

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

**DIVISION OF WATER RIGHTS**

---

**IN THE MATTER OF PERMIT 12860 (APPLICATION 15764)  
OF THE U.S. BUREAU OF RECLAMATION**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE  
TRANSFER OF UP TO 500 ACRE-FEET OF WATER TO CENTRAL CALIFORNIA  
IRRIGATION DISTRICT, SAN LUIS WATER DISTRICT, AND  
GRASSLAND WATER DISTRICT**

---

SOURCES: Old River and the San Joaquin Delta

COUNTIES: Contra Costa, Merced, and Stanislaus

---

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

**1.0 SUBSTANCE OF PETITION**

On July 15, 2020, the U.S. Bureau of Reclamation (Reclamation) submitted a petition for temporary change pursuant to Water Code section 1725 et seq. to the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). The petition seeks to temporarily add Los Banos Creek Detention Reservoir and three locations downstream of the reservoir within Los Banos Creek as points of rediversion in order to restore up to 500 acre-feet (af) of Central Valley Project (CVP) water from the San Luis Reservoir and subsequently deliver the water to various wildlife refuges and irrigation districts in the Central California Irrigation District (Central California ID), Grassland Water District (Grassland WD), and San Luis Water District (San Luis WD) service areas. Central California ID, Grassland WD, and San Luis WD, collectively Participants, would make the water available by using groundwater, recovered tailwater, or water stored in the Meyers Water Bank in lieu of surface water from San Luis Reservoir. Although the proposed individual components of substitute water supplies listed in the petition add up to 2,500 af, Reclamation has confirmed that it proposes to limit the amount of water exchanged and re-stored in Los Banos Creek Detention Reservoir to a total of 500 af from all sources.

This temporary change is a pilot project, and a petition for a larger pilot amount will be submitted after September 1, 2020. The exchanges for this temporary change would begin upon approval of this Order and remain effective for up to one year per Water Code section 1725.

## 1.1 Description of the Exchanges

As described by Reclamation, the purpose of the temporary change is to improve the flexibility of CVP operations and increase water supply reliability for wildlife refuges and other CVP contractors located south of the Sacramento-San Joaquin Delta Estuary (Delta) by permitting up to 500 af of CVP water to be re-stored in Los Banos Creek Detention Reservoir from September 2020 through November 2020.

In addition, Central California ID has identified a need in many years to develop “local dispatchable storage” to meet peak summer irrigation demand in order to better manage and utilize its existing water supplies. During the off-peak irrigation season, Central California ID proposes to use conserved water and/or substitute groundwater and store the CVP water that would have been delivered in the Los Banos Creek Detention Reservoir, for use during peak summer irrigation demand. If Central California ID does not need the water back to meet peak summer demand, then the water would be moved to one of the project partners to meet irrigation demands.

The petition explains that:

“Los Banos Creek Detention Dam and Reservoir are federally owned and state operated facilities that were constructed jointly by Reclamation and the California Department of Water Resources as part of the San Luis Unit of the CVP to provide flood control protection to the San Luis Canal. The California Department of Parks and Recreation operates the public recreational facilities at Los Banos Creek Detention Reservoir. Reclamation holds License 12134 for storage of up to 14,000 acre-feet per annum for non-consumptive purposes of use. The proposed action has been discussed with all parties and will not operate to the detriment of existing uses or Safety of Dams concerns.

It is expected that the reservoir would be operated in the October through February time period to bypass natural Los Banos Creek flow downstream. For this pilot project, the Participants would begin temporarily store up to 500 acre-feet of CVP water supplies in the available Los Banos Creek Detention Dam space. CVP water would be conveyed through the San Luis Canal (California Aqueduct) to San Luis WD’s Pump Station 8 and lifted into Los Banos Creek Detention Reservoir for temporary storage. The stored water would be returned to the participating Districts during peak irrigation or wildlife water management times via the Los Banos Creek at the three downstream points of rediversion. The Dam operations would preserve and enhance but be consistent with the current flood control criteria and operation.”

