

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

DIVISION OF WATER RIGHTS

ORDER WR 2023-0010-EXEC

**IN THE MATTER OF LICENSE 1986 AND PERMITS 11885, 11886, AND 11887
(APPLICATIONS 23, 234, 1465, AND 5638)
OF THE U.S. BUREAU OF RECLAMATION**

ORDER APPROVING TEMPORARY URGENCY CHANGE

SOURCE: San Joaquin River

COUNTIES: Fresno and Madera

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

On January 30, 2023, the U.S. Bureau of Reclamation (Reclamation) submitted petitions for temporary urgency change (TUCPs) pursuant to Water Code section 1435 et seq., to the State Water Resources Control Board (State Water Board), Division of Water Rights (Division). Reclamation requests to temporarily add Mendota Dam as a point of diversion and rediversion to water right License 1986 (Application 23) and Permits 11885, 11886, and 11887 (Applications 234, 1465, and 5638). License 1986 and Permits 11885, 11886, and 11887 are also referred to as the Friant Division water rights due to their association with Friant Dam; these rights are part of Reclamation's Central Valley Project (CVP). Friant Dam stores water to form Millerton Lake. As recent storms resulting in higher than average snowpack and runoff in the San Joaquin River watershed, Reclamation seeks to capture excess flood flows in an amount not to exceed the authorized storage amount allowed at Friant Dam.

Reclamation has indicated up to 2,200 cubic feet per second (cfs) could be diverted from Mendota Pool based on a maximum inflow of 2,500 cfs to the Mendota Pool and release at 300 cfs, resulting in a possible volume of 785,000 acre-feet (af) of diversion over a span of 180 days. The captured flood flows released from Friant Dam would be delivered to support wildlife refuges, meet irrigation demands this summer, and improve the condition of groundwater basins within the CVP. Reclamation proposes to only

divert or redivert at Mendota Dam when flows at Sack Dam¹ exceed 300 cfs to ensure connectivity of the San Joaquin River for fish and wildlife beneficial use. Pursuant to Water Code section 1440, the authorization to divert and use water under a temporary change order automatically expires 180 days after the authorization takes effect, unless an earlier date is specified, or the temporary change order is revoked. Because this Order authorizes a 138-day diversion period from March 15 through July 30, 2023, it allows Reclamation to capture up to 602,182 acre-feet of flood flows.

2.0 DROUGHT AND STORMS

California has experienced severe to exceptional drought conditions across the state over the past two years. Water Year 2020-2021 was a second consecutive dry year with record-breaking high temperatures. In response to California's severe drought conditions in 2021, Governor Gavin Newsom proclaimed a regional drought state of emergency on April 21, 2021 for the Russian River Watershed, and on May 10, 2021 he signed a proclamation expanding the drought state of emergency to the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake Watersheds. On July 8, 2021, the Governor signed a proclamation further expanding the regional drought state of emergency to include nine counties where drought effects are increasingly severe or where state emergency response may be needed. The Governor's drought proclamations brought a total of 50 of the state's 58 counties under the drought state of emergency.

The Governor's July 8, 2021 Proclamation states:

“since my May 10, 2021 Proclamation, California's water supplies continue to be severely depleted, and high temperatures are now increasing water loss from reservoirs and streams (especially north of the Tehachapi Mountains), and thus demands by communities and agriculture have increased, supplies of cold water needed for salmon and other anadromous fish that are relied upon by tribal, commercial, and recreational fisheries have been reduced, and risk has increased of drought impacts continuing in 2022 because of continued water loss from climate change-driven warming temperatures and less water available in reservoirs and streams from two years of below average precipitation.

On October 19, 2021, the Governor extended the drought emergency proclamation to include California's remaining eight counties.

On March 28, 2022, the Governor issued Executive Order (EO) N-7-22, finding that “early rains in October and December 2021 gave way to the driest January and February in recorded history for the watersheds that provide much of California's water

¹ Sack Dam is located on the San Joaquin River approximately 17 miles downstream of Mendota Dam.

supply” and that “the ongoing drought will have significant, immediate impacts on communities with vulnerable water supplies, farms that rely on irrigation to grow food and fiber, and fish and wildlife that rely on stream flows and cool water.” The March 28, 2022 Order applies various measures to encourage water conservation and to increase resilience of state water supplies during prolonged drought conditions, including through supporting groundwater recharge projects.

