

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

**DIVISION OF WATER RIGHTS**

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

**TEMPORARY URGENT CHANGE AND INSTREAM FLOW DEDICATION PURSUANT TO  
WATER CODE SECTIONS 1435 AND 1707**

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SOURCE: San Joaquin River

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

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**ORDER APPROVING TEMPORARY URGENT CHANGE AND INSTREAM FLOW DEDICATION**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS<sup>1</sup>:

**1. BACKGROUND**

The purpose of the proposed temporary urgent change and instream flow dedication 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.

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<sup>1</sup> On July 6, 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 urgent change if no objections are received. This order is adopted pursuant to the delegation of authority in section 4.41 of Resolution 2012-0029.



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 and Division Orders dated September 30, 2011 and October 1, 2012. The proposed change requests temporary authorization to continue the interim flow program beginning March 31, 2013 for a period of no longer than 180 days during the 2013 Water Year (WY). The proposed interim flow program would be terminated upon initiation of the long-term restoration flow program. Data obtained during the interim phase may be utilized to determine appropriate water right conditions for operating the long-term restoration program.

## 2. SUMMARY OF CHANGE PETITIONS

On March 26, 2013, the U.S. Bureau of Reclamation (Reclamation) submitted petitions for temporary urgent change and dedication of flow to instream purposes pursuant to Water Code sections 1435 and 1707, for its Permit Nos. 11885, 11886, and 11887. The petitions request temporary 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 diversion, (2) add the San Joaquin River channel from Friant Dam to the Sacramento-San Joaquin Delta (Delta) and through the Delta Channels to the Jones and Banks Pumping Plants to the place of use, and (3) add preservation and enhancement of fish and wildlife resources as an authorized purpose of use within the existing places of use depicted on: (a) maps 214-212-37 and 214-208-3331; and (b) within the reach of the San Joaquin River channel added to the place of use for dedication of instream flows.<sup>2</sup> The changes would temporarily continue the existing releases for instream use, which have been implemented under temporary approvals since water year 2010.

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.

In lieu of making deliveries to Reclamation's contractors via the Delta-Mendota Canal (DMC), releases of stored water would remain instream and subsequently be diverted at and near Mendota Dam for delivery through various canals and to flow through Mendota Dam. Similarly, water dedicated under Reclamation's rights at Friant Dam would remain instream and subsequently be diverted at and near Mendota Dam for delivery through various canals and to flow through Mendota Dam. Water would also be diverted into the Arroyo Canal and would flow past Sack Dam and would also be conveyed through the Sand Slough Control Structure to and through the Eastside Bypass. Water in the Eastside Bypass would thence flow through the Mariposa Bypass and thence the San Joaquin River and would also continue to flow through the Eastside Bypass to Bear Creek. Water would be re-diverted along the Eastside 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. Once additional channel improvements are made, water would also flow past Sack Dam and continue in the San Joaquin River channel.

Reclamation will coordinate its operation of Friant Dam with the San Luis Canal Company (SLCC) and the Central California Irrigation District (CCID). SLCC operates Sack Dam at the end of Reach 3 and delivers

<sup>2</sup> Attachment 1 is a map showing the relevant diversion facilities and places of use.



water to the Arroyo Canal. CCID operates and maintains Mendota Dam in Reach 2 and would release Interim and Restoration Flows from Mendota Dam.

The place of use for instream beneficial uses would include the San Joaquin River from Friant Dam to the San Joaquin River near Vernalis (including portions of the Eastside and Mariposa Bypasses), and thence to the Delta channels at the Jones and Banks Pumping Plants.

In addition to diverting water at various canals downstream of Friant Dam, Reclamation plans to divert water at the Jones and Banks Pumping Plants and at the San Luis Dam for 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. (DPEIS/R, p. 2-36.) Also, SJRRP 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 changes could be utilized through subsequent transfer and/or exchange actions separate from this action to facilitate the recapture and recirculation plan. (DPEIS/R, P. 2-36.) The petitions propose to limit water used for instream flow dedication to 389,355 acre-feet in wet years, as it was in previous years.

The petitions propose that conditions similar to those found in the October 1, 2012 Order be included as conditions for approval in the present order.

### **3. PUBLIC NOTICE OF THE PETITIONS**

The State Water Board will issue public notice of the petitions as soon as practicable, but no later than April 5, 2013. The State Water Board retains jurisdiction to change the terms and conditions of this Order to address any objections received in the timeframe provided in the notice.

### **4. CRITERIA FOR APPROVING THE PROPOSED INSTREAM FLOW DEDICATION AND TEMPORARY URGENT CHANGE**

Water Code section 1707 authorizes the use of the temporary urgency change provisions of Water Code section 1435 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 1435, Reclamation requested a temporary urgent change for the purpose of preserving and enhancing fish and wildlife resources. Before approving a petition under Water Code sections 1707 and 1435, the State Water Board must find that: (1) Reclamation has an urgent need to make the proposed change, (2) the proposed change will not increase the amount of water Reclamation is entitled to use, (3) the proposed change will not unreasonably affect any legal user of water or injure any lawful user of water, (4) the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses, (5) the proposed change is in the public interest, and (6) the proposed change otherwise meets the requirements of Division 2 of the Water Code.

### **5. DISCUSSION**

#### **5.1 The proposed change will not increase the amount of water Reclamation is entitled to use under Permits 11885, 11886 and 11887**

Water Code section 1707, subdivision (b)(1), requires that the State Water Board find, before approving a change to dedicate water to instream flows, that the proposed change will not increase the amount of water the person is entitled to use.