Reclamation proposes to limit the water withdrawn from San Luis Reservoir and re-stored in Los Banos Creek Detention Reservoir to water previously stored in San Luis Reservoir. According to Reclamation, the proposed changes will not result in diversion of additional water from the Delta, a change in the timing of CVP diversions, or the delivery of more CVP water than has been delivered historically. Instead, Reclamation maintains that the

requested change will provide the operational flexibility the CVP needs to improve water supply deliveries for wildlife refuges and other CVP contractors.

## 1.2 Project Participants

The project participants consist of the San Luis WD, Grassland WD, and Central California ID, a member agency of the San Joaquin River Exchange Contractors Water Authority (SJRECWA or Exchange Contractors). The participants would use one or more of the following projects to generate water that will be used when CVP water from San Luis Reservoir would have been delivered, allowing those deliveries to instead be re-stored in Los Banos Creek Detention Reservoir.

### A. Central California ID: Groundwater Substitution

Central California ID owns and operates approximately 60 groundwater wells within its service area. Central California ID would use up to 500 af of groundwater for irrigation purposes instead of its CVP Exchange Contract surface water, making CVP water available for temporary storage in Los Banos Creek Detention Reservoir.

### B. Central California ID: Conserved Water

Central California ID would use up to 500 af of conserved water, making CVP water available for temporary storage in Los Banos Creek Detention Reservoir. The conserved water would be generated through a conservation/tailwater recovery program, as described in the “Water Transfer Program for the San Joaquin River Exchange Contractors, 2014 – 2038 Environmental Impact Statement/Environmental Impact Report” approved by Reclamation on July 30, 2013.

### C. Grassland WD and San Luis WD: North Grasslands Water Conservation and Water Quality Control Project

Grassland WD and San Luis WD have jointly constructed a recirculation project, the “North Grasslands Water Conservation and Water Quality Control Project.” After CVP supplies are applied to various wetlands and refuges throughout the Grassland WD, it is re-collected and conveyed back up-gradient and re-applied to those same wetlands and refuges. In return for funding a portion of the project, San Luis WD can use up to half of the conserved water generated from the project.

This project would rely on an exchange of CVP refuge water supplies, leaving up to 500 af of CVP water stored in San Luis Reservoir which could be re-stored in Los Banos Creek Detention Reservoir.

This project was evaluated by Reclamation in the “North Grasslands Water Conservation/Water Quality Control and Level 2 Refuge Water Exchange Project Final Environmental Assessment” approved by Reclamation on April 24, 2017.

D. Grassland Water District and San Luis Water District: Groundwater Exchange

The Grassland WD and San Luis WD provide up to 500 af of groundwater supplies to wetlands and refuges within the Grassland WD, pursuant to an exchange that leaves an equivalent volume of CVP water stored in San Luis Reservoir, which could be re-stored in Los Banos Creek Detention Reservoir.

San Luis WD and/or Grassland WD desire to store up to 500 af of this CVP water in the Los Banos Creek Detention Reservoir.

This project was evaluated by Reclamation in the “5-Year Groundwater Acquisitions for South of Delta Central Valley Project Improvement Act Refuges Final Environmental Assessment” approved by Reclamation on January 28, 2016.

E. San Luis Water District: Meyers Water Bank Exchange

The San Luis WD stores CVP water in the Meyers Water Bank. As needed, banked CVP water is delivered into the Mendota Pool in exchange for water stored in San Luis Reservoir. On occasion, the stored water is at risk of loss or spill. San Luis WD desires to store up to 500 af of this exchanged CVP water in Los Banos Creek Detention Reservoir. This project would withdraw water from the Meyers Water Bank in lieu of deliveries from San Luis Reservoir, in order to make water available for re-storage at Los Banos Creek Detention Reservoir.