California experienced an unanticipated period of extreme precipitation from December 2022 through mid-January 2023. In response to severe winter storms related to an Atmospheric River event beginning in December 2022, the Governor proclaimed a State of Emergency on January 4, 2023. On January 16, 2023, the Governor issued EO N-1-23, finding that “...this Atmospheric River event resulted and continues to result in significant impacts to the State including, but not limited to, widespread flooding and power outages, downed trees, hazardous debris flows, mudslides, landslides, swelling of waterways, dam overflows, and levee failures.” All long-range forecasts for this period did not predict an extended period of extremely wet weather. Due to this extreme precipitation, the Five Station Index for the San Joaquin River basin is currently 178% of normal as of January 27, 2023. Inflows to Millerton Lake have been so high that operations at Friant Dam have transitioned to flood control. Releases from Friant Dam have been as high as 7,800 cfs in order to ensure sufficient flood storage capacity behind the dam. According to the TUCPs, runoff into Millerton Lake is projected to be 170% of average conditions.

3.0 RECLAMATION’S WATER RIGHTS

Reclamation’s water right License 1986 and Permits 11885, 11886, and 11887 authorize diversion and use of water for the Friant Division of the CVP. The Friant Division diverts water from the San Joaquin River at Friant Dam and stores water in Millerton Lake primarily for municipal, domestic, irrigation, and stockwatering uses. Water from Millerton Lake is released and delivered for beneficial use to either south through the Friant-Kern Canal or north through the Madera Canal. Water is also released from Friant Dam into the San Joaquin River for flood control purposes, to provide water to riparian water right holders downstream of the dam, and for fish and wildlife enhancement purposes pursuant to the requirements of the San Joaquin River Restoration Program (SJRRP) as described in Section 3.1 below.

Reclamation’s water rights subject to the TUCPs are License 1986, and Permits 11885, 11886, and 11887. Details related to these water rights are available online through the Division’s eWRIMS electronic database. These rights were considered and approved under State Water Board Decision 935 (1959) (D-935) after the State Water Board held

a hearing to consider competing applications² to appropriate unappropriated waters of the San Joaquin River and petitions to change point of diversion and place of use under a license to Reclamation in furtherance of the Friant Division of the CVP. (D-935, p. 1.) D-935 approved the maximum rate of diversion at Millerton Reservoir of up to 6,500 cfs and authorized storage up to 2,210,000 af per annum. (*Id.*, p. 85.)

Construction of Friant Dam, which impounds Millerton Reservoir, was completed in 1947 with a storage capacity of 520,500 acre-feet. From Friant Dam, the Madera Canal, with a design capacity of 1,500 cfs, extends northward 36 miles to the Chowchilla River, and the Friant-Kern Canal, with a design capacity of 4,000 cfs, extends southward 153 miles to the Kern River. (D-935, pp. 14-15.) The Friant Division of the CVP provides delivery of water under long-term water service contracts within the boundaries of certain districts along the Madera and Friant-Kern Canals. The anticipated maximum aggregate deliveries under the long-term contracts in any one year were 2,150,000 af, with 750,000 af being a Class 1 supply and up to 1,400,000 af being a Class 2 supply. Class 1 water was considered dependable in almost every year with deficiencies anticipated only in unusually dry years. Class 2 water was that water in excess of Class 1 and, accordingly, was anticipated to be less dependable as to its quantity and time of occurrence. It is available primarily during the spring and early summer months. (*Ibid.*) Class 1 water is more recently described as the first 800,000 af of available supply.³

The Madera Canal has an approximate capacity of 1,100 cfs, while the Friant-Kern Canal has a capacity that used to range from 5,000 cfs to 2,200 cfs over the course of its 152-mile length. However, due to significant subsidence, the capacity of the middle reach of the canal is limited to an estimated 1,600 cfs instead of 4,000 cfs⁴, with repairs to the middle reach yet to be completed. Based on a Forecast of Millerton Operations dated January 27, 2023, deliveries to the Madera Canal during January 20 to January 26 ranged from 980 cfs to 798 cfs and 578 cfs to 1,963 cfs to the Friant-Kern Canal. During this same period, 2,490 cfs was being released from Friant Dam, of which 450 cfs was for the San Joaquin River Restoration Program. The 50 percent exceedance forecast for deliveries in February were 332 cfs to 510 cfs for the Madera Canal and 1,552 cfs to 3,648 cfs to the Friant-Kern Canal.

² The Board denied competing applications by the City of Fresno and Fresno Irrigation District with the accommodation that the CVP provide municipal water to the City of Fresno and an average annual supply to Fresno Irrigation District on a parity with other long-term contract holders. (D-935, p. 75.)

