

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

**DIVISION OF WATER RIGHTS**

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

**PETITIONS FOR TEMPORARY CHANGE INVOLVING  
THE TEMPORARY TRANSFER OR EXCHANGE OF  
UP TO 76,069 ACRE-FEET OF WATER  
FOR INSTREAM FLOW DEDICATION AND REDIVERSION**

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SOURCES: San Joaquin River

COUNTIES: Fresno, Merced, Madera, Kings, Tulare, and Kern

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

**1.0 OVERVIEW**

On January 8, 2020, the U.S. Bureau of Reclamation (Reclamation) submitted four petitions under Water Code sections 1707 and 1725 et seq. (Change Petitions), to the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) for temporary change 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. If approved, Restoration Flows could be rediverted through Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID) facilities to the Delta-Mendota Canal (DMC) for reuse by Friant Division Central Valley Project (CVP) contractors through direct delivery, exchange, and/or transfer. The petitions include a request to modify the Net Delta Outflow Index (NDOI) as currently defined by Water Right Decision 1641 (D-1641), consistent with the purpose of the transfer.

In 2013, to facilitate implementation of the San Joaquin River Restoration Program (SJRRP), the State Water Board approved changes for long-term instream flow dedication and the rediversion of those flows at specified locations pursuant to Water Code section 1707. (See Order Approving Change and Instream Flow Dedication, October 21, 2013 [hereinafter referred to as "2013 Order"].) The 2013 Order anticipated that recapture and recirculation of Restoration Flows could occur in the future at PID and BCID facilities, if authorized by the State Water Board. The Change Petitions before the Division now relate to these new points of rediversion not authorized in the 2013 Order. Approval of the

Change Petitions would provide a means to supply water to the Friant Division CVP contractors when there is limited or no capacity at the Jones Pumping Plant and Banks Pumping Plant (Delta Pumps) in the Delta.

The transfer/exchange period is one year from the date of Order issuance. Reclamation may only begin any transfer of Restoration Flows seven (7) days after any occurrences of uncontrolled excess flows and flood control release operations at Friant Dam cease. Transfers must stop if Friant Dam enters a period of uncontrolled excess flow and flood control release operations and may resume seven (7) days after any instances in which these conditions cease. It is anticipated that the actual amount of water that may be transferred will be further reduced by stream depletions that occur below Sack Dam and the operational capacity constraints at the rediversion facilities at PID and BCID.

The proposed transfer would assist Reclamation in meeting a goal of the San Joaquin River Settlement Act (Public Law 111-11 Title X § 10001 et seq., 123 Stat 991.1349 (2009)) to reduce or avoid adverse water supply impacts on all of the Friant Contractors that may result from Restoration Flows. The transfer would be subject to existing provisions in the 2013 Order, Reclamation's License 1986 and Permits 11885, 11886, and 11887, and Biological Opinions (BOs) issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) under the federal Endangered Species Act (ESA).

## **2.0 CRITERIA FOR APPROVING THE TEMPORARY CHANGE**

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

Pursuant to Water Code section 1707, a permittee or licensee may petition the board for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code § 1707, subd. (a)(1).) The petition may be submitted for any of the purposes described above and may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part. (Wat. Code § 1707, subd. (a)(2).)

Water Code section 1707, subdivision (b) sets the condition of approval:

The board may approve the petition filed pursuant to [Water Code section 1707] subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements: (1) Will not

increase the amount of water the person is entitled to use; (2) Will not unreasonably affect any legal user of water; and (3) Otherwise meets the requirements of this division.

### **3.0 PROCEDURE**

On January 24, 2020, the Division posted public notice of the Change Petitions on the Division's website and sent notice through the State Water Board's LYRIS e-mail notification system. In addition, on January 24, 2020, Reclamation noticed the Change Petitions via publication in the Fresno Bee newspaper and mailed the notice via first class mail to interested parties. The comment deadline was February 24, 2020. No comments were received.

