

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

DIVISION OF WATER RIGHTS

IN THE MATTER OF PERMITS 11885, 11886 AND 11887
(APPLICATIONS 234, 1465 AND 5638) OF
U.S. BUREAU OF RECLAMATION

TEMPORARY TRANSFER OF WATER AND CHANGE PURSUANT TO
WATER CODE SECTIONS 1725 AND 1707

SOURCE: San Joaquin River

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

ORDER APPROVING TEMPORARY TRANSFER AND CHANGE

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1. BACKGROUND

The purpose of the proposed temporary transfer and change is to implement on an interim basis the provisions of the 2006 Stipulation of Settlement (Settlement) in *Natural Resources Defense Council et al. v. Rodgers et al.*, and the San Joaquin River Restoration Settlement Act (Settlement Act), Public Law No. 111-11, § 10001 et seq., 123 Stat. 991, 1349 (2009). The Settlement addresses restoration of fish habitat in the San Joaquin River below Friant Dam and ends an 18-year legal dispute over the operation of Friant Dam. The parties that entered into the Settlement include the United States Departments of the Interior and Commerce, Friant Water Users Authority (a public agency serving 20 member water districts), and the Friant Defenders (a coalition of environmental organizations led by the Natural Resources Defense Council). The San Joaquin River Restoration Program (SJRRP) was established to implement the Settlement. Congress provided federal authorization for implementing the Settlement in the Settlement Act.

The Settlement establishes two primary goals: (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 to the Friant Division long-term contractors that may result from the restoration program. The restoration program involves a series of projects to improve the river channel in order to restore and maintain healthy salmon populations. Flow restoration is to be coordinated with channel improvements. At the same time, the Settlement limits water supply impacts to Friant Division long-term water contractors by providing for new water management measures, including the recirculation and recapture of released water and the creation of a recovered water account.

The Settlement provides for releases of both interim flows and restoration flows. The purpose of the interim flows is to collect relevant data on flows, temperatures, fish needs, seepage losses, and water recirculation, recapture and reuse. The interim flow program began on October 1, 2009 pursuant to State Water Resources Control Board (State Water Board) Order WR 2009-0058-DWR, and was continued under Order WR 2010-0029-DWR. The present order is intended to provide temporary authorization to continue the interim flow program during the 2012 Water Year (WY). The interim flow program will be terminated in 2013 upon initiation of the long-term restoration flow program. Data obtained during the

interim phase will be utilized to determine appropriate water right conditions for operating the long-term restoration program.

2. SUBSTANCE OF PETITIONS

On July 28, 2011, the U.S. Bureau of Reclamation (Reclamation) submitted petitions for transfer and change pursuant to Water Code sections 1725 and 1707 with the State Water Board, Division of Water Rights (Division). The petitions request authorization to change the method of operation of the Friant Division of the Central Valley Project (CVP) in order to implement on an interim basis the provisions of the Settlement and the Settlement Act. Reclamation seeks to (1) add points of rediversion, (2) add the San Joaquin River channel between the designated reaches to the place of use, and (3) add preservation and enhancement of fish and wildlife resources as an authorized purpose of use under Permits 11885, 11886, and 11887 within: (a) the San Joaquin River channel and (b) the Lone Tree Unit, Merced National Wildlife Refuge and the East Bear Creek Unit, San Luis National Wildlife Refuge. A maximum of 389,355 acre-feet (af) of water will be transferred during the period October 1, 2011 to September 30, 2012.

Reclamation proposes to dedicate water released from Millerton Lake for instream use from Friant Dam to the confluence of the Merced and San Joaquin Rivers, and use instream conveyance of water in order to meet existing Reclamation obligations in lieu of making such deliveries from the Delta-Mendota Canal. Water will be used by Reclamation concurrently for fish and wildlife enhancement instream and within two wildlife refuges and for existing delivery obligations within the existing authorized places of use under Permits 11885, 11886, and 11887.

Water will be released to the natural watercourse of the San Joaquin River for the instream flow dedication, but due to capacity issues, both natural and artificial conveyance means may be utilized to facilitate flow throughout the designated stretch of the river. Water previously stored or that would otherwise be delivered for consumptive use in the Friant service areas would be released from Millerton Lake through the downstream San Joaquin River channel. Water would then be rediverted at and near Mendota Dam for delivery through various canals and also would flow through Mendota Dam. Water would flow past Sack Dam. Water would thence be conveyed through the Sand Slough Control Structure to and through the East Side Bypass. Water in the East Side Bypass would thence flow through the Mariposa Bypass and thence the San Joaquin River and would also continue to flow through the East Side Bypass to Bear Creek. Water would be diverted along the East Side Bypass at designated locations both north and south of the Mariposa Bypass. Water in Bear Creek would thence continue to flow into the San Joaquin River.

Reclamation proposes to temporarily amend the place of use for instream beneficial uses to include the San Joaquin River from Friant Dam to the San Joaquin River near Vernalis, and thence to the Sacramento-San Joaquin Delta (Delta) channels at the Jones and Banks Pumping Plants. Implementing the transfer could increase flows entering the Delta from the San Joaquin River. (Supplemental Draft Environmental Assessment for the WY 2012 Interim Flows Project (WY 2012 DEA), p. 2-9.) Reclamation seeks to temporarily redivert the transfer water at the Jones and Banks Pumping Plants and at the San Luis Dam for potential delivery within the existing place of use to meet demands of the Friant Division of the CVP. However, recirculation of recaptured water to the Friant Division could require mutual agreements between Reclamation, Department of Water Resources (DWR), Friant Division long-term contractors, and other south-of-Delta CVP/State Water Project (SWP) contractors. (WY 2012 DEA, p. 2-10.) Also, transfer water in San Luis Reservoir could be used for the benefit of Friant Division CVP contractors through subsequent transfers and/or exchanges. In addition to direct use, water made available as a result of the proposed transfer could be utilized through subsequent transfer and/or exchange actions separate from this action to facilitate the recapture and recirculation plan. (WY 2012 DEA, p. 3-19.)

The transferred water will be placed to use within Fresno, Madera, Tulare, Kern, Merced, Stanislaus, Contra Costa, Alameda, San Joaquin and Sacramento Counties. The petitions include proposed conditions for approval: (1) maintaining the 5 cubic feet per second (cfs) requirement at Gravelly Ford to meet the obligations of the Holding Contracts; and (2) maintaining sufficient Millerton Lake storage and available San Joaquin River channel capacity to meet the

requirements of the San Joaquin River Exchange Contract. In addition, the petitions condition release of transfer water on implementation of the following plans: (1) the Invasive Species Monitoring and Management Plan in Appendix F of the WY 2010 EA/Initial Study (EA/IS); (2) the 2009-2013 Interim Flow Release Program, Water Quality Monitoring Plan in Appendix E of the Supplemental EA for the WY 2011 Interim Flows Project (WY 2011 EA); (3) the Seepage Monitoring and Management Plan in Appendix G to the WY 2012 DEA; (4) the Mendota Pool Water Quality Response Plan in Appendix H to the WY 2012 DEA; (5) the Steelhead Monitoring Plan in Appendix D to the WY 2012 DEA; and (6) the Draft San Joaquin River Underseepage Limiting Capacity Analysis in Appendix I to the WY 2012 DEA. Reclamation also requests that any water rights order approving the temporary transfer petitions terminate upon issuance of an order by the State Water Board approving petitions for the long-term implementation of the Settlement and Settlement Act (WY 2012 and beyond). The requested conditions are included in this order.

3. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Reclamation filed the petitions for a temporary transfer and change 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 CEQA (Pub. Resources Code, § 21000 et seq.). The State Water Board will issue a Notice of Exemption.

In 2009 Reclamation, as the lead agency under the National Environmental Policy Act, and DWR, as the lead agency under CEQA, prepared the WY 2010 EA/IS for the 2010 Interim Flows Project. The EA/IS evaluated potential environmental consequences associated with the estimated change in flow in the San Joaquin River as a result of the 2010 Interim Flows Project. Reclamation and DWR adopted a Finding of No Significant Impact (FONSI) and Mitigated Negative Declaration, respectively, mitigation measures, and a Mitigation Monitoring Plan for the project.

On June 11, 2010, Reclamation released the WY 2011 EA and Proposed FONSI for the WY 2011 Interim Flows Project. On September 21, 2010, it completed the WY 2011 EA and signed the FONSI. The WY 2011 EA relies in part on analyses and conclusions presented in the WY 2010 EA/IS. The Final 2011 EA incorporates the 2010 EA/IS by reference. On June 14, 2011, Reclamation released the WY 2012 DEA for the WY 2012 Interim Flows Project, which was prepared using the previous years' environmental documents (the WY 2010 EA/IS and WY 2011 EA) and incorporates those documents by reference.

In its petitions, Reclamation requests that the change petitions be conditioned on compliance with certain mitigation measures identified in the WY 2010 EA/IS for the 2010 Interim Flows Project, the WY 2011 EA and the WY 2012 DEA. These conditions are listed in Section 2.0. Including those measures will help to avoid or reduce any unreasonable effects on fish and wildlife and to avoid injury to legal users of water. Accordingly, the requested mitigation measures are included in this order.

4. PUBLIC NOTICE OF THE PETITIONS

The State Water Board issued notice of the petitions on August 11, 2011. Any objections¹ were required to be submitted by September 11, 2011. Inasmuch as September 11 was a Sunday, the State Water Board considered comments filed by 4:30 pm on September 12. Comments were filed by: (1) the San Joaquin Exchange Contractors Water Authority (Exchange Contractors)² and the San Joaquin River Resource Management Coalition (RMC); (2) the San Luis and Delta-Mendota Water Authority (Authority), (3) Merced Irrigation District (MID); and (4) Paramount Farming Company (Paramount).

¹ Water Code section 1727, subdivision (f) allows water users that may be affected by a proposed temporary change and other interested parties to file a written comment with the State Water Board. The State Water Board's regulations allow any interested person to file an objection. (Cal. Code Regs., tit. 23, § 804, subd. (b).) In making their comments or objections, some interested persons used the protest form available on the Division's website. This order may use the term "comment," "objection," or "protest," as used by the interested person, but essentially the documents serve the same purpose.

² The Exchange Contractors are comprised of four agencies: the Central California Irrigation District (CCID), the San Luis Canal Company, the Firebaugh Canal Water District, and the Columbia Canal Company.

5. CRITERIA FOR APPROVING THE PROPOSED TEMPORARY TRANSFER AND CHANGE

Water Code section 1707 authorizes the use of the temporary transfer provisions of Water Code section 1725 et seq. for a change for the purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water. Pursuant to Water Code sections 1707 and 1725, Reclamation applied for a temporary transfer and change for the purpose of preserving and enhancing fish and wildlife resources. Before approving Reclamation's petitions, the State Water Board must make the following required findings under Water Code section 1707:

- a. The proposed change will not increase the amount of water Reclamation is entitled to use.
- b. The proposed change will not unreasonably affect any legal user of water.

In addition, the State Water Board must make the following required findings before approving a temporary change under Water Code section 1725 et seq.:

- a. The proposed transfer involves only the amount of water that would have been consumptively used or stored in the absence of the temporary change.
- b. The proposed change would not injure any legal user of 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 water or return flows.
- c. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, §§ 1726, subd.(e), 1727, subd. (b).)

5.1 Water that would have been consumptively used or stored

Water Code section 1725 requires the State Water Board to find that the transfer would involve the amount of water that would have been consumptively used or stored by the permittee in the absence of the proposed temporary change. According to Reclamation, all water that is subject to the transfer petitions would have remained in storage at Millerton Lake, or been diverted into the Madera and Friant-Kern Canals for consumptive use in the Friant Diversion service area of the CVP in the absence of the transfer. To reach this conclusion, Reclamation evaluated Millerton Lake daily operations and monthly operations downstream of Friant Dam in the WY 2010 EA/IS to compare Millerton storage levels and releases with and without the proposed transfer. (see WY 2010 EA/IS, Table 4-51 and Appendix G, Water Operations Modeling Output – CalSim Attachment, Tables 1 through 7, Monthly Averages of Simulated End-of-Month Millerton Lake Storage.)

5.2 No injury to any legal user of water

Reclamation asserts that the proposed transfer will not result in injury to any legal user of water. In the petitions, Reclamation addressed whether there would be any legal injury to San Joaquin River Holding Contractors, Exchange Contractors, Friant Division CVP Water Service Contractors, other South-of-Delta Water Service Contractors, Eastside Division Water Service Contractors, and water for fish hatchery purposes. Sections 10004(g) and 10004(j) of the Settlement Act specifically provide that, except as provided in the Settlement Act, nothing in the act shall modify the rights and obligations of the parties to any contracts. In its supplement to its petitions (page 11), Reclamation indicates that the proposed transfer would not affect or expand existing obligations or increase demand for CVP water supplies. Reclamation concluded that there would be no injury.

Reclamation and the Exchange Contractors entered into the Second Amended Contract for Exchange of Waters, Contract Ilr-1144, dated February 14, 1968. Under the terms and conditions of that contract,

Reclamation is obligated to supply the Exchange Contractors with water delivered through the Delta-Mendota Canal (DMC) or by other means. Reclamation generally delivers water to the Exchange Contractors at the Mendota Pool via the DMC. At times, Reclamation may make deliveries of water to Mendota Pool from the San Joaquin River or Fresno Slough.

In its petitions, Reclamation states that Millerton Lake operations will be conducted so that the availability of deliveries and releases for the Exchange Contractors' water supply will be the same as in the absence of the proposed changes. It contends that necessary deliveries from the DMC will be made pursuant to the terms and conditions of its Exchange Contract. Reclamation stated that the Final WY 2010 EA/IS concluded that based upon CalSim modeling results, the proposed transfer would not affect water delivery quantities to contractors outside the Friant Division, including the Exchange Contractors. (Petition Supplement, p. 11.) Reclamation also indicated that all water that is subject to the transfer petitions would have remained in storage at Millerton Lake or would have been diverted into the Madera and Friant-Kern Canals for consumptive use in the Friant Diversion service area of the CVP. Absent the proposed action, Reclamation would continue to release water at Friant Dam to maintain 5 cubic feet per second (cfs) at Gravelly Ford and provide flows in accordance with the Exchange Contract. These flows will remain unchanged under the proposed action. (Petition Supplement, pp. 11-12.)

In order to ensure that the Exchange Contractors will not be affected by the proposed transfer, Reclamation proposes the following permit condition.

Reclamation shall maintain sufficient Millerton Lake storage and available San Joaquin River channel capacity in order to make releases of available storage from Millerton Lake as required under the terms and conditions of the San Joaquin River Exchange Contract, Ilr-1144, as amended February 14, 1968, to the extent such releases would be made in the absence of the transfer.