³ <https://www.usbr.gov/newsroom/newsroomold/newsrelease/detail.cfm?RecordID=73745>

⁴ Information based on a fact sheet for the Friant-Kern Canal Middle Reach Capacity Correction Project available at: <https://www.usbr.gov/mp/mpr-news/docs/factsheets/fkc.pdf>.

3.1 San Joaquin River Restoration Program

The historic operation of the Friant Dam resulted in significant portions of the main stem of the San Joaquin River between Friant Dam and the confluence of the Merced River being dry. In 2006, in response to litigation over the impacts of dry reaches on the condition of fish in the San Joaquin River below Friant Dam, the Department of Interior, the Natural Resources Defense Council, and the Friant Contractors reached a 2006 Stipulation of Settlement in *Natural Resources Defense Council et al. v. Rodgers et al.* (Settlement) to restore and maintain fish in “good condition” below Friant Dam, including naturally-reproducing and self-sustaining populations of salmon and other fish. In addition, the parties to the Settlement agreed to reduce or avoid adverse water supply impacts to the Friant Contractors that could result from the implementation of interim and Restoration Flows. The Settlement was later authorized by Congress under the San Joaquin River Restoration Settlement Act (Settlement Act), Public Law No. 111-11, § 10001 et seq., 123 Stat. 991, 1349 (2009), and the SJRRP was established to implement the Settlement.

In 2013, to facilitate implementation of the SJRRP, the State Water Board approved changes to Reclamation’s Friant Division water rights for long-term instream flow dedication and the redirection of those flows at specified locations pursuant to Water Code section 1707. (See Order Approving Change and Instream Flow Dedication, October 21, 2013 [hereinafter referred to as “2013 Order”]). The 2013 Order anticipated that recapture and recirculation of Restoration Flows may occur at new points of redirection that were added for this purpose to Reclamation’s Friant Division water rights. Consistent with the 2013 Order, the added points of redirection are authorized solely for the purpose of implementing the SJRRP and recirculating Restoration Flows.

According to the SJRRP website, Friant Dam is currently making flood releases to the San Joaquin River and Restoration Flows will recommence upon the cessation of flood flows. The 2023 Restoration Allocation is currently set at 556,542 acre-feet at Gravelly Ford and is a Wet year type starting March 1. As described in an Order issued on April 30, 2021 approving a temporary transfer to allow additional redirection points of SJRRP flows, Reclamation is able to make flood operation releases while concurrently dedicating flows under Water Code section 1707 as part of the SJRRP. The SJRRP flows would be a portion of the total flood operation releases and not an additional release beyond those necessary for flood operations, therefore the dedication would not interfere with flood management actions. This Order is conditioned to require operation of the SJRRP concurrent with flood operations to ensure the San Joaquin River remains connected.

A more detailed description of the SJRRP, and its interaction with flood operations, is available in the April 30, 2021 Order approving changes to License 1986 and Permits 11885, 11886, and 11887, available here:
www.waterboards.ca.gov/waterrights/water_issues/programs/petitions/transfers.html

3.2 Water Supply for Central Valley Wildlife Refuges

Reclamation has various contracts and agreements for the conveyance of water to certain wildlife refuges, including the refuges that are proposed to receive water pursuant to the subject TUCPs. These contracts and agreements implement refuge water supply requirements pursuant to sections 3406(d)(1) and 3406(d)(2) of Title 34 of Public Law 102-575 of the Central Valley Project Improvement Act (CVPIA). The CVPIA was intended to mitigate the environmental impacts of the CVP, particularly for the protection, restoration, and enhancement of fish and wildlife. The contracts and agreements related to the wildlife refuges allow Reclamation to convey water supplies of suitable quality, either directly or through contractual agreements with other appropriate parties, to certain National Wildlife Refuges, State Wildlife Areas, and private wetlands in the Grassland Resources Conservation District.

Specifically, Reclamation is required to provide each refuge with Level 2 and Level 4 water supplies for critical wetland habitat supporting resident and migratory waterfowl, threatened and endangered species, and wetland dependent aquatic biota on the refuges. These supplies are ideally used to allow refuges to optimally manage the preserved land for the improvement of waterfowl populations. Level 2 supplies represent the historical average amount of water deliveries prior to CVPIA enactment in 1992 and is the baseline water required for wildlife habitat management. Level 4 supplies represent the additional increment of water required for optimal wetland habitat development. Approval of the TUCPs will assist Reclamation in providing Level 2, and particularly Level 4, water supplies to the subject refuges.