The proposed change does not seek to expand the season or amount of the diversion. As discussed herein, the proposed change seeks to modify the place and purpose of use to the Bureaus' existing water rights. Absent the proposed change, the water subject to the petitions would be consumptively used by Friant Division contractors by means of deliveries through the Madera and Friant-Kern Canals or would remain in storage for other authorized purposes and uses. There would be no expansion of existing obligations, or any increases in demands, to provide CVP water.

The State Water Board finds, in accordance with Water Code section 1707, subdivision (b)(1), that the proposed change will not increase the amount of water that Reclamation is entitled to use.

## **5.2 There is an urgent need to make the proposed change**

Water Code section 1435, subdivision (b)(1), requires that the State Water Board finds, before approving a temporary urgent change, that there is an urgent need to make the proposed change.

The State Water Board issued the October 1, 2012 Approval Order authorizing the dedication and rediversion of Interim Flows and the additional purpose of use of fish and wildlife preservation and enhancement. That order is effective until March 30, 2013. Pursuant to the directive in the Settlement Act to maintain the flow schedule provided in the Settlement, Reclamation filed the temporary urgency change petition to authorize the continued dedication and rediversion of Interim Flows commencing on March 31, 2013 and to add the preservation and enhancement of fish and wildlife as an authorized purpose of use. Approval of this temporary urgency change petition will facilitate maintenance of a live streambed in the San Joaquin River channel as directed by Congress in the Settlement Act, and will facilitate the ongoing temperature studies, egg transfer studies and adult salmon spawning studies prepared for the upcoming months. The information in these studies will be important to future decisions regarding fisheries management. Continuing to gather data in the ongoing temperature studies will be particularly important because it has been a dry water year, resulting in a low cold water pool in Millerton Lake at a time when air temperatures remain elevated.

On May 9, 2012, Reclamation filed petitions for indefinite change pursuant to Water Code sections 1700 and 1707 to authorize both the Interim and Restoration flows defined in the Settlement, requesting that the change be approved as of October 1, 2012. Those petitions are currently pending before the Division of Water Rights (Division). Reclamation has responded to all requests for information by the Division. A decision on the long-term change petition has been delayed due to the necessity to evaluate significant amounts of new information submitted by one protestant on March 18, 2013. Issuance of a temporary urgency petition will prevent a shift in the status quo while the petitions for long-term change are pending.

For these reasons, the State Water Board has concluded that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented. (See Wat. Code § 1435, subd. (c).)

The State Water Board finds, in accordance with Water Code section 1435, subdivision (b)(1), that there is an urgent need to make the proposed change.

## **5.3 The proposed change will not injure any lawful user of water.**

Water Code section 1435, subdivision (b)(2) requires that the State Water Board find, before approving a temporary urgent change, that the proposed change may be made without injury to any other lawful user of water. Water Code section 1707, subdivision (b)(2) requires that the State Water Board find, before approving a change to dedicate water to instream flows, that the proposed change will not unreasonably affect any legal user of water.

This temporary urgency change petition maintains the conditions of the water year 2012 temporary change, which were found to protect legal users of water.



In the Supplement to Petitions, pages 8 through 14, Reclamation addresses whether there would be any legal injury to downstream prior right and riparian right holders, San Joaquin River Holding Contractors (Holding Contractors), Exchange Contractors and other Water Rights Settlement Contractors, Friant Division CVP Water Service Contractors, CVP and SWP Contractors including South-of-Delta Water Service Contractors, Eastside Division Water Service Contractors or Water Users on Eastside Tributaries, in-Delta Diverters and Contra Costa Water District 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. Reclamation concludes that there would be no injury.

Reclamation, has demonstrated that all water subject to the instream flow dedication would otherwise have remained in storage at Millerton Reservoir or would have been diverted into the Madera and Friant-Kern Canals for consumptive use in the Friant Diversion service area of the CVP, rather than being released for other water right holders downstream of Friant Dam. Reclamation provided the State Water Board with evaluations of 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 changes (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.) Water that would be present in the channel under the proposed change would be water diverted under existing permit terms and conditions but used for instream purposes instead of being diverted or rediverted at the Madera and Friant-Kern Canals for other beneficial use. Therefore, water would be dedicated to instream flow at Friant Dam without legal injury to downstream water right holders.

If release of water from Friant Dam is required for flood control purposes, the petition indicates that concurrent Interim and Restoration flows would be reduced by an amount equivalent to the required flood control release. If flood control releases from Friant Dam exceed the concurrent scheduled Interim and Restoration Flows under the Settlement Act, no additional releases above those required for flood control would be made for purposes of implementing the Settlement Act.

Water released downstream represents water that has been previously diverted to storage at Friant Dam without legal injury. Water present in the channel is therefore foreign in time and downstream water right holders face no cognizable injury by not being able to divert it.

While the 2012 EIS/EIR for implementation of the Settlement Act finds a potential cumulative impact to groundwater and CVP contractors over the long term, based on potential deliveries under unchanged water right permits, such an impact is unlikely to occur or to cause any legal injury to diverters over the duration of the proposed temporary change, which will be 180 days at most.

A discussion of potential injury to specific users of water follows.

### **5.3.a Holding Contractors**

The releases from Millerton Reservoir pursuant to this action would be in addition to that quantity of releases otherwise required under the San Joaquin River Holding Contracts to maintain the 5 cubic feet per second (cfs) requirement at Gravelly Ford and would not interfere with the ability of landowners from Friant Dam to Gravelly Ford to exercise existing riparian or overlying rights. Reclamation estimates that up to 230 cfs of flow is needed to maintain the 5 cfs flow requirement at Gravelly Ford. (Table 2-6 of Final WY 2010 EA/IS.) Water released to maintain the 5 cfs flow requirement is not part of the 1707 instream flow dedication. (See Condition 6.)