The State Water Board will condition the transfer accordingly. In addition, in a separate term, the State Water Board will make it clear that this approval does not modify contractual obligations of Reclamation to the Exchange Contractors, nor does it alter the requirements of the Settlement Act.

Reclamation evaluated water supply impacts in a Water Operations Model, which was circulated as an Appendix to the 2010 EA/IS for this project and referenced in the petitions. Millerton Lake is operated as a single-year reservoir, with no annual carryover, and is fully exercised (i.e., full to minimum storage) in virtually all years. This operational scenario would not change if the transfer is approved. (WY 2010 EA/IS, p. 4-93.) Only minimal variation in seasonal Millerton Lake water level fluctuations is expected, and fluctuations in reservoir levels would remain within historical operational scenarios. (WY 2010 EA/IS, p. 4-93.) Reclamation evaluated whether substantial changes in water supply would occur for five geographic subareas and concluded that the additional instream flows would result in less than significant impacts to water supply in each of the subareas. (WY 2010 EA/IS, pp. 4-93 to 4-150.)

The releases from Millerton Lake pursuant to the petition would be in addition to the quantity of releases otherwise required under the San Joaquin River Holding Contracts. The Order includes a condition regarding maintenance of the existing 5 cfs requirement at Gravelly Ford in addition to the newly proposed instream flow regime. Reclamation requested inclusion of a condition to this effect in its petitions. (Petition Supplement, p. 8.) In addition, the transfer will be conditioned to require Reclamation to finalize its Plan for the Recirculation, Recapture, Reuse, Exchange, or Transfer of Interim and Restoration Flows (Recirculation Plan). The Recirculation Plan will establish a protocol for the recirculation of recaptured interim flows to Reclamation's Contractors.

5.3 No unreasonable effect on fish, wildlife, or other instream beneficial uses

In its petitions, Reclamation states that the proposed transfer would not significantly affect fisheries resources. (Petition Supplement, pp. 13-14.) According to Reclamation, the proposed transfer would augment streamflow and provide generally high-quality water. Any flow modifications would be in coordination with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS), as applicable. Recapture of transfer water would occur only in compliance with

regulatory requirements, including the USFWS and NMFS biological opinions or other requirements.

6. COMMENTS ON THE PETITIONS³

6.1 Exchange Contractors/RMC

The Exchange Contractors receive water from the CVP by virtue of their contracts with Reclamation. Pursuant to these agreements, the Exchange Contractors forego diversion under their senior water rights on the San Joaquin River in exchange for delivery of an equal amount and supply from the CVP from sources that may include sources other than the San Joaquin River. The water generally is delivered via the DMC. The RMC members include landowners and water users along the San Joaquin River.

6.1.1 Improper Notice

Comment:

The comment states that the State Water Board alternatively treated the petitions as requests for urgency transfers pursuant to Water Code section 1435 or requests for a short term transfer pursuant to Water Code section 1725 and asserts that the petitions should be renoticed. The Commentors further state that the petitions fail to meet the substantive requirements for an urgency transfer pursuant to Water Code section 1435.

Response:

No new notice is required. Reclamation has sought the changes pursuant to Water Code sections 1725 and 1707. The following documents refer to the petitions as having been requested pursuant to Water Code sections 1725 and 1707: the petitions, the notice of petitions posted on the Division's web site with accompanying PDF copy of the petitions, the notice of petitions provided by mail to the mailing list, and the notice of petitions published in two newspapers.

Division staff, however, inadvertently characterized the change petitions as temporary urgency filings in the following correspondence: a staff email to Mr. Jon Rubin dated August 19, 2011, an email advising the public that the petitions had been filed (but the link directed persons to the correct notice and petitions), and a template letter instructing Reclamation to publish the petitions in specific newspapers (but the correct notice was attached to the template letter). While the two emails were inaccurate, the copies of the notice and petitions provided to the public were accurate. The template letter was provided solely to Reclamation.

Thus, the change petitions were properly filed on the correct forms and the notice of the petitions clearly indicates that the changes are sought under Water Code sections 1725 and 1707. The Commentors received notice of the proposed changes requested under Water Code sections 1725 and 1707 and have commented on those changes. Commentors do not argue that they were prejudiced in any way, nor have they alleged that the notice requirements for temporary transfers were not met. There is no evidence that any individual who would be interested in the change petitions lacked information regarding the proposed changes. There is no need to renotice the change petitions. Moreover, Reclamation has not sought any approvals for temporary urgency transfer pursuant to Water Code section 1435 and, thus, it does not need to meet the requirements under that statute in this proceeding.

6.1.2 Injury to legal user of water

The Exchange Contractors/RMC assert that there were considerable impacts to their members as a result of the WY 2010 program that were largely ameliorated as a result of conditions imposed by the State Water Board in its WY 2011 approval. They allege that the impacts will reoccur in WY 2012 if the State

³ Certain Commentors incorporate by reference their comments on previous years' petitions. This order addresses issues expressly raised in comments on Reclamation's petitions filed this year. With respect to the issues that are incorporated by reference by the Commentors and not expressly addressed herein, this order adopts and incorporates the reasoning of Order WR 2009-0058-DWR, Order WR 2010-0029-DWR, and Order WR 2011-0002-EXEC.

Water Board approves the requested changes without the WY 2011 conditions and additional conditions.

The Exchange Contractors/RMC assert that they experienced the following injuries as a result of the Water Year 2010 operations under Order WR 2009-0058-DWR:

6.1.2a Seepage

Comment:

Order WR 2009-0058-DWR, Condition 8, required Reclamation to establish a Seepage Monitoring and Management Plan (SMMP). Reclamation was to install monitoring wells, establish groundwater elevation thresholds and only release interim flows consistent with the SMMP. Order WR 2010-0029-DWR improved upon and continued this requirement. The comments indicate that seepage management improved dramatically in WY 2011 and that Reclamation has made good progress in gaining an understanding of the multiple factors involved in managing for seepage. Nonetheless, Commentors point to seepage damage that occurred on Nickel Farms in WY 2010 and assert that the State Water Board should adopt more prescriptive conditions to ensure that Reclamation maintains flows at non-damaging levels.

More specifically, Commentors note that the WY 2012 DEA Table 2-8 provides the maximum flow capacity in each channel reach that Reclamation intends to utilize for the transfer water. Flows based on this table could cause seepage. The WY 2012 DEA indicates that it is possible that flows past Sack Dam would again be constrained by potential seepage concerns from neighboring landowners and that flows may again be limited to reduce or avoid groundwater impacts as a result of the release of interim flows. Yet, according to the Commentors, there is no assurance that Reclamation will in fact hold flows to 50 cfs or any other level. In the petitions, Reclamation cites to Appendix G of the WY 2012 DEA for assurance it will not increase flows in a manner that will cause seepage damage. The Commentors request that the State Water Board continue to order implementation of the SMMP, and also prohibit Reclamation from increasing flows above any amount that could encroach upon the currently established seepage thresholds. Further, if new information becomes available that dictates a different threshold, Reclamation should be required to report the change to the Deputy Director for Water Rights, who should sponsor a "meet and confer" session with the Exchange Contractors/RMC.

Also, Commentors request that Reclamation establish an administrative process that permits landowners and other entities to submit claims and evidence of harm.