3.3 Need for Long-Term Change Petitions

In the TUCPs, Reclamation raised its previous issue with the State Water Board's interpretation of the 2013 Order authorizing points of diversion and redirection of Restoration Flows; "[h]owever, in an abundance of caution, and without waiving any of its rights or arguments as to the use of the PORDs added in the 2013 Order, Reclamation is filing this [TUCP] in order to assure there are no complications with the use of this PORD for delivery of CVP water released from Millerton Lake to wildlife refuges." Reclamation should stop characterizing this as a disagreement on interpretation. To be clear, the State Water Board could not have authorized any additional points of redirection for any purpose other than the dedication and downstream recapture of SJRRP Restoration Flows in the 2013 Order. The petitions, accompanying environmental documentation, public comments and responses, and findings were focused solely on authorization of the SJRRP. The record contains no express or implied request, discussion and approval of any additional points of diversion for Reclamation's Friant water rights outside of the SJRRP, and to interpret the 2013 Order otherwise would be unlawful. It is not necessary for the State Water Board to initiate any proceedings at this time to clarify the subject language or otherwise apply and enforce the limitations that would be in effect absent the approval of the TUCPs. The State Water Board continues to support Reclamation filing long-term change

petitions to conduct Friant Division operations as it sees fit, including adding points of diversion and rediversion to deliver stored water in a lawful manner.

4.0 PROPOSED CHANGES

4.1 Mendota Pool

Reclamation proposes to add Mendota Dam as a point of diversion and rediversion. Mendota Dam is the point of diversion for the Mendota Pool and is located as follows:

California Coordinate System, NAD 83, Zone 3, North 1,745,375 feet and East 6,598,943 feet, being within the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 19, T13S, R15E, MDB&M.

The Mendota Pool is located on the San Joaquin River at the confluence of the San Joaquin and Kings rivers. Because the majority of San Joaquin River water upstream of the Mendota Pool is normally diverted to the Friant-Kern and Madera Canals at Friant Dam, Reclamation provides Sacramento-San Joaquin Delta CVP water via the Delta Mendota Canal to the Mendota Pool, which is then diverted from the pool or released for downstream use in the San Joaquin River. The wildlife refuges that are the subject of this Order primarily receive CVP water supplies from Mendota Pool that originate from the Sacramento-San Joaquin Delta. Reclamation's obligations to the San Joaquin River Exchange Contractors are also satisfied through delivery of water to Mendota Pool, either through provision of water from the Sacramento-San Joaquin Delta, or when necessary, from water released/bypassed from Friant Dam.

4.2 Method of Diversion

Diversions at Mendota Dam will vary between direct diversion, diversion to temporary underground storage, and rediversion of water previously stored at Friant Dam. The type of diversion will depend on conditions at Friant Dam when water is released to the San Joaquin River below Friant Dam. Inflows to Friant Dam that are released from Friant Dam at rates up to and equal to the rate of inflow are considered "bypassed" by Friant Dam and not diverted at Friant Dam; diversion of these inflows at Mendota Dam that are bypassed by Friant Dam should be characterized as either direct diversions or temporary diversions to underground storage once withdrawn from Mendota Pool⁵. Any water released from Friant Dam at rates greater than the rate of inflow to Friant Dam would be a release of water that had been previously diverted and stored at Friant Dam⁶.

⁵ Mendota Pool is reported to have a storage capacity of approximately 8,000 acre-feet. Given the anticipated rates of inflow to Mendota Pool and the application of last-in-first-out accounting of flows, storage at Mendota Pool would be limited to approximately a week or less.

⁶ Water is typically not considered "stored" by a reservoir unless it has been held in storage for at least 30 days.

Capture of Friant Dam releases at Mendota Dam that are in excess of inflows to Friant Dam would be redirection of previously stored water. When water is withdrawn from Mendota Pool and delivered for immediate use, such as delivery to wildlife refuges or municipal uses, the diversion will be a direct diversion. When water is delivered to contractors to recharge into groundwater basins for subsequent beneficial use, the diversion will be a diversion to temporary underground storage and not subject to the direct diversion limits of License 1986 and Permits 11885, 11886, and 11887. The underground storage will be temporary, as indicated in the TUCPs, because any water recharged into the groundwater basins within the place of use of License 1986 and Permits 11885, 11886, and 11887 will be subsequently withdrawn for the existing purposes of use authorized under the license and permits by landowners within the service area boundaries of each CVP contractor receiving deliveries pursuant to the TUCPs. The withdrawal and beneficial use of the amounts approved in this Order will occur within the current water year given that groundwater pumping in these basins far exceeds the amounts approved for delivery pursuant to this Order.