### **5.3.b Exchange Contractors**

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 other than the San Joaquin River. The water is delivered via the Delta-Mendota Canal (DMC).

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 from the DMC or other sources, including the San Joaquin River. Reclamation currently delivers water to the Exchange Contractors at the Mendota Pool via the DMC, but is permitted to change this under the contract. In order to make releases of available storage from Millerton Reservoir in lieu of deliveries from the Delta Mendota Canal, if such releases become necessary under the terms and conditions of the Exchange Contract, Reclamation states that it will ensure that sufficient Millerton Reservoir storage is maintained, and that available San Joaquin River channel capacity is not impeded by flows from the proposed action. Reclamation will ensure that necessary deliveries from the Delta Mendota Canal pursuant to the terms and conditions of the Exchange Contract will be made. The order contains a condition clarifying that approval of the petitions does not alter or change in any manner Reclamation's existing contractual obligations.

In order to prevent project-related impacts to water quality raised as a concern by the Exchange Contractors in prior years, Reclamation will be required to continue to implement the Mendota Pool Water Quality Response Plan. (Section 2.2.6 of the WY 2012 EA.) In order to prevent project-related seepage impacts, Reclamation will be required to implement the Seepage Monitoring and Management Plan. (Section 2.2.6 in WY 2012 EA and Appendix G.) Further, Reclamation will be limited to releasing instream flows to those flows that are within the non-damaging channel capacity and consistent with the underseepage analysis. (Section 2.2.5, Appendix I and Table 2-8 of WY 2012 EA.) Should Reclamation make improvements in channel capacity during the course of the year, releases in accordance with Table 2-3 of the WY 2012 EA should not result in injury.

### **5.3.c Friant Division CVP Water Service Contractors**

Release of flows from Millerton Reservoir to implement the proposed action would reduce allocations to Friant Division CVP water service contractors. However, Friant Division demands would be met through increased groundwater pumping and possibly recapture of water. Section 4.10 of the Final WY 2010 EA/IS concludes that reductions in deliveries due to the WY 2010 interim flows would result in less-than significant impacts. Section 3.2.3 of the WY 2011 Supplemental EA states that, although implementation of the proposed action could potentially result in changed effects to agricultural resources, the proposed action would be consistent with the Settlement Act. The WY 2011 Supplemental EA evaluated a one year project, and found no potential for harm. The proposed change would be limited to 180 days. Therefore conversion of agricultural lands to non-agricultural lands is unlikely. Also, Table 3-1 of the WY 2012 Supplemental EA provides that it is unlikely that any constraints upon recapture opportunities would result in any such conversion.

### **5.3.d Other CVP and SWP Contractors, Including South-of Delta Water Service Contractors**

Absent the proposed action, Reclamation would continue to release water at Friant Dam to maintain 5 cfs at Gravelly Ford and provide flows in accordance with the Exchange Contract. Reclamation maintains 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 change.



Reclamation evaluated water supply impacts in a Water Operations Model, which was circulated as an Appendix to the 2010 EA/IS. 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 change 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.) Section 2.2.8 of the WY 2011 EA concludes that using water released under the proposed action to meet Vernalis flow requirements would not adversely affect conditions in the Stanislaus River, and that the proposed action has the potential to increase San Joaquin River flows downstream of the confluence with the Merced. Section 3.2.2 of the WY 2012 Supplemental EA concludes that, for the same reasons described in the Final WY 2010 EA/IS and the WY 2011 Supplemental EA, the proposed action would result in less than significant impacts to hydrology. Therefore, CVP contractors taking delivery from New Melones Reservoir would not be significantly affected.

### **5.3.e Furnishing Water for Fish Hatchery Purposes**

Approval of the proposed action will not interfere with any customary provision, by means of pipeline from Friant Dam, of up to 35 cubic feet per second of incidental flow to the San Joaquin Fish Hatchery. This flow is already an incidental component of the quantity of water released from Friant Dam to maintain the 5 cfs requirement at Gravelly Ford pursuant to the Holding Contracts.

A discussion of potential harm to other legal users of water is found herein. Notably, the change will be conditioned to require Reclamation to: (1) continue to meet contractual obligations, (2) implement the Seepage Monitoring and Management Plan, and (3) implement the Mendota Pool Water Quality Response Plan.

The State Water Board finds, in accordance with Water Code section 1435, subdivision (b)(2) and Water Code section 1707, subdivision (b)(2), that the proposed change, as conditioned, will not injure or unreasonably affect any lawful or legal user of water.

### **5.4 The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses**

Water Code section 1435, subdivision (b)(3) requires that the State Water Board find, before approving a temporary urgent change, that the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

In its petitions, Reclamation states that the proposed change and dedication of instream flow would not have significant negative effects on fisheries or their habitats. (Petition Supplement, pp. 15-17.) This includes listed, special-status, native or migratory fish species. The proposed change and dedication of instream flow would augment streamflow and provide generally high-quality water. Any flow modifications would be made in coordination with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS), as applicable. Recapture of water dedicated for instream flow would occur only in compliance with regulatory requirements, including the USFWS and NMFS biological opinions or other requirements. The proposed change would require Reclamation to comply with the Steelhead Monitoring Plan in Appendix D to the WY 2012 EA.

The temporary change has 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 EA considered possible effects upon wildlife and other instream beneficial uses and determined that the instream flows to be dedicated will not have a significant negative effect upon wildlife resources, or other instream beneficial uses. In fact, the change is likely to improve fish and wildlife resources along the San



Joaquin River. The State Water Board has determined that measures to address the management of reservoir and instream flow releases are appropriate.