Response:

In Order WR 2010-0029-DWR, the State Water Board required: (a) implementation of the SMMP, (b) establishment of groundwater elevation thresholds to determine when impacts to agricultural lands or levee stability are imminent, (c) release of interim flows in a manner consistent with the SMMP, and (d) to the extent possible, management of interim flows to avoid exceeding an action threshold. The Commentors recognized that the SMMP reduced seepage impacts in WY 2011 as compared to WY 2010. Consequently, compliance with the SMMP will be imposed herein.

Regarding the request that the Deputy Director for Water Rights sponsor meet and confer sessions should a different threshold be suggested, the 2010 Order established a process for updating action thresholds. That process provides opportunity for public comment and Reclamation response to comments. This order will require that process. The order will also prohibit Reclamation from releasing interim flows in accordance with the channel capacity designations, if doing so would result in a violation of the SMMP.

Regarding the request for a damage claims process, the State Water Board does not have authority to establish a claims payment process for a federal agency.

6.1.2b Groundwater Impacts of Flood Flows

Comments:

According to Commentors, groundwater recovery has been affected by flood flows. For example, the 3,000 cfs peak flood flow of WY 2011 impacted lands within the CCID's service area a full three miles from the river, raising water into the crop root zones over a 3 mile wide area, and causing damage similar as seepage damage. Although this impact was not due to the interim flows, Commentors note that the flood flows of 3,000 cfs in Reaches 3 and 4A are well below the flows proposed to be released by Reclamation under the SJRRP. According to Commentors, Reclamation is seeking the right to release flows as high as 4,500 cfs. The seepage elevates groundwater, which cannot return to a lower level that is compatible with the crops being grown unless (a) projects are installed to address seepage or (b) flows are reduced. During WY 2011, Reclamation recognized the need to reduce flows into Reaches 3 and 4A to zero (0) cfs following the 2011 flood flows until groundwater levels returned to farmable levels. In WY 2011, Reclamation did reduce interim flows to lower groundwater levels. For WY 2012 the concern is that if there are high flows, that the interim flows be managed in the same manner. Commentors request that the same conditions imposed in WY 2011 be included in this year's approval.

In addition, Commentors request that: (a) flows be maintained at 50 cfs or lower below Sack Dam until mitigation measures are put in place, (b) in the event of flood flows during WY 2012, Reclamation should reduce interim flows to permit groundwater levels to reach pre-flood levels below the seepage damage thresholds, and (c) Reclamation should implement mitigation measures on a pilot program basis so that effective mitigation measures may be timely developed and implemented.

Response:

Operation consistent with the action thresholds in the SMP limited release of interim flows in a manner that demonstrably achieved the stated objective in WY 2011. Continuation of such operations will be required. As demonstrated during WY 2011, implementation of the SMP achieved requested outcomes (a) and (b) above. Regarding requested outcome (c), the Division recognizes that implementation of mitigation measures on a pilot program basis may provide valuable information. The order requires Reclamation to report progress on implementation of any seepage mitigation measures.

6.1.3 General objections and concerns

6.1.3a Multiple One Year Transfers

Comment:

The Exchange Contractors/RMC contend that it is an abuse of discretion to approve the proposed transfer, raising the issue that the proposed transfers do not qualify as one-year transfers under Water Code section 1725. The comments state that it is inappropriate for Reclamation to seek a one-year temporary transfer for a project that, after commencement of interim flows, will be continuously operated. The comments identify past transfers by two entities wherein: (a) the State Water Board has encouraged the transferor to proceed with permanent changes to the water right in lieu of continued temporary changes, and (b) the State Water Board has noted that repeated annual transfers by the same Transferor were acceptable because there were significant differences in the yearly transfers. According to the Commentors, the SJRRP Interim Flow program is distinguishable from the previously approved transfers because it spans multiple years. Consequently, multiple one-year approvals utilizing the short term transfer provisions of Water Code section 1725 are inappropriate.

Response:

As discussed herein, the interim flows project covered by Reclamation's petitions meets the criteria for a temporary transfer under Water Code sections 1707 and 1725 et seq. Reclamation has requested temporary authorization for the third year of a program to restore streamflow in the San Joaquin River. The Water Code does not require petitioners for temporary change to make a diligent effort to seek

approval for the proposed changes under other provisions of the Water Code (as is required for temporary urgency changes and temporary permits) or prohibit the approval of a series of similar temporary changes. Accordingly, the proposed temporary change is not in violation of Water Code sections 1725 et seq.

6.1.3b No Fish Introduction Should be Permitted for WY 2012

Comment:

The DEA leaves open the possibility that salmon could be reintroduced in WY 2012. According to the Commentors, the State Water Board should not permit reintroduction of salmon until Reclamation has (a) met the requirements of Water Code section 1725, et seq., which prohibit unreasonable impacts to fish and wildlife, (b) completed environmental review on a reintroduction program, and (c) constructed the Phase 1 and 2 facilities that are essential to providing habitat and passage. In WY 2011, some fall-run Chinook salmon migrated upstream of the Hills Ferry Barrier and died. The Commentors estimate that 10-15 percent of the entire Chinook salmon run of the Merced River perished and state that it is unreasonable to take this portion of the fishery to evaluate migration in the restoration area. The Commentors further contend that if spring run Chinook salmon are reintroduced to the San Joaquin River this year, they too will perish. The Commentors assert that an early introduction of the spring run would be unreasonable given the slim chances of their survival.

Response:

Fish reintroduction is coordinated by a multi-agency task force, including NMFS, USFWS and Department of Fish and Game (DFG). This Order will require that Reclamation meet all requirements of the Endangered Species Act for the temporary change. This Order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under the federal Endangered Species Act. If a "take" will result from any act authorized under this Order, this Order will require Reclamation to obtain authorization for an incidental take permit prior to construction or operation.

6.2 San Luis and Delta-Mendota Water Authority (Authority)

The Authority, on behalf of its 29 member agencies⁴, objects to the changes on the basis of environmental grounds,⁵ public interest considerations, and injury to their rights. The Authority's members have historically received deliveries of CVP water for irrigation along the San Joaquin Valley's West side and wetlands situated in the Pacific Flyway.

6.2.1 Temporary urgency changes under Water Code section 1435

Comment:

The comment raises the issue of whether the petitions meet the requirements for a temporary urgent change under Water Code section 1435 and asserts that the State Water Board should renounce the change petitions to make it clear that they will be processed under Water Code section 1725 et seq.

Response:

This issue is addressed in section 6.1.1.

⁴ The Authority's member agencies are: Banta-Carbone Irrigation District, Broadview Water District, Byron Bethany Irrigation District, Central California Irrigation District, City of Tracy, Del Puerto Water District, Eagle Field Water District, Firebaugh Canal Water District, Fresno Slough Water District, Grassland Water District, Henry Miller Reclamation District #2131, James Irrigation District, Laguna Water District, Mercy Springs Water District, Oro Loma Water District, Pacheco Water District, Pajaro Valley Water Management Agency, Panoche Water District, Patterson Irrigation District, Pleasant Valley Water District, Reclamation District 1606, San Benito County Water District, San Luis Water District, Santa Clara Valley Water District, Tranquility Irrigation District, Turner Island Water District, West Side Irrigation District West Stanislaus Irrigation District and Westlands Water District.

⁵ No specific environmental issues were identified in the comment.

6.2.2 Injury to legal user of water

The Authority contends that Reclamation has the burden to show that its implementation of the SJRRP will not cause unmitigated injury to third parties, including the Authority's members and that Reclamation has not met its burden of establishing that the proposed change will avoid injury to legal users of water. To the contrary, the Authority asserts, Reclamation's own data shows significant harm to the Authority's members.