4.3 Existing Place of Use and Purposes of Use

Reclamation is not proposing to change the existing place of use of License 1986 and Permits 11885, 11886, and 11887. The place of use is described in these License and Permits and can be viewed in Maps 1785-202-50, 214-212-37, and 214-208-3331, and 1785-202-14, on file with the State Water Board. A supplement to the TUCPs also provides a summary map of the place of use.

Reclamation is not proposing to change the existing purposes of use for License 1986 and Permits 11885, 11886, and 11887. The existing purposes of use include irrigation, domestic, municipal, stockwatering, preservation and enhancement of fish and wildlife, and recreation.

5.0 MONITORING AND REPORTING

Reclamation is currently subject to various monitoring and reporting requirements, monitoring and reporting requirements pursuant to the 2013 Order, and a November 7, 2022 Order (2022 Order) temporarily approving diversion of SJRRP flows at Patterson Irrigation District and Banta-Carbona Irrigation District. These monitoring and reporting requirements, described in Condition 8 and 9 of the 2022 Order, provide a means for accounting and tracking flows released from Friant Dam for the SJRRP⁷. While the 2022 Order identified areas of improvement, the requirements were designed to build upon the progress made during prior collaboration and coordination between

⁷ The 2022 Order is available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/petitions/docs/23tt220902_final_order.pdf.

State Water Board and Reclamation staff that was conducted pursuant to earlier temporary rediversion approvals. One result of this coordination was development of what the 2022 Order refers to as the Operations Spreadsheet, which implements accounting methodologies for SJRRP-related flows and provides a means for reporting data associated with the temporary approval. Given the availability of the Operations Spreadsheet and its ability to account for flows, this Order is conditioned on continuing the refinements identified in the 2022 Order, which will serve to identify when diversion or rediversion of water occurs at Mendota Pool under Reclamation's water rights.

6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Ordinarily, the State Water Board must comply with applicable requirements of the California Environmental Quality Act (CEQA) prior to issuance of any order approving a TUCP, pursuant to Water Code section 1435. (See Cal. Code Regs. tit. 23, § 805.) However, on March 28, 2022, the Governor issued EO N-7-22. Item 12 of the EO requires the State Water Board to prioritize permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high runoff events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife. The EO suspends CEQA for purposes of carrying out the directives in that paragraph, including the issuance of permits to capture high runoff events for local storage or recharge. The CEQA suspension applies to any actions taken by state agencies in furtherance of the order's directives, and for any necessary permits or approvals required to complete these actions. Absent the EO N-7-22 CEQA suspension, the project proposed with the TUCPs is categorically exempt under CEQA as the change meets the Class 1, 7, and 8 exemption criteria.

A Class 1 exemption "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." (Cal. Code Regs, tit. 14 § 15301). The proposed action will utilize Reclamation's existing facilities to convey the excess water.

A Class 7 exemption "consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (Cal. Code Regs, tit. 14 § 15307). The proposed action will ensure the maintenance of a natural resource (i.e. the fish and wildlife resources of the wildlife refuges) by ensuring water supplies are delivered to the refuges via diversion/rediversion of water bypassed and/or stored in Millerton Lake. Approval of the TUCPs will assist Reclamation in providing both Level 2 and Level 4 water supplies (as described above) to the refuges, which assists in mitigation of environmental impacts from operation of the CVP.

A Class 8 exemption “consists of actions taken by regulatory agencies, as authorized by state or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment.” (Id., § 15308). The proposed action will ensure the maintenance of the environment (i.e. the fish and wildlife resources of the wildlife refuges) in the same way as stated for the Class 7 exemption.

Reclamation has prepared documents⁸ related to the National Environmental Policy Act (NEPA) to support its delivery of water to wildlife refuges pursuant to this Order. Reclamation is required to adhere to the various contracts and agreements with wildlife refuges based on the requirements of NEPA findings. Reclamation has also evaluated delivery of Article 215 water through a NEPA Categorical Exclusion Checklist titled Friant Division 215 Contracts for Contract Year 2023 (CEC-22-044)⁹.