Reclamation's water rights subject to the Change Petitions are License 1986, and Permits 11885, 11886, and 11887, and are available online through the Division's eWRIMS electronic database. The present place of use of water diverted under Reclamation's license and permits is the entire consolidated CVP place of use shown on maps on file with the State Water Board. Under Reclamation's rights, water may be used for irrigation, domestic, municipal and industrial use, salinity control, water quality control, fish and wildlife enhancement, stockwatering, recreation, and incidental power. The transfer has been reviewed by Division staff to ensure that the transfer quantities and season are within the scope of the existing rights and that the source of transfer water is an authorized source under the water rights. The Change Petitions request the temporary addition of the points of redirection of Restoration Flows below:

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

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

A total maximum redirection rate of 40 cubic feet per second (cfs) is proposed for transfer of Restoration Flows at the PID facility. A total maximum redirection rate of 65 cfs is proposed for transfer of Restoration Flows at the BCID facility.

As explained below, the temporary changes requested by Reclamation can be properly considered and approved under Water Code sections 1725 and 1707.

### **4.0 THE CHANGE INVOLVES A TRANSFER OR EXCHANGE OF WATER OR WATER RIGHTS**

Although the transfer does not reduce water deliveries to CVP contractors, it expands public trust resources, and thus amounts to a transfer to the public. As such, Reclamation

has included new users of the water as follows: 1) the public, through the protection and enhancement of instream beneficial uses held in the public trust, and 2) the California Department of Fish and Wildlife (CDFW), whose mission is to manage California's diverse fish, wildlife, and plant resources, and habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

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

## **5.0 THE CHANGE INVOLVES WATER THAT WOULD HAVE BEEN CONSUMPTIVELY USED OR STORED**

When reviewing a petition for temporary change, Water Code section 1725 provides that a permittee may temporarily change the point of diversion, place of use, or purpose of use through a "transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored" by permittee or licensee in the absence of the proposed temporary change. (Wat. Code, § 1725; see also § 1726 [proposed change must be submitted to Board]; §1011 [conserved water may be transferred].) Water Code section 1725 defines "consumptively used" to mean "the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion."

Restoration Flows that are released from Millerton Reservoir (behind Friant Dam) in accordance with the terms and conditions of the 2013 Order approving the SJRRP's dedication of Restoration Flows would have either remained in storage or have been directly diverted at Friant Dam for delivery and consumptive use by the Friant Division CVP contractors, or used in the CVP service area. Further, in the absence of this temporary change, the Restoration Flows, as authorized in the 2013 Order, would continue to remain under the dominion and control of Reclamation as currently authorized under the subject permits and license. Reclamation included Water Code section 1707 with its Change Petitions to make clear that the transfer operates in conjunction with and for the purpose of facilitating the dedication of instream flows. The current Change Petitions, by virtue of being filed under sections 1707 and 1725 function as a modification of the 2013 Order. The water subject to the Change Petitions is not water that would be available for use in the downstream water supply. Reclamation has indicated that all of the flows subject to the Change Petitions would be water that is released from storage in Millerton Reservoir, and a term is included in the Order that reflects this commitment.

## **6.0 NO INJURY TO OTHER LEGAL USERS OF THE WATER**

Before approving a petition for temporary change, the State Water Board must find that the temporary change would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat Code, § 1727, subd. (b)(1).) As explained above, in the absence of the Change Petitions, Reclamation would continue to retain dominion and control of all instream flows downstream of the PID and BCID facilities for consumptive use as currently authorized under the subject permits and license and the 2013 Order. The instream flows would remain protected and removed from use in the downstream water supply. Water released from storage is not available to downstream users. (See e.g. *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 570 [when the stored water is released for use, it is not part of the river's natural flow and redirection of this water does not count toward the appropriator's current allocation of river water]; see *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 737-745 [a riparian or appropriator has no legally protected interest in other appropriators' stored water or in the continuation of releases of stored water].)

The 2013 Order includes a condition specifically stating that the approved change in no way modifies the obligations and rights under the San Joaquin River Exchange Contract and other contracts. The conditions of the 2013 Order remain in force and effect.

## **7.0 NO UNREASONABLE EFFECT ON FISH, WILDLIFE, OR OTHER INSTREAM BENEFICIAL USES**

Before approving a temporary change due to a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) Reclamation provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Water Board) with copies of the petitions in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW and the Regional Water Board did not provide any information regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

The purpose of the SJRRP is to protect instream beneficial uses in the San Joaquin River. Recapture would occur only at screened facilities. The transfer will be subject to provisions of Reclamation's License 1986 and Permits 11885, 11886, and 11887, and the 2013 Order. The 2013 Order and this transfer are also subject to existing BOs issued by the USFWS and NMFS under the federal ESA. At the time of issuance of the 2013 Order and subsequent temporary transfers, the existing BOs included the 2008 USFWS BO and the 2009 NMFS BO, which contain reasonable and prudent alternatives that imposed fishery protection measures on the coordinated operation of the Central Valley Project and the State Water Project.