The State Water Board finds, in accordance with Water Code section 1435, subdivision (b)(3), that the proposed change, as conditioned, will not unreasonably affect fish, wildlife, or other instream beneficial uses.

### **5.5 The proposed change is in the public interest**

Water Code section 1435, subdivision (b)(4) requires that the State Water Board finds, before approving a temporary urgent change, that the proposed change is in the public interest.

Article X, Section 2 of the California Constitution declares that the water resources of the State be put to the beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

Water Code Section 104 declares that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection.

Water Code Section 105 declares that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

Irrespective of this Order, 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. Operation of the interim flows project in accordance with the Settlement, the Settlement Act, and in keeping with Fish and Game Code 5937 is in the public interest.

Approval of the proposed change is necessary to enable the petitioner to achieve the Settlement's simultaneous goals of restoring and maintaining fish populations in good condition in the main stem of the San Joaquin River from Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish ("Restoration Goal"), while reducing or avoiding adverse water supply impacts to all of the Friant Division long-term Central Valley Project contractors that may result from the Interim Flows provided for in the Settlement ("Water Management Goal"). Through the Settlement Act, Congress authorized and directed the petitioner, through the Secretary of the Interior, to implement the Settlement, and in doing so, to retain, acquire, or perfect all rights to manage and control all Interim flows, subject to applicable provision of California water law.

If the proposed change is not approved, Interim Flows will not be authorized. As discussed above, Interim Flows are necessary to achieve the Restoration Goal, and in the near term, to evaluate progress towards achievement of the goal and to facilitate adaptive management of flows in furtherance of that goal. Authorization of additional points of rediversion is necessary to achieve the Water Management Goal.

The Restoration and Water Management goals are set forth in the Settlement. In general, the State Water Board supports settlements that are consistent with the Water Code. Though implementation of the Settlement is underway, the State Water Board is aware that the settling parties continue to discuss how the Water Management Goal should be realized. Though there is some disagreement, as expressed in objections to prior years' petitions, the parties have informed the State Water Board that they are nearing consensus. Approval of the proposed change will allow continued operation of the SJRRP while



the settling parties strive for consensus on outstanding issues relating to the Water Management Goal.

Therefore, in carrying out the purpose and public policy set forth in the Settlement Act, the proposed changes presented in this petition are in the public interest.

The State Water Board finds, in accordance with Water Code section 1435, subdivision (b)(4), that the proposed change is in the public interest.

#### **5.6 The proposed change otherwise complies with the Division 2 of the Water Code**

Reclamation has complied with the procedures for change petitions under Water Code, section 1425. As discussed above, the project will not injure other legal users of water, does not unreasonably harm fish and wildlife, does not enlarge petitioner's rights, is urgently needed, and is in the public interest. Petitioners have permitted waters right issued by the State Water Board and there is no indication of forfeiture. Therefore, this change petition meets the applicable requirements of Division 2 of the Water Code.

### **6. COMPLIANCE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Reclamation filed the petitions for a temporary urgent change and instream flow dedication under Water Code sections 1435 and 1725 et seq. in order to continue operation under a temporary flow regime. As such, the current petition maintains the existing baseline conditions for purposes of the California Environmental Quality Act (CEQA).

Reclamation and the Department of Water Resources have prepared and certified a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) which covers both the interim flows contemplated in this temporary urgency permit, and long-term implementation of the San Joaquin River Restoration Program, including interim and future restoration flows. Reclamation filed its Record of Decision adopting the EIR/EIS on September 28, 2012, and Department of Water Resources filed its Notice of Determination on October 1, 2012. Additionally, Reclamation and the Department of Water Resources conducted environmental analysis under the National Environmental Policy Act and CEQA, respectively, for prior years implementation of interim flows. These documents are a joint Environmental Analysis (EA)/Initial Study for the Water Year (WY) 2010 Interim Flows Project, and the resulting Finding of No Significant Impact (FONSI) and Mitigated Negative Declaration, finalized July 2010; Reclamation's EA and FONSI for the WY 2011 Interim Flows Project, finalized September 2010; and Reclamation's EA and FONSI for the WY 2012 Interim Flows Project, finalized September 2011. The State Water Board has reviewed and considered these environmental documents in making a determination on the instant petition.

The joint EIR/EIS identifies a series of potentially significant impacts on water resources and public trust uses within the State Water Board's jurisdiction. While none of these are likely to occur in the limited 6 month period covered by this temporary urgency permit, the State Water Board will make findings and adopt mitigation concerning the all of those where this approval might contribute cumulatively to the impacts over the longer term. Consideration of these longer-term impacts in the cumulative analysis does not limit the State Water Board's ability to require different mitigation for a longer-term petition approval, or to disapprove the petition altogether

#### **6.1 Impact UTL-11: Potential for Insufficient Existing Water Supply and Resources**

Finding: For the reasons stated in the EIS/EIR, the State Water Board finds that an overall reduction in surface water deliveries to Friant Division long-term contractors will result if all Interim and Restoration flows are not recaptured, potentially resulting in increased reliance on groundwater supplies and increased overdraft. Reclamation will consider regional overdraft conditions in evaluating candidate groundwater banking projects developed under Title III of the Settlement Act. Additionally, the flow



releases into the channel itself may to some extent serve to recharge the groundwater basin. It is uncertain if these efforts will be fully sufficient in addressing any increased overdraft problems, and the State Water Board has identified no other feasible mitigation measures exist without a change in the laws governing groundwater, if the mitigation is insufficient.

