Present Holder and User of Water Right

Bureau of Reclamation
Mid-Pacific Region, MP-440
Attention: Mr. Bob Colella
2800 Cottage Way
Sacramento, CA 95825

Telephone: (916) 978-5256
Email: rcolella@usbr.gov

Background and Proposed New User

On October 21, 2013, the State Water Board amended the subject permits and license to authorize the dedication of instream flows, pursuant to Cal. Water Code §1707, and the rediversion of those flows at specified locations to facilitate implementation of the San Joaquin River Restoration Program (SJRRP). The October 21, 2013, order approving those amendments recognized that it is anticipated that recapture and recirculation of flows may occur in the future at Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID) facilities. On March 23, 2016, the State Water Board approved Reclamation's petitions under Cal. Water Code §§1725-1732, for temporary changes to add two points of rediversion PID and BCID facilities, allowing Reclamation to transfer up to 76,069 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. In the March 23, 2016, approval, the State Water Board characterized the transfer as an expansion of public trust resources amounting to a transfer to the public. The State Water Board also noted that interpreting Water Code §1725 to include temporary changes that provide additional flows for instream beneficial uses is consistent with the broad language of the statute and the public policies in favor of encouraging transfers and protection of instream beneficial uses.

This proposed transfer is for the rediversion at PID and BCID facilities of flows dedicated for instream use pursuant to the existing terms and conditions of the subject water right Permits and License. These are flows that, pursuant to Cal. Water Code § 1707, are and remain under the dominion and control of Reclamation after having been (a) released from Millerton Reservoir following collection to storage, or (2) taken control of using direct diversion rights at Friant Dam, but allowed to pass into the river channel in lieu of being conveyed into the Madera and Friant-Kern canals. Authorization for instream flow dedication has been received pursuant to the Division of Water Rights Order Dated October 21, 2013 (October 21, 2013 Order). Reclamation will make use of instream conveyance by means of the San Joaquin River to meet obligations of the Central Valley Project (CVP) under existing contracts. The temporary transfer will facilitate a change in CVP operations that will provide water for instream beneficial uses in a longer reach of the San Joaquin River.

Implementation of the proposed transfer is authorized and directed by, and would be implemented in accordance with, the San Joaquin River Restoration Settlement Act (P.L.

111-11) (Settlement Act). The purpose of the change is to assist in implementing Paragraph 16 of the settlement in *NRDC, et al., v. Kirk Rodgers, et al.*, as authorized in the Settlement Act. Paragraph 16 calls for the development and implementation of a plan for the recirculation, recapture, reuse, exchange, or transfer of Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to all of the Friant Contractors caused by Restoration Flows.

The subject permits and license provide that "Reclamation shall document that it has taken all practicable measures to provide contract water to the Friant Division Contractors, while complying with all other conditions of this water right. One of these practicable measures shall include implementation of the February 2011 Draft Plan for the Recirculation, Recapture, Reuse, Exchange or Transfer of Interim and Restoration Flows…" (Permit Terms 26; License Term 22)

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 only involves the addition of other points of rediversion, involving a transfer, to the ongoing implementation of the SJRRP pursuant to those permits and license. This action involves the location of the recapture of Restoration Flows released and dedicated pursuant to the Order of October 21, 2013.

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, using Central Valley Project, Department of Water Resources, and private facilities, back to Friant Division contractors 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 is currently preparing the long-term Recapture and Recirculation of Restoration Flows EIS for the SJRRP. In July 2015, Reclamation published a Notice of Intent to prepare an EIS to identify a set of alternatives for the recapture and recirculation of Restoration Flows to long-term contractors of the Friant Division of the CVP.

Reclamation has determined that at this time none of the conditions underlying the FEA has changed, and therefore it intends to utilize the existing FEA and to issue a new FONSI for recapture commencing after March 22, 2017. The FEA can be found at https://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=24095.

Period of Transfer/Exchange

The period for the proposed temporary transfer is for one year.

Points of Diversion and Rediversion

Present Points of Diversion and Rediversion

The points of diversion and rediversion are the same as on file with the State Water Board for Applications 23, 234, 1465, and 5638.

Proposed Points of Rediversion to be Added

The proposed points of rediversion to be added are as follows and as shown on Map 1785-202-176, on file with the State Water Board:

Intake facility for PID, Located N2004071 E6392678 California Coordinate System, Zone 3, NAD 83, being within the SW ¼ of Section 15, T 5S, R8E, M.D.B.&M.

Intake facility for BCID, Located N2083018 E6327281 California Coordinate System, Zone 3, NAD 83, being within the SE ¼ of Section 33, T2S, R6E, M.D.B.&M.

Places of Use

Present Places of Use

The places of use are the same as on file with the State Water Board for Applications 23, 234, 1465, and 5638. See Map 1785-202-50, on file with the State Water Board.

Proposed Places of Use to be Added

No change. The water recaptured by rediversion from the San Joaquin River would be used within the places of use authorized for the subject permits and license.

