flow available for rediversion at each of the SJRRP Operations flow gages in the flowpath of the San Joaquin River, including upstream and downstream of each point of rediversion, in real-time, with the gaged flow measurements available at the time of the diversion, as well as amounts of other flows present in the San Joaquin River, including from Friant Dam to the points of rediversion;
- E. Develop and incorporate into the Operations Spreadsheet a pilot calculation methodology to integrate the daily diversion of San Joaquin River flow measured and reported by each water right holder, water right claimant,

or contract holder that telemeters diversion measurement information,¹ and deduct these daily diversions from the flows from which the water was diverted, at the location it was diverted. Indicate if the diversion was of Restoration Flow available for rediversion for each point of diversion in the flow path of the San Joaquin River for at least the water rights or claims listed below by Application or Statement ID number and location relative to stream gages:

At Friant Dam (MIL):

- i. United States Bureau of Reclamation (A000023, A000234)

Between Gravelly Ford (GRF) and below the Chowchilla Bifurcation (SJB):

- ii. Wonderful Nut Orchards LLC (S022534)

Between the Chowchilla Bifurcation (SJB) and Mendota (MEN):

- iii. Wonderful Nut Orchards LLC (S022153)
- iv. Columbia Canal Company (S001073)
- v. Firebaugh Canal Water District (S001098)
- vi. Central Calif Irrigation District (S000477)

Between Mendota (MEN) and Dos Palos (SDP):

- vii. San Luis Canal Company (S001074)

Between Dos Palos (SDP) and Stevinson (SJS):

- viii. SJR Farming (S023037)

Should restoration flows continue to be routed through the Eastside Bypass or the Chowchilla Bypass:

- ix. Sweetwater Ridge LLC (S022180)
- x. Wonderful Nut Orchards LLC (S022154)

¹ Cal. Code Regs., tit. 23, §§ 931-938 [measurement and reporting requirements for water diversions over 10 acre-feet per year]. Section 933(b)(4) includes telemetry requirements for large diversions (10,000 acre-feet or more annually, storage capacity over 10,000 acre-feet, over 30 cfs at any time between June 1 and September 30). Telemetered data shall be provided via a public website that displays the data on at least a daily basis and updated weekly at a minimum.

- F. Include a daily total of Unreleased Restoration Flow volume available to supplement Restoration Flow and the Unreleased Restoration Flow volume removed from the allocation;
- G. Document shifts from the release schedule of the applicable Base Flow Restoration Hydrographs in Exhibit B of the 2006 Settlement, including the volume of water that was shifted and the hydrograph component to which it was shifted, and any resulting Unreleased Restoration Flows; and
- H. Flag when availability of flows for rediversion are affected by the conditions of this order, including NDOI conditions and the three-day running average on San Joaquin River flows during the April-May pulse flow period required in D-1641 described in Condition 6 of this order, and when rediversion is not possible at the Delta pumps due to insufficient capacity or other constraints.

The Operations Spreadsheet and documentation submitted will be subject to acceptance by the Deputy Director for Water Rights and any revisions requested by the Deputy Director for Water Rights shall be addressed by Reclamation within 30 days of receipt. Reclamation may request, and the Deputy Director for Water Rights may approve, extensions of time to develop and submit information required under this condition.

- 9. Within 120 days of the date of this order, Reclamation shall submit to the Deputy Director for Water Rights an accounting method integrated into the Operations Spreadsheet of daily values that quantify the amounts of storage and diversion, including rediversion, pursuant to Reclamation's water rights at Friant Dam, and quantify the amounts diverted, including rediverted, and stored at Millerton Reservoir pursuant to other right holders, and quantify the daily amounts of Restoration Flow stored, released, lost to unexpected seepage losses, diverted, rediverted, or diverted as Unreleased Restoration Flow at Friant Dam. The method will also characterize the purpose of releases from Friant Dam into the San Joaquin River. The method shall characterize which flows coming from Friant Dam are releases of water previously stored at Friant and which are releases of natural flow, abandoned flow, or any other type of flows. The method and its integration into the Spreadsheet are subject to approval by the Deputy Director for Water Rights. Reclamation shall submit requested revisions within 30 days of receipt.
- 10. Within 60 days of the date of this order, provide a summary of the amount of water delivered to the Exchange Contractors from the San Joaquin River, and what, if any, impact this had on the management of the cold-water pool at Millerton, Chinook salmon in-river, spring-run Chinook hatchery, and the San Joaquin River Trout Hatchery. Explain any operational strategy or coordination for releases of Restoration Flow and Exchange Contractor deliveries when/if substitute water becomes unavailable in the Delta in 2024.
- 11. Reclamation is responsible for providing the Deputy Director for Water Rights a

monthly report describing the transfer of water pursuant to this order until such time as the transfer has been completed. The report shall be submitted by the last day of each month and no rediversion is authorized in subsequent months in the absence of submitted reports for the prior months. The report shall include:

- A. The measured average rate and volume of Restoration Flow rediverted each day, the location of that point of rediversion, and amounts diverted pursuant to the rediverting party's other bases of right.
- B. Documentation of insufficient capacity or other constraints that existed at the Delta Pumps that was provided pursuant to Condition 7, descriptions of whether Conditions 1, 4, 5, or 7 constrained rediversions, and whether Reclamation anticipates any of these conditions will constrain rediversions in the subsequent month.
- C. Daily releases of Restoration Flow from Friant Dam
- D. Notification of whether any daily amount of Restoration Flow below any reach of the SJRRP downstream of Friant Dam during the prior month was lower than the Restoration Flow amount identified in Reclamation's daily coordination calls per compliance with Condition 13 of the 2013 Order. Documentation of flows lower than those identified in the daily coordination calls shall be included in the Operations Spreadsheet developed pursuant to Condition 8.
- E. A copy of the Operations Spreadsheet developed pursuant to Conditions 8 and 9 that includes data for the prior month. The Operations Spreadsheet may be used to provide any of the information required pursuant to these conditions:

If the above required daily values of rate and volume of Restoration Flow rediverted is in the possession of the rediverting party and has not been provided to Reclamation in time for inclusion in a monthly or annual report, Reclamation shall provide the information to the Deputy Director for Water Rights within 10 days of receipt in the form of a supplemental monthly report and shall specify when the information was received.

12. 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.

13. This order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a “take” will result from any act authorized under this temporary transfer, Reclamation shall obtain authorization for an incidental “take” permit prior to construction or operation. Reclamation shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this order.
14. The State Water Board reserves authority 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.
15. Term 2 in Permits 11885, 11886, and 11887 identifies in a table the location of points of rediversion after diversion at Friant Dam authorized under the 2013 Order. The footnote to the table in Term 2, titled “Location of point of diversion”, in Permit 11885, Permit 11886, and Permit 11887 is amended to read as follows: “* The points of rediversion are for recapture of SJRRP flows that are either: (a) water released from storage, or (b) water previously diverted at Friant Dam that remains under the dominion and control of Reclamation from Friant Dam to the points of rediversion, pursuant to Water Code section 1707.”

Term 2 in License 1986 identifies in a table the location of points of rediversion after diversion at Friant Dam authorized under the 2013 Order. The footnote to the table in Term 2, titled “Location of point of diversion”, in License 1986 is amended to read as follows: “* The points of rediversion are for recapture of SJRRP flows water previously diverted at Friant Dam that remains under the dominion and control of Reclamation from Friant Dam to the points of rediversion pursuant to Water Code section 1707.”

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY

Erik Ekdahl, Deputy Director
Division of Water Rights

Dated: November 17, 2023