On October 21, 2019, NMFS and USFWS issued BOs (2019 BOs) that significantly reduce flows that were previously dedicated or available for the benefit of salmon and other native fish, including flows in the Stanislaus River, the Lower San Joaquin River, and flows through the Delta. The State Water Board staff has concerns about the adequacy of the 2019 BOs for long term operations of the Central Valley Project and water quality conditions in the Delta that go beyond the scope of this Order. It is possible that a small portion of water not rediverted at PID or BCID would contribute toward better conditions in the downstream segments of the San Joaquin River, including those within the Delta; however, the primary purpose of the SJRRP is to re-water the San Joaquin River for fisheries in specified reaches of the San Joaquin River. Term 5 has been added to clarify that compliance with the requirements of the 2013 Order apply to rediversions at BCID and PID, particularly Condition 19 of the 2013 Order to ensure adequate flows on the San Joaquin River at Vernalis. Additional monitoring and reporting requirements have been added, and the State Water Board reserves authority to modify transfer authorization under Term 13 below to respond appropriately if changes in fisheries conditions occur.

## **8.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

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

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

The recirculation of recaptured water at existing facilities back to Friant Division contractors, using CVP, Department of Water Resources, and private facilities, was covered in the Recirculation of Recaptured Water Year 2013-2017 SJRRP Flows Environmental Assessment (Recirculation EA) which, along with its corresponding

Recirculation FONSI, is dated April 2013. Reclamation has determined that at this time none of the conditions underlying the Recirculation EA has changed, and therefore it intends to rely upon the existing Recirculation EA. In addition, Reclamation issued a new FONSI for recapture on February 27, 2018 for the Short-Term Recirculation of Recaptured SJRRP Restoration Flows as analyzed in the Recirculation EA.

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

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

## **9.0 WATER CODE SECTION 1707 FINDINGS**

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

## **10.0 MONITORING AND REPORTING**

Conditions of the prior approvals, most recently Condition 8 of the approval on April 8, 2019 (2019 Transfer), required Reclamation to submit a monthly report describing the transfer of water until such time as the transfer had been completed. The report was to include the daily average rate of water rediverted and daily volume of water rediverted at PID and BCID facilities pursuant to the approval. These reports were not submitted on a monthly basis, and none of the reports provided daily information for either the rate or volume of water rediverted at PID or BCID facilities. Reclamation resubmitted a report for the 2019 Transfer that included daily values and stated that the lack of monthly reporting was an oversight. Additionally, Reclamation was required to provide evidence documenting insufficient capacity or other constraints exist at the Delta Pumps prior to commencing any rediversion at PID or BCID facilities. This reporting was not received during implementation of prior transfer approvals. Increased oversight is warranted. Accordingly, the following term is added to address monitoring and reporting requirements:

*Reclamation is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer*

*has been completed. The report shall be submitted by the last day of each month and no rediversion under this Order is authorized in subsequent months in the absence of submitted reports for the prior months. The report shall include the average rate of water rediverted and volume of water rediverted each day at PID and BCID facilities pursuant to this Order and amounts diverted pursuant to PID's and BCID's other bases of right. The monthly report shall summarize documentation of insufficient capacity or other constraints that existed at the Delta Pumps that was provided pursuant to Condition 8, descriptions of whether Conditions 1, 4, 5, 6, or 8 constrained rediversions, and whether Reclamation anticipates any of these conditions will constrain rediversions in the subsequent month.*

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

In addition, adequate accounting methods that accurately track the volume of Restoration Flows from the release point at Friant Dam as they are conveyed downstream to the proposed points of rediversion are needed. The 2013 Order provides conditions describing required release amounts and related schedules (Condition 8); monitoring to track the protected instream flows (Condition 10); and documentation to be included with annual reports of water diversion that quantify storage and direct diversion at Millerton Reservoir, instream use releases at Friant Dam, and amounts of dedicated flows diverted downstream (Condition 25). While these conditions are generally being satisfied by Reclamation, there remains ambiguity in how Restoration Flows are accounted for from their release at Friant Dam downstream to the points of rediversion identified in the 2013 Order and those identified in this Order.