Purposes of Use

Present Purposes of Use

The combined purposes of use for all three permitted applications are irrigation, domestic, incidental domestic, municipal, stockwatering, preservation and enhancement of fish and wildlife, and recreational, as on file with the State Water Board.

Proposed Purpose of Use to be Added

No change.

Season of Use, Direct Use, and Storage

Present Season of Use, Direct Use, and Storage

The present season of use, season of direct use, and season of storage are as specified in these permitted applications and license on file with the State Water Board.

Proposed Season of Use, Direct Use, and Storage

No change.

Proposed New Users (transferees)

Implementation of the proposed transfer includes the following proposed new users (transferees), consistent with implementation of the proposed transfer as authorized and directed by, and in accordance with, the Settlement Act.

Rediverted flows would be conveyed through PID and BCID facilities to the Delta-Mendota Canal (DMC). Reclamation's CVP contractors capable of receiving CVP supply in the San Luis Unit would receive this water as transferees. In addition, the rediverted water in the San Luis Canal would be conveyed through the Cross-Valley Canal to the Friant Division service area, or would be provided to entities in the Tulare Lake region for exchange.

Proposed new users of the rediverted water also include: 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, whose mission is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

Counties of Storage and Use

The proposed transfer water is presently used and stored within the following counties:

Madera; Fresno; Tulare; Kern; Merced; Stanislaus; Contra Costa; Alameda; San Joaquin; Sacramento.

The proposed transfer water will be placed to beneficial within the following counties within the existing authorized places of use:

Fresno; Merced; Kings, Tulare, Kern,

Amount of Water to be Transferred

A total maximum of up to 28,979 acre-feet of water is proposed for transfer through rediversion at the PID facility. Table 2-1 of the FEA shows potential capacity available

for rediversion at the PID facility for delivery into the DMC. The maximum rate of rediversion at the PID facility is 40 cubic feet per second (cfs).

A total maximum of up to 47,090 acre-feet of water is proposed for transfer through rediversion at the BCID facility. Table 2-2 of the FEA shows potential capacity available for rediversion at the BCID facility for delivery into the DMC. The maximum rate of rediversion at the BCID facility is 65 cfs.

A total combined maximum recapture of 76,069 acre-feet of water is proposed for transfer through both PID and BCID facilities up to a combined rediversion rate of 105 cfs.

Consumptive Use Requirement

This petition meets the consumptive use requirement under Cal. Water Code §1725. In the absence of the transfer, Reclamation would continue to retain dominion and control of all instream flows downstream of the PID facilities for consumptive use as currently authorized under the subject permits and license; the water would be diverted by Reclamation at other locations for consumptive use, as authorized under Reclamation's water rights, or permanently removed from use as a result of entering the ocean (saline sink). This is consistent with the definition of "consumptively used" under section 1725, which includes water that "*has been otherwise removed from use in the downstream water supply"* (emphasis added). Furthermore, all Restoration Flows that are released from Friant Dam in accordance with the terms and conditions of the October 21, 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 to and consumptive use by the Friant Division CVP contractors without the approved SJRRP dedication under the October 21, 2013 Order, or used in the CVP service area.

Instream Flow Dedication

An instream flow dedication, pursuant to Cal. Water Code §1707, is included as part of this petition.

The location of the upstream location for this transfer is Friant Dam. The location of the downstream locations for this transfer are the intakes to the PID and BCID facilities. The protected reach is as shown on Map 1785-202-176, and the existing dedication and places, also, are shown on Map 1785-202-50, both on file with the State Water Board.

For purposes of tracking protected instream flows, Reclamation will monitor river stage and flow conditions during all periods when SJRRP flows are likely to be flowing at the locations specified in Condition 5 of the October 21, 2013 Order.

General Information

The total quantity of water proposed to be transferred under this petition will be up to 76,069 acre-feet of dedicated instream flows previously stored at Millerton Reservoir and/or taken under control at Friant Dam pursuant to direct diversion rights.

Reclamation would make the recaptured Restoration Flows available in south-of-Delta facilities (for example, such as San Luis Reservoir, O'Neill Forebay, Delta-Mendota Canal, California Aqueduct, Cross-Valley Canal) for recirculation and beneficial use by the Friant Contractors. Recirculation to the Friant Contractors would be accomplished through direct delivery, exchange, and/or transfer. This could require the exchange and/or transfer of recaptured Restoration Flows among Friant Contractors or non-Friant Contractors. The Proposed Action would assist in Reclamation meeting its obligation pursuant to the Settlement Act to reduce or avoid adverse water supply impacts on all of the Friant Contractors that may result from Restoration Flows.

Recapture is subject to availability of Restoration Flows and the available capacity of the districts' facilities and within the CVP and/or the SWP storage and conveyance facilities, including the California Aqueduct, DMC, San Luis Reservoir, and related pumping facilities. Available capacity is capacity that is available after all statutory and contractual obligations are satisfied to existing water service or supply contracts, exchange contracts, settlement contracts, transfers, or other agreements involving or intended to benefit CVP/SWP contractors served through CVP/SWP facilities. The proposed transfer would not affect water delivery quantities to contractors and refuges outside the Friant Division, including the San Joaquin River Exchange Contractors. There would be no expansion of existing obligations, or increases in demands, to provide CVP water supplies.