This project was evaluated by Reclamation in the “Amendment to the Meyers Groundwater Banking Exchange Agreement” and the Finding of No Significant Impact (FONSI) was approved by Reclamation in September 2013.

## **2.0 BACKGROUND**

### **2.1 Substance of Reclamation’s Permit**

Reclamation’s water right Permit 12860 is the subject of the change petition. Permit 12860 allows diversion to storage at San Luis Reservoir. This water right permit is available for review online through the Division’s eWRIMS electronic database at:

[eWRIMS Database](#)

The present place of use of water diverted under Reclamation’s specified permit is shown on a map on file with the State Water Board, and includes the Central California ID, San Luis WD, and Grassland WD service areas. Under Reclamation’s right, water may be used for irrigation, domestic, municipal, industrial, stockwatering, and recreational purposes.

## **2.2 Proposed Temporary Changes**

With the petition, Reclamation requests changes to Permit 12860 to temporarily add Los Banos Creek Detention Dam and three points of rediversion within Los Banos Creek to Reclamation's water rights. The change petition requests the temporary addition of the points of rediversion below:

- Los Banos Creek Detention Dam (Lat: 36.993 / Long: -120.934)
- Grassland Water District Downstream Delivery via Los Banos Creek (Lat: 37.072 / Long: - 120.880)
- Los Banos Creek at Central California ID Outside Canal (Lat: 37.040 / Long: - 120.891)
- Los Banos Creek to Delta Mendota Canal Inlet DMC MP 79.61(Lat: 37.018 / Long: -120.900)

## **3.0 PUBLIC NOTICE AND COMMENTS ON THE PROPOSED TEMPORARY CHANGE**

On July 24, 2020, the Division posted public notice of the change petition on the Division's website and sent notice to the water right transfers distribution list through the State Water Board's LYRIS e-mail notification system. In addition, on July 24, 2020, Reclamation noticed the change petition via publication in the Merced-Sun Star newspaper and mailed the notice via first class mail to interested parties, including water right holders with the potential to be affected by the changes. The comment deadline was August 24, 2020. No comments were received.

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

Water Code section 1729 exempts temporary changes involving a transfer or exchange of water from the requirements of the California Environmental Quality Act. The State Water Board will issue a Notice of Exemption for this project.

## **5.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

Pursuant to Water Code section 1725, "a permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would 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.)

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

- a. The proposed change would not injure any legal user of 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 water or return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*) In addition, if the water involved in the temporary change is moved to off-stream storage outside the watershed of origin within the one-year period, then the water may be put to beneficial use either during or after the one-year period. (*Ibid.*)

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

## **6.0 REQUIRED FINDINGS OF FACT**

### **6.1 Availability of Water for Transfer**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.” This serves to ensure that the change does not result in an

increase in use of water and addresses the potential for injury for other legal users of water by ensuring that the amount of water available for diversion downstream is not affected.

All of the water to be re-stored in Los Banos Creek Detention Reservoir for delivery later in the season is water that would have been consumptively used or stored in the absence of the requested change. In the absence of the change, the water would be “removed from use in the downstream water supply” because it would be exported from the Delta and stored in San Luis Reservoir.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer would be consumptively used or stored in the absence of the proposed temporary change.

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

Before approving a temporary change due to a transfer or exchange of water pursuant to article 1 of Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would not injure any legal user of the water during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) In general, the transfer of water that would otherwise be stored or consumptively used will not result in injury to other legal users of water.

### **6.2.1 Delta Exports**

Reclamation claims that the proposed changes will not result in diversion of additional water from the Delta, a change in the timing of CVP diversions, or the delivery of more CVP water than has been delivered historically. Instead, Reclamation maintains that the requested changes will provide the operational flexibility the CVP needs to improve water supply deliveries for wildlife refuges and CVP contractors. Reclamation proposes to limit the water re-stored in Los Banos Creek Detention Reservoir to water previously stored in San Luis Reservoir. Accordingly, the proposed changes will not result in an increase in the amount of natural and abandoned flow directly diverted from the Delta.