6.2.2a Water Supply

Comment:

The Authority asserts that implementation of the SJRRP would result in water supply impacts and an undue risk of harm to its members. It requests the State Water Board to condition its approval of the petitions to avoid these impacts and ensure that any harm is avoided or mitigated in accordance with Water Code sections 1435 and 1727, subdivision (b).

The Authority explains that the reduction in what it characterizes as "flood flows" in the San Joaquin River reduces the quantity of water available to members of the Authority in many years. Historically, flood flow releases below Friant Dam that reach the Mendota Pool have been used to meet the demands of the Exchange Contractors, leaving more water available in San Luis Reservoir to meet the demands of other south of Delta water users. According to the Authority, these releases "have allowed for as much as a 25 percent augmentation of the water supply available to those other water users." (Authority Comment letter (Sept. 11, 2011), p. 7.)

Citing to the results of modeling performed by Reclamation, the Authority states that the release of interim flows will affect the timing and/or quality of reservoir releases in the San Joaquin River. According to the Authority, the SJRRP-related releases occur much earlier in the water year than the releases that would occur for the benefit of the entities that contract for water from Friant Dam. As a result of the earlier releases of water, the quantity of flows later in the year that reach the Mendota Pool is reduced with implementation of the SJRRP, which in turn ultimately reduces the allocation of water to the Authority members.

Response:

The relevant inquiry before the State Water Board in considering the proposed change is whether the change would injure any legal user of water. A legal user of water is not limited to a person who holds an appropriative water right, but encompasses any person who legally uses the water involved. (See, e.g., *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 804 [finding that a legal user of water includes a person who uses the water under a contract with the appropriator who seeks the change].) Thus, the controlling consideration in the State Water Board's inquiry is the effect of the change on the rights of others. (*Id.*, at pp. 743, 805.) A person who claims that a proposed change will cause injury "must show the change will interfere with his or her right to use the water, whatever the source of that right may be." (*Id.* at p. 805.) It is not enough for a person to show that he or she will receive less water as a result of the change. A person claiming injury must demonstrate that he or she has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*)

The Authority does not allege injury to its members' water use under any contractual right or any other legal entitlement to the use of water under California law. The Authority's claim of injury and request for conditions to mitigate any injury derives from the protections afforded to third parties under the Settlement and the Settlement Act. Article 7 of the Settlement memorializes the settling parties' belief that implementation of the Settlement will not have a material adverse effect on third parties.⁶ Section 10004 of the Settlement Act generally provides that nothing in the Act "shall modify or amend the rights and obligations" of the parties to any existing water service, repayment, purchase, or exchange contract or under the Exchange Contract held by the Exchange Contractors. (Settlement Act, § 10004(g), (j).) Nor

⁶ Section 7 of the Settlement states, in part: "The Parties neither intend nor believe that the implementation of this Settlement will have a material adverse effect on any third parties or other streams or rivers tributary to the San Joaquin River."

shall implementation of the Settlement result in involuntary reductions in contract water allocations to CVP long-term contractors, other than Friant Division long-term contractors. (*Id.*, § 10004(f).) Thus, the Authority raises the issue as to whether these provisions of federal law create a protectable interest in the use of the water sought to be transferred by Reclamation.

Nothing in the Settlement Act preempts state law (*id.*, § 10006(b)) or creates an entitlement to the use of water under California law. A legal user of water encompasses persons who legally use water under an appropriative right, a riparian right, a contractual right, and other claims of right to use water. (*State Water Resources Control Bd. Cases, supra*, at p. 802.) The scope of the State Water Board's "no injury" inquiry is consistent with provisions of the Settlement Act prohibiting interference with contractual rights. But the Settlement Act itself does not create a right to use water under California law or under contract with Reclamation.

The Authority does not identify a water right or contractual entitlement to the amount of flows historically diverted. It is not enough for interested persons to claim that they will receive less water than they historically received; they must demonstrate that they have a legal entitlement to the amount of water claimed.

The Authority contends that even if their contracts do not provide a right that would protect them from the reduced deliveries they are concerned about, the Settlement or Settlement Act provides that protection. But the language of the Settlement and the Settlement Act does not support the argument that the Authority has been or will be injured within the meaning of Water Code sections 1707 and 1725 et seq. For example, the requirement in the section 16(a)(3) of the Settlement that a recapture and recirculation plan be developed in a manner that "does not adversely impact the Secretary's ability to meet [existing] contractual obligations," does not create an entitlement to the use of water greater than that afforded under the preexisting contracts. Rather, this provision and others simply reaffirm the contractual entitlements.⁷ As noted above, the Authority does not identify injury to its contractual rights or to any other entitlement to the use of water. There is no basis to support a finding of injury to a legal user of water.

Nor does the public interest support a condition requiring water users to be able to continue to divert historical diversions above any legal entitlements. To the contrary, the public interest in this action supports operation of the interim flows project in accordance with the Settlement, the Settlement Act, and in keeping with Fish and Game Code 5937. In accordance with Fish and Game Code 5937, Reclamation must allow sufficient water to pass through the Friant Dam to maintain fish populations in good condition in the main stem of the San Joaquin River below Friant Dam.

Absent specific information provided by the Authority identifying particular legal users of water, bases of water rights or contractual entitlements, and the potential injury to their entitlements, the State Water Board concludes that Reclamation has presented sufficient information to conclude that the proposed temporary transfer will not cause injury to other legal users of water. Nonetheless, although the State Water Board concludes that the proposed changes will not injure any legal user of water, as discussed herein, the Board will condition its approval to avoid injury.

6.2.2b Water Quality

Comment:

The Authority claims that the SJRRP will likely injure members of the Authority by causing a degradation of water quality. During 2010 and 2011, the Authority brought to Reclamation's attention the potential for the SJRRP causing water quality impacts at Mendota Pool. This resulted in the Mendota Pool Water Quality Response Plan. The response plan must be implemented to avoid water quality impacts.

⁷ The analysis in this section is limited to issues involving the no injury and public interest requirements of California law as applied to the temporary transfer and change, and does not address any authority or responsibility Reclamation may have independent of those requirements.

Response:

To avoid potential water quality impacts, this order requires implementation of the response plan.

6.2.2c Approving the Petitions without Conditions to Protect the Authority Members is Contrary to Public Interest

Comment:

The Authority claims that if the State Water Board approves Reclamation's petitions without appropriate conditions, the Authority's members will likely suffer reduced water supplies. The farmers served by the Authority's members might then fallow land and may pump more groundwater. Both actions have potentially significant environmental effects. The Authority requests the State Water Board to condition, in the public interest, its approval to avoid these types of impacts.

Response:

The issue of surface water supply impacts is addressed in item 6.2.1a. As discussed herein, the approval in this order is conditioned as necessary in accordance with the requirements of Water Code section 1707 and 1725 et seq.

6.3 Merced Irrigation District (MID)

Comment:

The comment references and generally supports the Exchange Contractors/RMC objection. More specifically, MID expresses concern regarding the potential loss from the proposed transfer of fall-run Chinook salmon due to the disrepair and ineffective operation of the Hills Ferry Barrier. According to MID, in WY 2011, the operation of that barrier (or non-operation) resulted in observed fall-run salmon being attracted into the upper San Joaquin River above the mouth of the Merced River. The fish would otherwise have gone into the Merced River. These fish perished.