**Statement of Overriding Considerations:** The Settlement resolves claims concerning compliance with laws regarding water diversions, including Fish and Game Code 5937 and public trust limits to flow diversions on the San Joaquin River. Addressing these legal issues through settlement allows stakeholders to minimize the harm that any one stakeholder will suffer, by entering into agreements that might not be possible to achieve through a court or regulatory order. Here, the detailed recirculation planning, the funding for facility upgrades to allow these, and the increased potential for groundwater banking funding are mitigations that may not have been possible outside of a cooperative settlement context. The social and environmental benefits of river restoration are high, particularly in light of the potential to restore a salmon run with high recreational and associated economic benefits, and the benefit to the threatened Central Valley Spring Run Chinook salmon. Additionally, the finality of the Settlement brings beneficial certainty to all parties involved.

Additionally, the many of the aquifers in the San Joaquin River Basin and the Tulare Basin are already in a state of increasing overdraft. While the potential reductions to surface deliveries may affect the rate of this overdraft, the problem already exists. The flow changes requested are unlikely to interfere with any effort that might be taken in the future to address the problem.

The State Water Board finds the remaining risk of potentially significant and unavoidable impacts after Settlement implementation to be acceptable because the environmental, economic, legal, social, technological and other benefits of settling the longstanding litigation and addressing the flow in the San Joaquin River outweigh and override this potential impact.

## **6.2 Impact UTL-16: Potential for Insufficient Existing Water Supply and Resources from Recapture of Interim and Restoration Flows Between the Merced River and the Delta**

**Finding:** For the reasons stated in the EIS/EIR, the State Water Board finds that an overall reduction in surface water will result if all Interim and Restoration flows are not recaptured between the Merced River and the Delta, which may result in increased use of groundwater supplies, thereby increasing overdraft. Reclamation will consider regional overdraft conditions in evaluating candidate groundwater banking projects developed under Title III of the Settlement Act. Additionally, the flow releases into the channel itself may to some extent serve to recharge the groundwater basin. It is uncertain if these efforts will be fully sufficient in addressing any increased overdraft problems between the Merced River and the Delta, and the State Water Board has identified no other feasible mitigation measures exist without a change in the laws governing groundwater, if the mitigation is insufficient.

**Statement of Overriding Considerations:** The Settlement resolves claims concerning compliance with laws regarding water diversions, including Fish and Game Code 5937 and public trust limits to flow diversions on the San Joaquin River. Addressing these legal issues through settlement allows stakeholders to minimize the harm that any one stakeholder will suffer, by entering into agreements that might not be possible to achieve through a court or regulatory order. Here, the detailed recirculation planning, the funding for facility upgrades to allow these, and the increased potential for groundwater banking funding are mitigations that may not have been possible outside of a cooperative settlement context. The social and environmental benefits of river restoration are high, particularly in light of the potential to restore a salmon run with high recreational and associated economic benefits, and the benefit to the threatened Central Valley Spring Run Chinook salmon. Additionally, the finality of the Settlement brings beneficial certainty to all parties involved.

Additionally, the many of the aquifers in the San Joaquin River Basin and the Tulare Basin are already in a state of increasing overdraft. While the potential reductions to surface deliveries may affect the rate of



this overdraft, the problem already exists. The flow changes requested are unlikely to interfere with any effort that might be taken in the future to address the problem.

The State Water Board finds the remaining risk of potentially significant and unavoidable impacts after Settlement implementation to be acceptable because the environmental, economic, legal, social, technological and other benefits of settling the longstanding litigation and addressing the flow in the San Joaquin River outweigh and override this potential impact.

### **6.3 Impact REC-12: Effects on Boating Opportunities from Increased Flow in the Restoration Area: Implement Recreation Outreach Program**

Reclamation will continue to implement the recreation outreach plan developed for the most recent Interim Flows Project.

Finding: For the reasons stated in the EIS/EIR, the State Water Board finds that implementing Condition 25 will reduce significant impacts on boating opportunities to a less-than-significant level because the recreation program will inform the recreating public as well as agencies and organizations that serve the recreating public and protect public safety, of changes in river flows that would occur as result of the temporary urgency permit approval.

### **6.4 Impact GRW-4: Change in Groundwater Levels in CVP/SWP Water Service Areas**

Finding: For the reasons stated in the EIS/EIR, the State Water Board finds that reduced surface water deliveries to the Friant Division long-term contractors would potentially increase reliance on groundwater and result in adverse impacts to groundwater levels and quality. Reclamation will consider regional overdraft conditions in evaluating candidate groundwater banking projects developed under Title III of the Settlement Act. Additionally, the increase in live streamflows in the San Joaquin River channel may increase groundwater recharge. Whether remaining groundwater overdraft would be potentially significant and unavoidable is unknown, and no feasible mitigation measures exist to reduce impacts associated with changes in groundwater levels in the CVP/SWP service area, absent a change in law.

Statement of Overriding Considerations: The Settlement resolves claims concerning compliance with laws regarding water diversions, including Fish and Game Code 5937 and public trust limits to flow diversions on the San Joaquin River. Addressing these legal issues through settlement allows stakeholders to minimize the harm that any one stakeholder will suffer, by entering into agreements that might not be possible to achieve through a court or regulatory order. Here, the detailed recirculation planning, the funding for facility upgrades to allow these, and the increased potential for groundwater banking funding are mitigations that may not have been possible outside of a cooperative settlement context. The social and environmental benefits of river restoration are high, particularly in light of the potential to restore a salmon run with high recreational and associated economic benefits, and the benefit to the threatened Central Valley Spring Run Chinook salmon. Additionally, the finality of the Settlement brings beneficial certainty to all parties involved.

Additionally, the many of the aquifers in the San Joaquin River Basin and the Tulare Basin are already in a state of increasing overdraft. While the potential reductions to surface deliveries may affect the rate of this overdraft, the problem already exists. The flow changes requested are unlikely to interfere with any effort that might be taken in the future to address the problem.