In addition, Reclamation proposes to limit the water re-stored in Los Banos Creek Detention Reservoir to water made available by groundwater pumping or conservation. The project participants will use the additional water generated through groundwater pumping or conservation in order to allow the CVP water that otherwise would have been delivered to them to instead be re-stored in Los Banos Creek Detention Reservoir for later use. Accordingly, the proposed changes will not result in a change in San Luis Reservoir operations or an increase in the amount of water exported from the Delta. This order requires Reclamation to track and account for the water withdrawn from storage and re-stored in accordance with these limitations.

## 6.2.2 Groundwater Substitution

Pumping additional groundwater to make water available for the proposed exchange has the potential to adversely affect groundwater supplies. The petition states that Central California ID could pump up to 500 af of groundwater within its service area. In addition, Grassland WD and San Luis WD may supply wetlands and refuges within Grassland WD with up to 500 af of groundwater in exchange for CVP surface water. The groundwater would be pumped from the Delta-Mendota Subbasin of the San Joaquin Valley Groundwater Basin, which the Department of Water Resources has designated as a high-priority basin pursuant to the Sustainable Groundwater Management Act (SGMA).

In the future, compliance with SGMA should ensure that groundwater pumping within the Delta-Mendota Subbasin, including any pumping associated with transfers or exchanges, is managed sustainably. Central California ID and Grassland WD have each formed or are part of a Groundwater Sustainability Agency (GSA) and have developed their Groundwater Sustainability Plans (GSPs). The GSAs adopted the GSPs on December 13, 2019 and were required to submit annual reports by April 1, 2020 providing information on groundwater conditions and implementation of the plan for the prior year. Reclamation states that the GSP covering Central California ID includes monitoring and accounting that is based and expands on the existing plan, which has been in place for many years. As an example, Central California ID is subdivided into seven different sub-basins of like hydrogeological conditions. The total annual groundwater extractions would be measured and compiled within and adjacent to each sub-basin, including any pumping for transfer. In addition, the plan includes groundwater level triggers in each sub-basin, which are specific to transfers. If groundwater in the spring is below the depth established as the trigger, then transfers from the sub-basin are not allowed in that year.

In addition to impacts to groundwater resources, groundwater substitution transfers or exchanges have the potential to impact surface water supplies. Depending on various factors, including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrologic conditions, the increase in groundwater pumped to enable the transfers or exchanges could result in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of groundwater and surface water (streamflow depletion). Consequently, groundwater pumping for transfers or exchanges has the potential to provide water at the expense of current and future streamflow, which in turn has the potential to injure legal users of the stream.

Within the Central California ID service area, Central California ID has established a series of shallow monitoring wells near the San Joaquin River as part of the seepage management plan for the San Joaquin River Restoration Program (SJRRP). Within the Central California ID service area, fine-grained materials have been deposited, separating groundwater adjacent to the river from the zone that is actively pumped. Data from the shallow monitoring wells were used to determine the locations where surface water and groundwater are disconnected. Central California ID will only utilize wells in these disconnected areas to develop water for transfers or exchanges. This management technique mitigates the potential to have any direct depletion of surface water. Grassland



WD is also a member of a GSA, the Grassland Groundwater Sustainability Agency, and has developed a GSP that is required to address any impacts to surface water attributable to groundwater pumping.

In light of the above, I find in accordance with Water Code section 1727, subdivision (b)(1) that the proposed changes and any associated increase in groundwater pumping will not injure any legal user of the water.