The State Water Board has reviewed the TUCPs and finds that the proposed project is consistent with the suspension of CEQA in EO N-7-22 as well as being categorically exempt pursuant to Class 1, 7, and 8 exemptions. The State Water Board will file a Notice of Exemption within five days of approval of this Order.

7.0 PROCEDURAL REQUIREMENTS CONCERNING THE TEMPORARY URGENCY CHANGE PETITIONS

On February 2, 2023, the State Water Board issued a public notice of Reclamation’s TUCPs pursuant to Water Code section 1438, subdivision (a). Pursuant to Water Code section 1438, subdivision (b)(1), the public notice was also published in *The Fresno Bee* on February 27, 2023, by Reclamation. In addition, the State Water Board distributed the notice through its electronic notification system. Pursuant to Water Code section 1438, subdivision (d), any interested person may file an objection to the temporary changes by the end of the noticing period, which was March 3, 2023. The State Water Board must promptly consider any objections and may hold a hearing on any objections. (*Id.*, subd. (e).)

The State Water Board received a letter from the Natural Resources Defense Council (NRDC) and the Bay Institute (TBI) objecting to the TUCPs on February 22, 2023. Friant Water Authority (FWA) submitted comments on March 3, 2023. A late comment letter was received from the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) on March 6, 2023. Reclamation responded to NRDC’s and TBI’s letter on March 2, 2023.

7.1 Comments of NRDC and TBI

In their joint comment letter, NRDC and TBI, both signatories to the Settlement, submitted objections to the TUCPs. NRDC and TBI asserted that the TUCPs as

⁸ https://www.usbr.gov/mp/cvpia/3406d/env_docs/

⁹ https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=52469

proposed are inconsistent with Reclamation's obligations under the Settlement, Fish and Game Code section 5937, and the public trust doctrine.

NRDC and TBI stated that as a result of seepage limitations and other constraints, Restoration Flows have been limited to no more than 300 cfs below Sack Dam since 2016, resulting in the Restoration Program failing to release the minimum flows required by the Settlement. Additionally, the approved Restoration Flow recommendation this year calls for releasing approximately 185,000 af of water to the San Joaquin River, and not releasing approximately 380,000 af of water that was called for under the Settlement.

NRDC and TBI claimed that Reclamation's proposed diversion/redirection at Mendota Pool when flows below Sack Dam exceed 300 cfs are far less than the minimum flows required by the Parties under the Settlement and the 2013 Order. Thus, Reclamation fails to provide the minimum flows necessary to comply with Fish and Game Code section 5937. Additionally, NRDC and TBI claimed that reducing flows in the San Joaquin River compared to the flows identified in Exhibit B of the Settlement will likely reduce the survival of juvenile spring-run Chinook salmon out-migrating to the ocean. As such, NRDC and TBI requested that the State Water Board deny the TUCPs, or condition Reclamation to only implement the proposed changes when flows below Sack Dam exceed the minimum default Restoration Flow schedule for the applicable water year type (currently a wet year).

Reclamation Response

Reclamation referenced Paragraph 13(d) of the Settlement that states "...that flood flows may accomplish some or all of the Restoration Flow purposes to the extent consistent with the hydrographs." Reclamation further referenced the selected alternative under the Record of Decision (ROD) for the SJRRP's Programmatic Environmental Impact Statement/Report (PEIS/R) that states "*If release of water from Friant Dam is required for flood control purposes, concurrent Interim and Restoration flows would be reduced by an amount equivalent to the required flood control releases. If flood control releases from Friant exceed concurrent scheduled Interim and Restoration flows, no additional releases above those required for flood control would be made for SJRRP Purposes*" (PEIS/R page 2-40 Lines 10-16). Reclamation indicated that while the statement recognizes flood operations can serve some or all of the Restoration Flow purposes as indicated in Paragraph 13(d) of the Settlement, flood operations on the San Joaquin River are governed by the operation and maintenance manual for the Lower San Joaquin River Flood Control Project (LSJ Project). Reclamation may request releases of flood flows from Friant Dam be passed down the San Joaquin River into Mendota Pool (Lower San Joaquin Levee District (LSJLD) Operation and Maintenance Manual for San Joaquin River and Chowchilla Canal Bypass Automatic Control Structures and Appurtenances, Part III, 1969, Section 5100), but LSJLD has the delegated responsibility for the operation of the LSJ Project.