Accounting as described in Exhibit B of the 2006 Stipulation of Settlement Agreement does not specify which data sources to use and does not apply downstream of the confluence of the Merced River and the San Joaquin River. Inconsistencies were observed between "Friant Releases" reported on the SJRRP Restoration Flows website and gauged Friant releases to the San Joaquin from Millerton (CDEC USBR gauge MIL) less releases to Madera and Kern-Friant Canals (CDEC USBR gauges MI1 + MI2) reported in Compliance Report Tables 3-1 and 3-2 within the duration of previously issued transfer orders. The 2018 and 2019 monitoring reports, and the 2018 Compliance Report Table 3-2 Footnote 5 describe methodologies for accounting for the amount of Restoration Flow available at PID and BCID that rely on differing reference gauges, including GRF, SWA, and "below Sack Dam" (SDP). Without further information, differences among the methods proposed in Reclamation's and SJRRP's reports, Exhibit B, and between reported gauging station values and values for these same gauging stations published on CDEC, remain unresolved. This leads to multiple potential accounting methods, including estimations of Restoration Flow, particularly from Reach 4A to PID and BCID.

An accounting methodology that describes and tracks the purpose and volume of releases from Friant Dam through the San Joaquin River to the points of rediversion is needed to demonstrate that the conditions of this temporary transfer order are being satisfied.



Accounting methods need to identify data sources and equations for estimating the amount of Restoration Flow remaining in the SJR and available for rediversion. Accordingly, the following term is added to address the need for an accounting methodology:

*Within 60 days of the date of Order issuance, Reclamation shall submit a proposed accounting method for quantifying SJRRP flows from Friant Dam to all points of rediversion, including at PID and BCID. The method shall describe which gauges will be relied upon, any QA/QC protocols that will be used on gauged data, how uncontrolled excess flows will be quantified, and how the methods provided by Exhibit B of the 2006 Stipulation of Settlement Agreement are being implemented. Reclamation shall submit a report to the Deputy Director for Water Rights within 60 days of completion of the transfer which shall include daily and monthly releases from Millerton Reservoir for Restoration Flows and shall be based on the accounting methods developed pursuant to this condition and accepted by the Deputy Director for Water Rights. The report shall include daily and monthly values for flood control releases, Restoration Flow releases, rediversion rates at PID and BCID facilities in cubic feet per second, and total amounts rediverted in acre-feet per day.*

## **11.0 ADDITIONAL PROPOSED TERMS**

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

*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 NDOI conditions in D-1641 will be reduced by the quantity of water rediverted by the BCID facility pursuant to this temporary transfer order.*

In separate correspondence, it appears that there may be some confusion regarding the scope of the 2013 Order authorizing new points of rediversion in Permits 11885, 11886, and 11887 and License 1986. Upon adoption of the 2013 Order, a column of new points of rediversion was added to Reclamation's permits and license that included, inter alia, Canal Intakes Off Mendota Dam, and the Jones and Banks Pumping Plants. Consistent with the 2013 Order, the added points of rediversion are authorized solely for the purpose of implementing the Settlement Agreement and recirculating Restoration Flows. A conditional footnote attaches to these points of rediversion that provides: "The points of rediversion are for: (a) water released from storage or (b) water previously diverted at Friant Dam that remains under the dominion and control of Reclamation from Friant Dam to the points of

rediversion pursuant to Water Code section 1707.” This Order includes a term that adds a minor amendment to this provision to ensure that there is no ambiguity on this point.

## **12.0 STATE WATER BOARD’S DELEGATION OF AUTHORITY**

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

## **13.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code sections 1707 and 1727, and, therefore, I find as follows:

I conclude that, based on the available evidence:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will not increase the amount of water Reclamation is entitled to use.
3. The proposed temporary change will not injure any legal user of the water.
4. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
5. The proposed temporary change otherwise meets the requirements of Division 2 of the Water Code.

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petitions filed for temporary change for the transfer/exchange of instream flow dedication of up to 76,069 af of water under License 1986 and Permits 11885, 11886, and 11887 are approved.