The State Water Board finds the remaining risk of potentially significant and unavoidable impacts after Settlement implementation to be acceptable because the environmental, economic, legal, social, technological and other benefits of settling the longstanding litigation and addressing the flow in the San Joaquin River outweigh and override this potential impact.



### **6.5 Impact GRW-5: Change in Groundwater Quality in CVP/SWP Water Service Areas**

**Finding:** Although in the short term there would not be increased groundwater depletion, as groundwater drawdown would be within the range of historical fluctuations, for the reasons stated in the EIS/EIR, the State Water Board finds that over the long term, reduced surface water deliveries to Friant Division long-term contractors would potentially increase reliance on groundwater, thereby potentially increasing overdraft. Such an increase in groundwater pumping for a prolonged period could not only decrease groundwater levels, but could potentially lead to upwelling of poorer quality groundwater. The San Joaquin Valley Groundwater Basin is in a state of overdraft, and groundwater levels are expected to continue in a downward trend absent changes in law or pumping practices that would limit groundwater usage to levels that halt the decline. Reclamation will consider regional overdraft conditions in evaluating candidate groundwater banking projects developed under Title III of the Settlement Act. Additionally, the increase in live streamflows in the San Joaquin River channel may increase groundwater recharge. Whether remaining groundwater overdraft would be potentially significant and unavoidable is unknown, and no feasible mitigation measures exist to reduce impacts associated with changes in groundwater levels in the CVP/SWP service area, absent a change in law.

**Statement of Overriding Considerations:** The Settlement resolves claims concerning compliance with laws regarding water diversions, including Fish and Game Code 5937 and public trust limits to flow diversions on the San Joaquin River. Addressing these legal issues through settlement allows stakeholders to minimize the harm that any one stakeholder will suffer, by entering into agreements that might not be possible to achieve through a court or regulatory order. Here, the detailed recirculation planning, the funding for facility upgrades to allow these, and the increased potential for groundwater banking funding are mitigations that may not have been possible outside of a cooperative settlement context. The social and environmental benefits of river restoration are high, particularly in light of the potential to restore a salmon run with high recreational and associated economic benefits, and the benefit to the threatened Central Valley Spring Run Chinook salmon. Additionally, the finality of the Settlement brings beneficial certainty to all parties involved.

Additionally, the many of the aquifers in the San Joaquin River Basin and the Tulare Basin are already in a state of increasing overdraft. While the potential reductions to surface deliveries may affect the rate of this overdraft, the problem already exists. The flow changes requested are unlikely to interfere with any effort that might be taken in the future to address the problem.

The State Water Board finds the remaining risk of potentially significant and unavoidable impacts after Settlement implementation to be acceptable because the environmental, economic, legal, social, technological and other benefits of settling the longstanding litigation and addressing the flow in the San Joaquin River outweigh and override this potential impact.

### **6.6 Cumulative Impact on Utilities and Service Systems**

As discussed above in sections 7.1 and 7.2, implementing the Interim flows over the next six months could potentially add to a cumulative reduction in water supply deliveries to Friant Division long-term contractors and to other CVP water users between the Merced River and the Delta. This potentially significant impact with no feasible mitigation measures could also combine with other water supply reductions related to regulatory compliance for habitat restoration, fisheries management, and the constraints of existing facilities. Over the long term, and consistent with the Settlement Act, Reclamation will develop a plan to recirculate, recapture, reuse, exchange, or transfer water released for Interim and Restoration flows to address reduced deliveries to Friant Division long-term contractors. In addition, a recovered water account will be established to provide an accounting of reductions in water supply deliveries to Friant Division long-term contractors and to make surplus water available at a discounted rate to the affected contractors. However, these actions may not fully mitigate losses in water deliveries, and new water sources could be required. Therefore, the temporary flows would contribute to this significant cumulative and unavoidable impact.



Statement of Overriding Considerations: The Settlement resolves claims concerning compliance with laws regarding water diversions, including Fish and Game Code 5937 and public trust limits to flow diversions on the San Joaquin River. Addressing these legal issues through settlement allows stakeholders to minimize the harm that any one stakeholder will suffer, by entering into agreements that might not be possible to achieve through a court or regulatory order. Here, the detailed recirculation planning, the funding for facility upgrades to allow these, and the increased potential for groundwater banking funding are mitigations that may not have been possible outside of a cooperative settlement context. The social and environmental benefits of river restoration are high, particularly in light of the potential to restore a salmon run with high recreational and associated economic benefits, and the benefit to the threatened Central Valley Spring Run Chinook salmon. Additionally, the finality of the Settlement brings beneficial certainty to all parties involved.

Additionally, the many of the aquifers in the San Joaquin River Basin and the Tulare Basin are already in a state of increasing overdraft. While the potential reductions to surface deliveries may affect the rate of this overdraft, the problem already exists. The flow changes requested are unlikely to interfere with any effort that might be taken in the future to address the problem.

The State Water Board finds the remaining risk of potentially significant and unavoidable impacts after Settlement implementation to be acceptable because the environmental, economic, legal, social, technological and other benefits of settling the longstanding litigation and addressing the flow in the San Joaquin River outweigh and override this potential impact.

## **7. CONCLUSIONS**

In accord with the findings discussed above, the State Water Board approves Reclamation's petitions under Water Code sections 1425 and 1707 for water right Permits 11885, 11886, and 11887, under the conditions below.



## ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** Reclamation's petitions for temporary urgent change and dedication of water for instream purposes pursuant to Water Code sections 1707 and 1435 are approved for a period of up to 180 days from date of issuance of this order, subject to prior vested water rights, under the following conditions.