Reclamation reiterated that under the TUCPs, the flows below Sack Dam will exceed 300 cfs (or the concurrent scheduled Restoration Flows) prior to any diversion of excess water to help ensure that some of the flood flows meet the goals of Paragraph 13(d) of the Settlement. Although operation of the LSJ Project could result in higher flows past Sack Dam, Reclamation would not request flows that exceed known downstream constraints as it would be inconsistent with Reclamation commitments in the SJRRP's PEIS/R and ROD, conditions of their amended water rights, and Statutory requirement to not impact third parties without mitigation. Reclamation acknowledges the concerns of NRDC and TBI and will continue to work toward full build-out of key Settlement projects to resolve flow restrictions by downstream constraints.

State Water Board Response

NRDC and TBI's comment letter articulates a general concern that current implementation of the Settlement is not achieving the goals of the Settlement Act or Fish and Game Code section 5937. They point out that Restoration Flows are significantly restricted below Sack Dam (300 cfs, whereas the Settlement anticipates a maximum of 3,000 cfs in wet years) due to seepage impacts that were intended to be resolved during the period of interim flow releases. The State Water Board encourages Parties to the Settlement to begin consideration of the processes available under Paragraph 26 of the Settlement to informally meet and confer or provide a Statement of Position to the other Settlement Parties to formally commence a meet and confer process. (Settlement, Paragraph 26.) Given that Paragraph 20 of the Settlement provides an opportunity for parties to request increases, decreases, or material changes in the quantity or timing of the Restoration Flows during the first six months of 2026, it would be beneficial to begin formally resolving issues around progress on channel and structural improvements, funding, and interpretations on implementation of flows prior to the opportunity for proposing changes to the flows.

The State Water Board has not held a hearing or made any determination of what Fish and Game Code section 5937 or the public trust requires on this reach of the San Joaquin River. As described in Section 3.1 of this Order, the 2013 Order was issued by the State Water Board to facilitate the implementation of the SJRRP and is essentially a voluntary agreement among certain parties. Voluntary agreements have been described by many, including the State Water Board, as having the potential to inform and expedite implementation of water quality objectives and provide durable solutions in the Delta watershed. This stretch of river was excluded from the most recent update to the Bay-Delta Plan, although the State Water Board reserved its authority to promulgate water quality objectives in the future. (Bay-Delta Plan, p. 57 [Recommendations to Other Agencies].)

The State Water Board continues to support voluntary agreements in the San Joaquin River and elsewhere that help inform and expedite implementation for the benefit of fish and wildlife beneficial uses. The SJRRP provides an opportunity to demonstrate a successful voluntary agreement, and all parties, including those not signatories to the

Settlement but with an interest in the San Joaquin River or the Delta more broadly, share an interest in its successful implementation. The State Water Board shares the concern regarding the disparity between Restoration Flows provided in Appendix B developed to ensure fish are kept in good condition and the actual flows to date that are significantly limited due to delays in project implementation and encourages continued cooperation of San Joaquin parties to demonstrate that a voluntary agreement can be fully realized. This Order as conditioned will ensure that Reclamation meet all of its existing obligations and downstream requirements prior to implementing the TUCP Order. Furthermore, the Order as conditioned will not injure other legal users of water, or result in unreasonable effects to fish and wildlife, or other instream beneficial uses.

7.2 Comments of FWA

FWA submitted a letter indicating that it is supportive of Reclamation's TUCPs. FWA are composed of members that are Friant Division contractors of the CVP, all of whom draw some of their water supplies from the San Joaquin River stored at Millerton Lake. Reclamation's TUCPs will allow Reclamation and CVP contractors (including Friant Division contractors) to take advantage and maximize the beneficial use of flood releases and temporary supplies. FWA indicated the importance of Reclamation's proposed terms of the TUCPs and stated the following: 1) Reclamation's TUCPs will not injure any other legal user of water including the Friant Division; 2) diversions will not unreasonably affect fish and wildlife; 3) no impact to Friant Division diversions; 4) demand must be maximized by Friant Contractors prior to Mendota Pool diversions for other CVP contractors; 5) no impact to Restoration flows and the ability to recapture; and 6) no impact to Reclamation's ability to meet Exchange Contractor demands from Mendota Pool and the Delta.

State Water Board Response

This Order as conditioned will ensure that Reclamation meets its existing obligations and downstream requirements, including those items identified by FWA.

7.3 Comments of Exchange Contractors

The Exchange Contractors submitted a comment letter indicating that they have no objections to Reclamation's TUCPs and requested that approval of the TUCPs be conditioned that the TUCP Order will not modify or amend the rights and obligations of the parties to the San Joaquin River Exchange Contract, as amended February 14, 1968.