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

Before approving a temporary change due to a transfer or exchange 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).) In addition, 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 and in the public interest. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)

Reclamation provided CDFW and the Central Valley Regional Water Quality Control Board (Regional Board) with copies of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW and the Regional Board did not raise concerns regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

Los Banos Creek Detention Dam and the three points in Los Banos Creek are the locations where the exchanged water will be rediverted. The petition states the transfer will improve flexibility in managing multiple water sources over the irrigation season, while also increasing water supplies for wildlife refuges in the San Joaquin Valley. All the water to be re-stored in Los Banos Creek Diversion Reservoir for consumptive use later in the season is water that would have been delivered to the participating districts earlier in the season in the absence of the exchanges. As conditioned, there will be no change in San Luis Reservoir operations, the amount or timing of Delta pumping, or the amount of flow or water quality conditions in the Delta. In addition, the transfer will be subject to provisions of Reclamation's Permit 12860 and applicable Biological Opinions. Also, as previously mentioned, Reclamation has prepared, and the Board has reviewed, the National Environmental Policy Act (NEPA) documents for the various groundwater substitution, conservation, or exchange projects mentioned in the petition, which indicate that the proposed actions will not significantly affect listed or proposed threatened or endangered species and will not significantly impact natural resources.

Thus, the proposed exchanges will not unreasonably affect fish, wildlife or other instream beneficial uses.

## **7.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing.

## **8.0 CONCLUSIONS**

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

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

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change for the transfers or exchanges of up to 500 af of water under Permit 12860 is approved.

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

1. The transfers or exchanges must be effectuated within a one-year period commencing on the date of this Order. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary transfers or exchanges are carried out. In addition, water re-stored in Los Banos Creek Detention Reservoir may be withdrawn from storage in that reservoir and applied to beneficial use after the one-year period, provided that the water is moved to storage in the reservoir within the one-year period.
2. The points of diversion under Reclamation's Permit 12860 are temporarily amended to add:
  - Los Banos Creek Detention Dam (Lat: 36.993 / Long: -120.934)
  - Grassland Water District Downstream Delivery via Los Banos Creek (Lat: 37.072 / Long: - 120.880)

- Los Banos Creek at Central California ID Outside Canal (Lat: 37.040 / Long: -120.891)
  - Los Banos Creek to Delta Mendota Canal Inlet DMC MP 79.61(Lat: 37.018 / Long: -120.900)
3. During the period of transfers or exchanges, the petitioner shall comply with all applicable Biological Opinions.
  4. The total amount of the exchanged water re-stored in Los Banos Creek Detention Reservoir shall be limited to storage releases from San Luis Reservoir. There shall be no increase in Central Valley Project allocations or the amount or timing of Delta exports during the period of the exchanges. The total amount of water re-stored in Los Banos Creek Detention Reservoir is limited to water that would have been delivered to the project participants in the absence of this approval.
  5. Within 90 days of completion of the transfers or exchanges, Reclamation shall provide the Deputy Director for Water Rights a report describing the transfers or exchanges authorized by this Order. The report shall include the following information:
    - A description of the activities that generated water that was used in lieu of water stored in San Luis Reservoir in order to make water available for re-storage in Los Banos Creek Detention Reservoir.
    - The monthly amount of water generated (broken down by groundwater substitution or conservation and by project participant) in order to make water available for re-storage in Los Banos Creek Detention Reservoir;
    - The monthly average rate and volume moved from San Luis Reservoir to re-storage in Los Banos Creek Detention Reservoir;
    - Verification that the amount of water re-stored in Los Banos Creek Detention Reservoir would have been delivered to Central California ID, Grassland WD, or San Luis WD in the absence of the exchanges; and
    - The monthly average rate and volume of water released from storage in Los Banos Creek Detention Reservoir via Los Banos Creek to the three downstream points of rediversion.
  6. The exchanges are subject to compliance with the Department of Water Resources' Division of Safety of Dams requirements.
  7. 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.

8. This Order does not authorize any act which results in the taking of a candidate, 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.
9. 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.

#### STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director  
Division of Water Rights*

Dated: AUG 28 2020