In addition, MID notes that during the initial review of the SJRRP, Reclamation identified potentially significant impacts upon the temperature of the water released pursuant to the settlement arriving at the mouth of the Merced River. Subsequent negotiations resulted in agreements that provide for real time adaptation of the timing of the flows to mitigate this impact. Without this mitigation the temperature of the water arriving at the mouth of the Merced River could be harmful or fatal to out-migrating Merced River salmon during the spring. MID seeks assurance that the flows will be managed to ensure that the temperature is not harmful or lethal to salmon smolts.

Response:

DFG seasonally operates the Hills Ferry Barrier at the confluence of the Merced River and the San Joaquin River to direct upstream migrating adult salmon into suitable spawning habitat in the Merced River. Operation of this facility and its effectiveness are outside the scope of the transfer, but are being evaluated as part of the long-term restoration program. Flows of 3,000 cfs that occurred in the San Joaquin River in WY 2011 may have attracted adult salmon past the mouth of the Merced River and upstream to the Hills Ferry Barrier. These flows were the result of wet year flood flows, not release of interim flows from Millerton Lake. Interim flows in WY 2011 were limited to 50 cfs past Sack Dam. A condition from the WY 2010 transfer has been modified and included in the order to address the temperature issue.

6.4 Paramount Farming Company (Paramount)

Comment:

Paramount submitted a letter asserting that Reclamation's temporary water transfers can be (and so far have been) executed in a way that is consistent with Paramount's claimed existing water rights. Paramount does not claim injury to any prior rights.

Paramount asserts that Order WR 2010-0029-DWR contains an inconsistency. The order indicates, on page 6, that all water that is subject to the transfer petitions would have remained in storage at Millerton Lake or would have been diverted into the Madera and Friant-Kern Canals for consumptive use in the Friant Division service area of the CVP in the absence of the transfer. The order also notes, on page 9, that Reclamation makes annual reservoir releases into the San Joaquin River "to make room for flood flows", and notes that these releases are subject to transfer and may no longer be available for diversion by downstream water users. Paramount asserts that the only way that Reclamation can temporarily change the purpose and place of use of its annual controlled-release flood flows is to establish that those flows would have been consumptively used and the transfer will not injure any legal water user. According to Paramount, to the extent that Reclamation attempts to re-characterize its controlled-release flood flows as transfer flows, Reclamation cannot make either of these showings.

In addition, Paramount encourages the State Water Board to condition the proposed temporary transfer on terms requiring groundwater seepage and flow monitoring and maintenance in Reach 2B of the San Joaquin River, and to coordinate with local agencies regarding Mendota Pool operations.

Response:

Reclamation maintains control over its releases from Friant Reservoir, in order to provide the water to its contractors. Historically, the reservoir has been fully exercised in virtually all years, with no carryover storage (see item 5.2). During some years, Reclamation released water for the purpose of maintaining the flood control pool in the reservoir. These flood control releases did not, however, occur in all years. In those years when flood control releases did not occur, the releases were fully utilized by the contractors. Such water is available for transfer.

Implementation of the interim flows program has effectively eliminated some of the flood control releases for maintaining the flood control pool. (see item 6.2.2a) Irrespective of whether the transfer is approved, Reclamation may continue to shift the timing of its reservoir releases to avoid releasing water downstream when water is not needed for a downstream beneficial use. Such action is consistent with Reclamation's permits.

The transfer is being conditioned on implementation of a groundwater seepage and flow monitoring program. Also, the transfer is being conditioned on continued coordination with the local agency operators of the Mendota Pool.

7. FINDINGS

7.1 Transfer Involves Water That Would Have Been Consumptively Used or Stored and Will Not Increase the Amount Reclamation is Entitled to Use

Before approving a temporary change due to a transfer or exchange of water, 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. (Wat. Code, §§ 1725 - 1726.) In addition, before approving a change under section 1707, the State Water Board must find that the proposed change will not increase the amount of water the person is entitled to use. (Wat. Code, § 1707, subd. (b)(1).)

As discussed herein, absent the proposed transfer, the water that is the subject of the transfer would have remained in storage at Millerton Lake or would have been diverted into the Madera and Friant-Kern canals for consumptive use in the Friant Division service area. Accordingly, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this order would be consumptively used or stored in the absence of the proposed temporary change, and that the proposed change will not increase the amount of water that Reclamation is entitled to use.

7.2 No Injury to Other Legal Users of Water

Before approving a temporary change due to a transfer or exchange of water, 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).) Before approving a change under Water Code section 1707, the State Water Board must find that the change will not unreasonably affect any legal user of water. (*Id.*, § 1707, subd. (b)(2).) A discussion of potential harm to other legal users of water is found in Sections 5.2 and 6 above. Notably, the transfer will be conditioned to require Reclamation to: (1) continue to meet contractual obligations, (2) implement the Seepage Monitoring and Management Plan, (3) implement the Mendota Pool Water Quality Response Plan, and (4) finalize the Recirculation Plan. As conditioned, I find that the proposed temporary change would not injure any legal user of the 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 the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

7.3 No Unreasonable Effect Upon Fish, Wildlife, or Other Instream Beneficial Uses

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The temporary transfer and change have been requested in order to re-establish flows below Friant Dam and re-water the stream system for the purpose of protecting and maintaining salmonids. The WY 2012 DEA considered possible effects upon wildlife and other instream beneficial uses and determined that the instream flows to be dedicated will not have a significant effect upon wildlife resources, or other instream beneficial uses. In responding to the comments on the petitions, the State Water Board has determined that suggested measures to address the management of reservoir and instream flow releases are appropriate. Accordingly, I find that, as conditioned, the proposed change will not unreasonably affect fish, wildlife, or other instream beneficial uses.

8. STATE WATER BOARD'S DELEGATION OF AUTHORITY

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, 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 2007-0057.

9. CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code sections 1707 and 1725.

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

1. The proposed change would not injure any legal user of 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 water or return flows.

2. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.
3. The proposed change will not increase the amount of water Reclamation is entitled to use.
4. The proposed change will not unreasonably affect any legal user of water.
5. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Reclamation's petitions for temporary transfer and dedication of water for instream purposes of 389,355 acre-feet pursuant to Water Code sections 1707 and 1725 are approved for a period of one year, from October 1, 2011 to September 30, 2012, subject to prior vested water rights.