The proposed transfer would be subject to the following parameters:

- No native or untilled land (fallow for three consecutive years or more) will be cultivated with the water involved in this action.
- The purposes of water use are consistent with existing authorized purposes of use.
- The recapture of Restoration Flows will be limited to existing supply and will not increase overall consumptive use.
- The recapture of Restoration Flows will not lead to any land conversion.
- The recapture of Restoration Flows will comply with all applicable Federal, State, Local or Tribal laws or requirements imposed for the protection of the environment and Indian Trust Assets (ITAs).
- The recapture of Restoration Flows will not alter the flow regime of streams, creeks, ponds, pools, wetlands, etc.
- The Proposed Action does not include construction or modification of facilities.

The proposed recapture of Restoration Flows on the San Joaquin River downstream from the Merced River at existing facilities on the San Joaquin River (PID and BCID facilities) is described and analyzed at the program-level under Alternatives B and C of the DPEIS/R.

The proposed recapture will not change or affect the manner in which Reclamation will make Recapture and Recirculation Water available to Friant Contractors under the Recirculation EA/FONSI. The Recirculation EA states that the recirculation and recapture of Restoration Flows in contract water year 2017 was found to have no impact on water resources, land use, biological resources, cultural resources, ITAs, socioeconomic resources, environmental justice, air quality, or global climate change.

The proposed recapture is consistent with the Draft Plan for Recirculation, Recapture, Reuse, Exchange, or Transfer of Interim and Restoration Flows (February 2011) referenced in Term 26 of the subject Permits and Term 22 of the subject License.

Based upon CalSim II water operations simulation, Table 3-1 of the FEA provides the estimated portion of the water contract year 2017 Restoration Flows that would reach PID and BCID facilities and be available for recapture. Tables 3-2 and 3-3 show the maximum percentage of average San Joaquin River Flow at Vernalis able to be recaptured at the PID and BCID facilities, respectively. Table 3-4 shows the maximum percentage of average San Joaquin River Flow at Vernalis to be recaptured in the aggregate at PID and BCID facilities. The portion of flows that could be recaptured at PID and BCID is minimal in comparison to the availability of flows in the San Joaquin River. The FEA provides that recapture at the PID and BCID facilities would not result in any violations of existing water quality standards or substantial water quality changes that would adversely affect beneficial uses, or have substantive impacts on public health.

Recapture would occur only at screened facilities. The proposed transfer will be conducted to comply with applicable United States Fish and Wildlife (USFWS) and National Marine Fisheries Service (NMFS) operations biological opinions. Reclamation is currently required to comply with Term 42 of the subject license and Term 47 of the subject permits as follows: "Consistent with the Settlement and Settlement Act, Reclamation shall coordinate any flow modifications with the USFWS and NMFS, as applicable. Recapture of water dedicated for instream flow shall be in compliance with the USFWS and NMFS biological opinions." This condition would continue to remain in place during the proposed transfer period as a term within the subject Permits and License.

Proposed Term

The proposed transfer operations with rediversion at the BCID Pumping Plant would be outside the current assumptions of State Water Board Water Right Decision 1641. Such an operation would increase the Net Delta Outflow Index as currently defined by Revised

D-1641. Consequently, Reclamation requests that the following term be included in the order approving Reclamation's petitions:

- During the times that water is being rediverted at the BCID facility pursuant to this temporary transfer order, San Joaquin River flows used to inform conditions in D-1641 will be reduced by the quantity of water rediverted by the BCID facility pursuant to this temporary transfer order.

Access

Reclamation proposes to obtain access to the proposed points of rediversion by virtue of seeking and entering into a one-year agreement with PID and with BCID for the recapture of up to 76,090 AF of Restoration Flows.

Persons Taking Water

Diverters between Friant Dam and the confluence of the Merced River, and from the confluence of the Merced River to and through the Delta, are on file with the Board. Many assumed riparian water right holders between Friant Dam and Gravelly Ford have executed Holding Contracts with Reclamation. Also, the San Joaquin River Exchange Contractors divert water downstream of Friant Dam.

Other Persons Who May Be Affected

The proposed transfer involves the recapture, at two new locations, of water that has been dedicated to instream flow. These two locations are within the river reaches authorized for instream flow dedication under existing permit and license terms and conditions. Other than PID and BCID whose facilities are proposed to be utilized, Reclamation is unaware of other persons who may be affected by the recapture of its dedicated flows.

Reclamation's point of contact is Lonnie Wass, 559-445-6051 at the Central Valley Regional Water Quality Control Board.

Reclamation's point of contact at the California Department of Fish and Wildlife is Gerald Hatler, 559-243-4005, ext. 127.