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 added to the water rights for: (a) water released from storage or (b) water previously diverted at Friant Dam that remains under the dominion and control of the right holder from Friant Dam to these locations pursuant to Water Code section 1707. All coordinates 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  $\frac{1}{4}$  of NE  $\frac{1}{4}$  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 NE  $\frac{1}{4}$  of Section 19, T13S, R15E, MDB&M.
    - ii. Outside Canal – North 1,741,896 feet and East 6,599,689 feet, being within SE  $\frac{1}{4}$  of Section 19, T13S, R15E, MDB&M.
    - iii. Columbia Canal – North 1,746,420 feet and East 6,605,595 feet, being within NE  $\frac{1}{4}$  of Section 20, T13S, R15E, MDB&M.
    - iv. Helm Ditch - North 1,745,022 feet and East 6,598,787 feet, being within NE  $\frac{1}{4}$  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  $\frac{1}{4}$  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  $\frac{1}{4}$  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  $\frac{1}{4}$  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  $\frac{1}{4}$  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  $\frac{1}{4}$  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  $\frac{1}{4}$  of Section 8, T8S, R11E, MDB&M. (at East Bear Creek Unit, San Luis National Wildlife Refuge).
  - G. Jones Pumping Plant – North 2,114,400 feet and East 6,248,073 feet, being within SW  $\frac{1}{4}$  of SW  $\frac{1}{4}$  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  $\frac{1}{4}$  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 facility 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 facility 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 facility 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.

Rediversion at the West Stanislaus Irrigation District facility shall only occur if Reclamation obtains authority to take any listed species. Rediversion at the Patterson Irrigation District facilities shall only occur after the proposed fish screen is functional and operationally compliant.

- 2. Direct diversion of flows originating downstream of Friant Dam is not authorized. Only water available at Friant Dam may be dedicated for preservation of fish and wildlife pursuant to Water Code section 1707 and subsequently utilized downstream of the dam at the authorized locations.
- 3. Any San Joaquin River Settlement Interim Flows that are recaptured and stored or routed through San Luis Reservoir shall be used consistent with the Settlement and Settlement Act. The water need not be delivered back to the Friant Division Contractors, but may be made available to others through transfers, exchanges and sales. Reclamation shall document that it has taken all practicable measures to provide contract water to the Friant Division Contractors, while complying with all other conditions of this water right.

One of these practicable measures shall include implementation of the February 2011 Draft Plan for the Recirculation, Recapture, Reuse, Exchange or Transfer of Interim and Restoration Flows, unless superseded by a final recirculation plan, which is anticipated in October 31, 2013. The Recirculation Plan may be revised and amended from time to time as the physical conditions in the river change due to implementation of the SJRRP. To the extent the recirculation plan or any revision thereto includes components that are subject to state approval under Section 8 of the Reclamation Act of 1902, those components are subject to review, modification and approval of the Deputy Director for Water Rights. The plan shall be timely implemented.

- 4. The following additional place of use is added:

San Joaquin River from Friant Dam to the Sacramento-San Joaquin Delta (Delta) and through the Delta Channels to the Jones and Banks Pumping Plants, as shown on map 1785-202-53.

- 5. The following purpose of use is added to the water rights: fish and wildlife preservation and enhancement within: (a) the places of use depicted on maps 214-212-37 and 214-208-3331, and (b) the reach of the San Joaquin River place of use for dedication of instream flows as shown on map 1785-202-53.
- 6. The SJRRP flows dedicated for the purpose of fish and wildlife preservation and enhancement are 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 from Friant Dam to Gravelly Ford pursuant to the obligations of the Holding Contracts executed by Reclamation.
- 7. The instream flow releases shall be consistent with restoration flow guidelines. (Appendix C to the Final WY 2010 EA/IS). The Restoration Year type and determination of flow releases shall be based on Section 2.2.3 to the WY 2012 EA. The instream flow releases may exceed those estimated



maximums shown in Tables 2-1 and 2-2 to the WY 2012 EA, but shall not exceed the maximums shown in Table 2-3.

8. For purposes of accounting for protected instream flows, Reclamation shall monitor river stage and flow conditions at the following locations during all periods when SJRRP flows are 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. River stage and flow conditions shall also similarly 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](http://cdec.water.ca.gov) on a daily basis. Flow conditions shall also similarly 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.

9. The change 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 EA .

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 July 1, 2013 for public review and comment and shall also provide this information to the Division. Reclamation shall consider any comments submitted by July 31, 2013 and shall draft written responses, which may include revisions to the thresholds, by September 30, 2013. Comments, responses, and then-current thresholds shall be published on the SJRRP website by September 30, 2013, 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 September 30, 2013, Reclamation shall publish on the SJRRP website the location of all new monitoring wells installed in the 2013 calendar year and its plans for installation for additional monitoring wells in 2013, including proposed well locations and estimated timelines for installation. Plans for installation of new monitoring wells shall include surveying well locations.



10. 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.
11. 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 EA and in the USACE 2003 San Joaquin River Mainstem, California Reconnaissance Report, Sacramento District. 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.
12. In the event that SJRRP flows create seepage conditions, Reclamation shall reduce SJRRP flows to the last known flow volume 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 SJRRP flows). Recognizing that many factors contribute to groundwater elevations, Reclamation shall manage SJRRP flows to avoid exceeding a seepage action threshold to the extent possible.
13. Reclamation shall coordinate its operations with the Central California Irrigation District (CCID) and the San Luis Canal Company (SLCC). When SJRRP 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 SJRRP 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 SJRRP 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 SJRRP 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 SJRRP 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 SJRRP flows.