All existing terms and conditions of Permits 11885, 11886 and 11887 remain in effect, except as temporarily amended by the following provisions:

1. The following points of diversion are temporarily added to the permits. All coordinates in this Order are in California Coordinate System of 1983, Zone 3:
 - A. Mendota Dam – North 1,745,350 feet and East 6,598,943 feet, being within the SE ¼ of NE ¼ of Section 19, T13S, R15E, MDB&M, including intakes to the following canals:
 - i. Main Canal – North 1,744,396 feet and East 6,598,937 feet, being within the SE ¼ of Section 19, T13S, R15E, MDB&M.
 - ii. Outside Canal – North 1,741,896 feet and East 6,599,689 feet, being within SE ¼ of Section 19, T13S, R15E, MDB&M.
 - iii. Columbia Canal – North 1,746,420 feet and East 6,605,595 feet, being within NE ¼ of Section 20, T13S, R15E, MDB&M.
 - iv. Helm Ditch - North 1,745,022 feet and East 6,598,787 feet, being within NE ¼ of Section 19, T13S, R15E, MDB&M.
 - v. Firebaugh Water District Canal – North 1,741,821 feet and East 6,599,844 feet, being within SE ¼ of Section 19, T13S, R15E, MDB&M.
 - B. Intake to the Arroyo Canal – North 1,816,307 feet and East 6,561,446 feet, being within SW ¼ of Section 12, T11S, R13E, MDB&M.
 - C. Intake to the Sand Slough Control Structure – North 1,862,535 feet and East 6,535,468 feet, being within NE ¼ of Section 31, T9S, R13E, MDB&M, for conveyance through the East Side Bypass.
 - D. Along the East Side Bypass – North 1,883,703 feet and East 6,523,784 feet, being within NW ¼ of Section 11, T9S, R12E, MDB&M (at Lone Tree Unit, Merced National Wildlife Refuge).
 - E. Intake to the Mariposa Bypass Control Structure, on the East Side Bypass – North 1,895,936 feet and East 6,505,198 feet, being within SE ¼ of Section 30, T8S, R12E, MDB&M.
 - F. Along the East Side Bypass – North 1,914,452 feet and East 6,480,299 feet, being within NE ¼ of Section 8, T8S, R11E, MDB&M.
 - G. Jones Pumping Plant – North 2,114,400 feet and East 6,248,083 feet, being within SW ¼ of SW ¼ of Section 31, T1S, R4E, MDB&M.
 - H. Banks Pumping Plant – North 2,115,990 feet and East 6,237,838 feet, being within SW ¼ of Section 35, T1S, R3E, MDB&M.

- I. San Luis Dam – North 1,844,598 feet and East 6,394,093 feet, being within SW ¼ of SE ¼ of Section 15, T10S, R8E, MDB&M.
- J. Intake for Patterson Irrigation District – North 2,004,071 feet and East 6,392,678 feet, being within SW ¼ of Section 15, T5S, R8E, MDB&M.
- K. Intake for West Stanislaus Irrigation District – North 2,036,021 feet and East 6,358,704 feet, being within SE ¼ of Section 16, T4S, R8E, MDB&M.
- L. Intake for Banta-Carbona Irrigation District – North 2,083,018 feet and East 6,327,281 feet, being within SE ¼ of Section 33, T2S, R6E, MDB&M.

2. The following additional place of use is temporarily added to the permits:

San Joaquin River from Friant Dam to the Sacramento-San Joaquin Delta at the Jones and Banks Pumping Plants. This place of use is added for the dedication of instream flows for the purpose of preservation and enhancement of fish and wildlife resources pursuant to Water Code section 1707.

Pursuant to this transfer, water may be temporarily used in Fresno, Madera, Tulare, Kern, Merced, Stanislaus, Contra Costa, Alameda, San Joaquin and Sacramento Counties, as shown on map 1785-202-53.

- 3. The following purpose of use is temporarily added to the permits: preservation and enhancement of fish and wildlife within: (a) the boundaries of the Lone Tree Unit, Merced National Wildlife Refuge and East Bear Creek Unit, San Luis National Wildlife Refuge, as shown on maps 214-212-37 and 214-212-3331, and (b) the reach of the San Joaquin River added to the place of use for dedication of instream flows.
- 4. Reclamation shall complete and submit to the Deputy Director for Water Rights the Recirculation Plan by February 1, 2012.
- 5. The quantities of water released from Friant Dam for this transfer shall be in addition to that quantity of releases otherwise required to maintain the 5 cfs requirement at Gravelly Ford and that would be sufficient to provide necessary flow in the river reach below Gravelly Ford pursuant to the obligations of the holding contracts executed by Reclamation.
- 6. Reclamation shall monitor river stage and flow conditions at the following locations during all periods when water released under this order is likely to be flowing at those locations:
 - below Friant Dam (river mile 267);
 - at Gravelly Ford (river mile 228);
 - below Chowchilla Bifurcation Structure (river mile 216);
 - below Sack Dam (river mile 182);
 - at the head of Reach 4B1 (river mile 168); and
 - above the Merced River confluence (river mile 118).

Monitoring shall be conducted on a daily basis, and Reclamation shall make the information from such monitoring readily available to the public by posting it on a daily basis on a publicly available website whenever the flows at Friant Dam are modified, and daily for a period of three days after any modification, and on a weekly basis under all other circumstances. Flows shall also be monitored at the Vernalis gaging station, which is operated by the U.S. Geological Survey and Department of Water Resources (DWR), with provisional monitoring data reported on the California Data Exchange Center website at cdec.water.ca.gov on a daily basis. Flows shall also be monitored by Reclamation

at the Jones Pumping Plant and the Clifton Court Forebay in coordination with DWR, with provisional monitoring data reported on a daily basis on Reclamation's website.

Reclamation shall, within 5 working days of determining that a station is non-working: (1) report the non-working flow monitoring station to the Deputy Director for Water Rights; and (2) submit to the Deputy Director for Water Rights a plan for timely restoration of the monitoring station. All stations shall be calibrated and report flow data in accordance with standards established by the U.S. Geological Survey.

In the event that flows have the potential to or will exceed channel capacities, Reclamation shall reduce flows to the last known flows that did not result in exceeding such capacities until such time that Reclamation determines that increasing flows would not exceed channel capacities.

7. Release of transfer water is conditioned upon implementation of the Seepage Monitoring and Management Plan in Appendix D of the WY 2010 EA/IS, as updated in Appendix G to the WY 2012 DEA .

As part of implementing the Seepage Monitoring Plan, Reclamation shall publish the then-current well locations, monitoring/buffer groundwater thresholds, and proposed process for development of and updates to action thresholds on the SJRRP website by January 10, 2012 for public review and comment and shall also provide this information to the Division. Reclamation shall consider any comments submitted by January 30, 2012 and shall draft written responses, which may include revisions to the thresholds, by March 1, 2012. Comments, responses, and then-current thresholds shall be published on the SJRRP website by March 1, 2012, and also provided to the Deputy Director for Water Rights for review, modification and approval. Recognizing that many factors contribute to groundwater elevations, Reclamation shall manage Interim Flows to avoid exceeding an action threshold to the extent possible. In addition, and prior to January 10, 2012, Reclamation shall publish on the SJRRP website the location of all new monitoring wells installed in 2011 and its plans for installation for additional monitoring wells in 2012, including proposed well locations and estimated timelines for installation. Plans for installation of new monitoring wells shall include surveying well locations.

8. Reclamation shall issue a notification on the flow monitoring page of the SJRRP website, with a short description of status and decisions made, within 5 working days of any of the following:
 - a. A seepage hotline call is reported.
 - b. A monitoring well crosses a threshold.
 - c. An operational change or constraint arises from the daily coordination call; or,
 - d. A flow change is made.
9. Interim flows shall not exceed the channel capacities identified in the Draft San Joaquin River Underseepage Limiting Capacity Analysis in Appendix I to the WY 2012 DEA. Reclamation shall also operate in accordance with the Seepage Monitoring and Management Plan. In the event of a conflict between these two requirements, the most restrictive channel flow shall prevail. In the event that interim flows create seepage conditions, Reclamation shall reduce or redirect flows to the last known flow that did not result in seepage conditions until Reclamation determines that increasing flows would not create seepage conditions (i.e., seepage is caused by an activity not related to the interim flows).
10. Reclamation shall coordinate its operations with the CCID and the San Luis Canal Company (SLCC). When interim flows are or are anticipated to be flowing into Mendota Pool, Reclamation shall communicate with CCID, as the owner/operator of Mendota Dam, at least once daily via telephone, email, or other written communication. This daily communication shall identify, for the following 24 hours: (1) how much water is expected as inflow into the Mendota Pool for the purposes of the interim flows; (2) how much water is to be exchanged to satisfy the Exchange Contract at Mendota

Pool; and (3) how much water is to be released below Mendota Dam for the interim flows. Reclamation shall communicate with SLCC, as the owner/operator of Sack Dam, at least once daily via telephone, email, or other written communication when interim flows are being released from Mendota Dam. This daily communication shall identify, for the following 24 hours: (1) how much water is expected as inflow into Reach 3 below Mendota Pool for the purposes of the interim flows; (2) how much water is to be exchanged to satisfy water delivery contracts at the Arroyo Canal; and (3) how much water is to be released below Sack Dam for the interim flows. Reclamation shall also notify facility owners that flows authorized under this order are protected under the California Water Code and shall not be diverted or stored unless otherwise authorized by Reclamation consistent with this order.