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

1. The transfer shall not commence until seven (7) days after Friant Dam operations have ceased uncontrolled excess flows and flood control release operations at

Friant Dam, or date of Order issuance, whichever is later, and shall immediately cease anytime such conditions commence. The transfer shall end one year after Order issuance.

2. The points of diversion for Restoration Flows under Reclamation's License 1986 and Permits 11885, 11886, and 11887 et al. are temporarily amended to add:

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

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

3. The maximum diversion rate at PID will be 40 cfs and the maximum diversion rate at BCID will be 65 cfs. A maximum of 76,069 af of Restoration Flows may be diverted at PID and BCID facilities during the transfer period.
4. The totality of the transferred water will be limited to storage releases from Millerton Reservoir for the entire authorized transfer period.
5. Diversion of water at BCID and PID is subject to the same requirements as pumping of SJRRP flows at the Jones Pumping Plant and Banks Pumping Plant provided in Condition 19 of the 2013 Order, and any future State Water Board order or decision implementing Bay-Delta water quality objectives.
6. Diversion of water is subject to compliance by Reclamation with all existing BOs and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
7. During the times that water is being diverted at the BCID facility pursuant to this temporary transfer order, San Joaquin River flows used to inform NDOI conditions in D-1641 will be reduced by the quantity of Restoration Flows diverted at the BCID facility pursuant to this temporary transfer order.
8. Diversion of Restoration Flows at PID and BCID intake facilities shall only occur at times when diversion is not possible at the Delta Pumps due to insufficient capacity or other constraints. Prior to commencing any diversions at PID or BCID facilities, Reclamation shall provide evidence documenting insufficient capacity or other constraints exist at the Delta Pumps to the Deputy Director for Water Rights.
9. Reclamation is responsible for providing the Deputy Director for Water Rights a monthly report describing the transfer of water pursuant to this Order until such time as the transfer has been completed. The report shall be submitted by the last day of each month and no diversion under this Order is authorized in subsequent months

in the absence of submitted reports for the prior months. The report shall include the average rate of water rediverted and volume of water rediverted each day at PID and BCID facilities pursuant to this Order and amounts diverted pursuant to PID's and BCID's other bases of right. The monthly report shall summarize documentation of insufficient capacity or other constraints that existed at the Delta Pumps that was provided pursuant to Condition 8, descriptions of whether Conditions 1, 4, 5, 6, or 8 constrained rediversions, and whether Reclamation anticipates any of these conditions will constrain rediversions in the subsequent month.

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

10. Within 60 days of the date of Order issuance, Reclamation shall submit a proposed accounting method for quantifying SJRRP flows from Friant Dam to all points of rediversion, including at PID and BCID. The method shall describe which gauges will be relied upon, any QA/QC protocols that will be used on the gauged data, how uncontrolled excess flows will be quantified, and how the methods provided by Exhibit B of the 2006 Stipulation of Settlement Agreement are being implemented. Reclamation shall submit a report to the Deputy Director for Water Rights within 60 days of completion of the transfer which shall include daily and monthly releases from Millerton Reservoir for Restoration Flows and shall be based on the accounting methods developed pursuant to this condition and accepted by the Deputy Director for Water Rights. The report shall include daily and monthly values for flood control releases, Restoration Flow releases, rediversion rates at PID and BCID facilities in cubic feet per second, and total amounts rediverted in acre-feet per day.
11. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

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

12. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. § 1531 to

1544). If a “take” will result from any act authorized under this temporary transfer, Reclamation shall obtain authorization for an incidental “take” permit prior to construction or operation. Reclamation shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

13. The State Water Board reserves authority to supervise the transfer, exchange, and use of water under this Order, and to coordinate or modify terms and conditions for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.
14. The footnote to the table in item 2. Location of Point of Diversion for Permit 11885, Permit 11886, and Permit 11887 is amended to read as follows: “\* The points of rediversion are for recapture of SJRRP flows that are either: (a) water released from storage or (b) water previously diverted at Friant Dam that remains under the dominion and control of Reclamation from Friant Dam to the points of rediversion, pursuant to Water Code section 1707.”

The footnote to the table in item 2. Location of Point of Diversion for License 1986 is amended to read as follows: “\* The points of rediversion are for recapture of SJRRP flows water previously diverted at Friant Dam that remains under the dominion and control of Reclamation from Friant Dam to the points of rediversion pursuant to Water Code section 1707.”

#### STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: APR 20 2020