Reclamation shall also notify diversion facility owners within the reach of the instream flow dedication that flows dedicated for preservation and enhancement of fish and wildlife resources pursuant to Water Code section 1707 are protected under the California Water Code and shall not be diverted or stored unless otherwise authorized by Reclamation, subject to the conditions of Reclamation's water rights.
14. The authorization to release and to dedicate SJRRP flows for instream use at Friant Dam shall not be construed as authorizing any act that results in damage that could result in imminent failure to: (a) private levees located along the San Joaquin River, (b) facilities, including levees and related structures, which are part of the San Joaquin River Flood Control Project, (c) Mendota Dam, (d) bifurcation structure at Chowchilla Bypass, (e) Sand Slough control structure, or (f) headworks of Mariposa Bypass. Reclamation shall be responsible for operating the SJRRP in a way that does not result in such damage.
15. Release and dedication of SJRRP flows for instream use at Friant Dam shall be managed to avoid interference with operations of the Lower San Joaquin River Flood Control Project.



16. Within 90 days of issuance of this Order, Reclamation shall consult with the Central Valley Flood Protection Board, Lower San Joaquin Levee District, DWR, or any other appropriate agency to ensure that the proposed flows will not compromise the flood safety features of the San Joaquin River and Eastside and Mariposa Bypasses. Reclamation shall provide information on the consultation to the Deputy Director for Water Rights with the electronic annual report of water use.
17. Approval of the SJRRP petitions shall not modify or amend the rights and obligations of the parties to: (a) the San Joaquin River Exchange Contract, Ilr-1144, as amended February 14, 1968, and (b) contracts executed as of October 1, 2012 between the United States and various contracting entities providing for adjustment and settlement of certain claimed water rights in and to the use of the San Joaquin River to satisfy obligations of the United States under Schedule 2 of the Contract for Purchase of Miller and Lux Water Rights (Contract Ilr-1145, dated July 27, 1939). Nothing herein changes Reclamation's obligations with respect to the Exchange Contractors or with respect to obligations under Schedule 2 of Contract Ilr-1145.
18. Pumping and conveyance of SJRRP flows under Permits 11885, 11886 and 11887 by or through Central Valley Project (CVP) and State Water Project (SWP) facilities: (1) shall be consistent with all applicable provisions of law (including the Agreement of November 24, 1986, between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the CVP and the SWP as authorized by Congress in section 2(d) of the Act of August 26, 1937 ( 50 Stat. 850, 100 Stat. 3051)), or any successor agreement, and (2) 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 the Secretary's obligation to make CVP water (other than the SJRRP Flows) and water acquired through the transfer agreements available to existing south-of-Delta CVP contractors. For purposes of this condition, water service contracts entered into pursuant to federal reclamation law that are renewed after the date of this order, as authorized by the Central Valley Project Improvement Act, are deemed to have existed prior to the date of this order.
19. Pumping of SJRRP flows at the Jones Pumping Plant and the Banks Pumping Plant 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. Pumping of SJRRP flows at the Jones Pumping Plant and the Banks Pumping Plant is also subject to compliance by the operators with all applicable biological opinions and any court orders applicable to these operations.
20. Reclamation shall include the following information in its electronic annual report of water use to the State Water Board: documentation for each individual water right of (a) monthly quantities stored in Millerton Reservoir (for water rights authorizing storage), (b) monthly direct diversion quantities (for water rights authorizing direct diversion), (c) quantities released and dedicated for instream use at Friant Dam pursuant to Water Code section 1707, and (d) separate information on quantities of flow dedicated pursuant to Water Code section 1707 diverted at each authorized location downstream, including Clifton Court Forebay and the Jones Pumping Plant.

Reclamation shall also submit documentation of its compliance with the conditions established by the State Water Board for the SJRRP, including environmental mitigation measures set forth in paragraphs 2.2.6 and 3.2.6 of the WY 2012 EA.

21. Reclamation shall implement the Mendota Pool Water Quality Plan dated February 1, 2011.
22. Reclamation shall monitor temperature in Millerton Reservoir or the purpose of determining the availability of cold water for fishery purposes. Reclamation shall coordinate its releases of the available cold-water pool with USFWS, NMFS, Department of Fish and Wildlife (DFW) and DWR to



maximize benefits to fishery resources. Reclamation shall also coordinate the ramping of reservoir releases with USFWS, NMFS, DFW and DWR to protect fishery resources.

23. Reclamation shall coordinate any flow modifications with the USFWS and NMFS, as applicable. Recapture of water dedicated for instream flow shall be in compliance with the USFWS and NMFS biological opinions.
24. Reclamation shall comply with the Steelhead Monitoring Plan in Appendix D to the WY 2012 EA.
25. Reclamation shall continue to implement the recreation outreach plan developed for the water year 2012 Interim Flows Project.
26. This water right does not authorize any act that results in the taking of a candidate, 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) or the California Endangered Species Act (Fish and Game Code sections 2050 to 2097). If a "take" will result from any act authorized under this water right, Reclamation shall obtain any required authorization for the "take" consistent with the Federal Endangered Species Act and/or the California Endangered Species Act prior to construction or implementation of changes in operation. Reclamation shall be responsible for meeting all applicable requirements of the California and Federal Endangered Species Acts for the SJRRP.
27. Nothing in this order authorizes the use of, or access to, any lands or facilities not owned by right holder. Right holder is solely responsible for obtaining any necessary access agreements.
28. This Order terminates upon issuance of a State Water Board Order on the change petitions already filed pursuant to Water Code sections 1700 and 1707 for the purpose of implementing the SJRRP, or after 180 days, whichever occurs first.

STATE WATER RESOURCES CONTROL BOARD



*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: **MAR 28 2013**