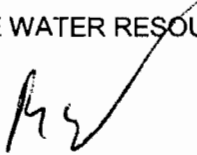
11. Nothing in this order authorizes the use of, or access to, private property. In carrying out the activities authorized under this order, Reclamation is responsible for obtaining any approvals that may be necessary to access private property.
12. Reclamation shall obtain any necessary access agreements: (a) for use of the Sand Slough Control Structure as a point of redirection for conveyance through the East Side Bypass and the introduction of flow into the East Side Bypass and Mariposa Bypass; (b) from the Central Valley Flood Protection Board for release of transferred water into the East Side Canal and (c) from the Lower San Joaquin Levee District for operation, inspection and maintenance of flood control facilities.
13. Prior to February 1, 2012, Reclamation shall document that it has either entered into or attempted to enter into a continuous operations and maintenance agreement, or comparable funding mechanism, that accounts for increased operations and maintenance costs of CCID, SLCC, and the Levee District associated with the Interim Flows Program. Reclamation shall submit a copy of any agreement or documentation to the Deputy Director for Water Rights by February 1, 2012.
14. This order does not authorize any act that results in damage that could result in imminent failure: (a) to private levees located along the San Joaquin River, (b) to facilities, including levees and related structures, which are part of the San Joaquin River Flood Control Project, or (c) to Mendota Dam. Reclamation shall be responsible for operating under this Order in a way that does not result in such damage.
15. Releases of water from Millerton Lake pursuant to the transfer shall be managed to avoid interference with operations of the San Joaquin River Flood Control Project, as described in the Implementation Coordination discussion in section 2.2.3 of the WY 2010 EA and section 2.2.5 of the WY 2011 EA and p. 2-17 of the WY 2012 DEA.
16. Effective as of the date of this Order, Reclamation shall consult with the Central Valley Flood Protection Board, DWR, or any other appropriate agency to ensure that the proposed change will not compromise the flood safety features of the San Joaquin River and Eastside and Mariposa Bypasses. Within 60 days of the effective date of this Order, Reclamation shall provide the Deputy Director for Water Rights with a report on the status of the required consultation.
17. Reclamation shall maintain sufficient Millerton Lake storage and available San Joaquin River channel capacity in order to make releases of available storage from Millerton Lake as required under the terms and conditions of the San Joaquin River Exchange Contract, IIR-1144, as amended February 14, 1968, to the extent such releases would be made in the absence of the transfer.
18. This order shall not be construed as modifying or amending (1) the rights and obligations of Reclamation and the Exchange Contractors under the Second Amended Contract for Exchange of Waters, Contract IIR-1144, dated February 14, 1968, or (2) the requirements of section 10004(g) and 10004(j) of Public Law 111-11.
19. Rediversion and conveyance of water under Permits 11885, 11886 and 11887 by or through Central Valley Project (CVP) and State Water Project (SWP) facilities is limited to pumping and conveyance that is available at the C.W. Jones Pumping Plant, at the Harvey O. Banks Pumping Plant, in the Delta-Mendota Canal or in the California Aqueduct, after satisfying all contractual obligations to CVP

and SWP contractors entitled to water from Delta Facilities and that existed prior to the date of the change order (or were subsequently renewed).

20. Rediversion of water at the Jones Pumping Plant and the Banks Pumping Plant pursuant to this order is subject to compliance by the operators with the objectives currently required of Reclamation or DWR set forth in Tables 1, 2, and 3 on pages 181 to 187 of State Water Board Revised Decision 1641 (D-1641), or any future State Water Board order or decision implementing Bay-Delta water quality objectives at those plants, including compliance with the various plans required under D-1641 as prerequisites for the use of the Joint Points of Diversion by Reclamation and DWR. Rediversion of water at the Jones Pumping Plant and the Banks Pumping Plant pursuant to this order is also subject to compliance by the operators with all applicable biological opinions and any court orders applicable to these operations.
21. By January 15, 2013, Reclamation shall provide to the Deputy Director for Water Rights a compliance report describing compliance with the requirements of this order. This report shall include the following information:
 - a. the average daily rates of rediversion of water pursuant to the order at both the Clifton Court Forebay and the Jones Pumping Plant,
 - b. the daily and monthly volumes of water rediverted at both the Clifton Court Forebay and the Jones Pumping Plant,
 - c. daily releases from Friant Dam,
 - d. daily rediversions at all authorized points of rediversion,
 - e. compliance with all other conditions of this order, and
 - f. progress in implementing mitigation measures, including any pilot programs, addressing seepage issues.
22. This order does not authorize any act that results in the taking of a threatened or endangered species, or any act that is now prohibited, or becomes prohibited in the future, under 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 Order, Reclamation shall obtain authorization for an incidental take permit prior to construction or operation. Reclamation shall be responsible for meeting all requirements of the Endangered Species Act for the temporary change authorized under this order.
23. The State Water Board reserves jurisdiction to supervise the short-term change under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses as future conditions may warrant or as appropriate to respond to information provided by the monitoring programs required under this order.
24. The maximum release rate from Friant Dam for water authorized for transfer and instream dedication shall be limited as shown in Table 2-3 to the WY 2012 DEA.
25. Reclamation and DWR shall implement the Invasive Species Monitoring and Management Plan, included in Appendix F of the WY 2010 EA/EIS.
26. Reclamation shall implement the 2009-2013 Interim Flow Release Program Water Quality Monitoring Plan in Appendix E of the WY 2012 DEA. Requests for modification of the Interim Flow Release Program Water Quality Monitoring Plan shall be submitted in writing to the Deputy Director for Water Rights, and may only be made upon written approval from the Deputy Director for Water Rights.
27. Reclamation shall implement the Mendota Pool Water Quality Response Plan in Appendix H to the WY 2012 DEA.

28. Reclamation shall comply with the Steelhead Monitoring Plan in Appendix D to the WY 2012 DEA.
29. The temporary transfer shall terminate upon issuance of an order by the State Water Board approving petitions for the long-term implementation of the Settlement and Settlement Act.
30. Reclamation shall monitor temperature changes in Millerton Lake and release water in accordance with a coordinated program for ramping of flows and maintenance of instream temperatures suitable for fishery purposes, consistent with the San Joaquin River Restoration Settlement Agreement. These actions shall be taken in coordination with USFWS, NMFS, DFG and DWR.

STATE WATER RESOURCES CONTROL BOARD



Barbara Evoy
Deputy Director for Water Rights

Dated: **SEP 30 2011**