State Water Board Response

This Order includes Condition 14 to ensure that the TUCPs will not modify or amend the rights or obligations of the parties to the San Joaquin River Exchange Contract or other contracts.

8.0 CRITERIA FOR APPROVING A TEMPORARY URGENCY CHANGE

Water Code section 1435 provides that a permittee or licensee who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (*Id.*, § 791, subd. (e).)

Before approving a temporary urgency change, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest.

(Wat. Code, § 1435, subd. (b)(1-4).)

A temporary change order does not result in the creation of a vested right, even of a temporary nature, but shall be subject at all times to modification or revocation in the discretion of the State Water Board. (Wat. Code, § 1440.)

8.1 Urgency of the Proposed Change

Under Water Code section 1435, subdivision (c), an “urgent need” means “the existence of circumstances from which the board may in its judgment conclude 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”

In this case, there is an urgent need for the proposed temporary changes in order to provide CVP water released from Millerton Lake for beneficial use and help alleviate severe drought conditions. CVP contractors south of the Delta have experienced severe drought impacts in the past twenty plus years in California. The drought conditions have resulted in contractors receiving zero water allocation under their CVP contracts for multiple years. Additionally, areas within the Friant Division are

experiencing critical levels of overdraft. The unanticipated precipitation events of late December 2022 to mid-January 2023 creates an opportunity for Reclamation to deliver flood control releases as temporary water supplies to these contractors, which would enable the contractors to recharge the aquifers through relying on extraction of recharged surface water.

Additionally, the approval of the temporary changes will assist Reclamation in meeting its obligations to deliver Level 2 and Level 4 water supplies to the wildlife refuges pursuant to CVPIA requirements as described in Section 3.2 of this Order.

Water Code section 1435, subdivision (c) also states that the State Water Board shall not find a petitioner's need to be urgent if it concludes that the petitioner has not exercised due diligence either in petitioning for a change pursuant to provisions other than a TUCP or in pursuing that petition for change. The current high flows to be diverted at Mendota Dam were due to exceptional and unanticipated precipitation in December 2022 and January 2023 that in conjunction with immediately preceding dry conditions, create an urgent need for the proposed changes. However, in future years Reclamation could address the current limitations of the Friant Division water rights through submittal of water right change petitions pursuant to Water Code section 1701 et seq. to add points of diversion and rediversion at the locations currently authorized for rediversion of SJRRP flows given that swings between hydrologic dry and wet hydrologic extremes are likely to become more common under a changing climate.

Accordingly, there is an urgency in granting these TUCPs, as the proposed temporary changes will: (1) enable Reclamation to maximize beneficial use under its Friant Division water rights; (2) be consistent with advancing groundwater recharge projects as indicated in the Governor's EO N-7-22; and (3) help California meet the long-term goals of the Sustainable Groundwater Management Act (SGMA).

8.2 No Injury to Any Other Lawful User of Water

Reclamation states that water released from storage at Friant Dam is water diverted to storage under the water right permits and license for the Friant Division of the CVP, and thus not available for appropriation by other water right holders (including temporary water right permits due to priority). Water released from storage is not available to downstream users. (See e.g. *North Kern Water Storage Dist. v. Kern Delta Water Dist.* (2007) 147 Cal.App.4th 555, 570 [When the stored water is released for use, it is not part of the river's natural flow and rediversion of this water does not count toward the appropriator's current allocation of river water]; see *State Water Board Cases* (2006) 136 Cal.App.4th 674, 737-745 [a riparian or appropriator has no legally protected interest in other appropriators' stored water or in the continuation of releases of stored water].) Similarly, water allowed to pass into the river channel in lieu of being conveyed into and through canals through the exercise of direct diversion rights at Friant Dam would remain protected and removed from use in the downstream water supply.

Additionally, Reclamation indicated that water diverted and rediverted pursuant to these TUCPs must be released for Millerton Lake to remain in accordance with flood control requirements during any additional high precipitation events as well as the upcoming snowmelt. Reclamation stated that the released stored water will be in excess of the demands for the CVP's Friant Division contractors, therefore delivery of the excess water to the wildlife refuges and other CVP contractors will not injure the contractors and refuges by diminishing their supply. Reclamation also indicated that Friant Division contractors potentially could be offered uncontrolled season deliveries, SJRRP Recovered Water Account water, downstream recapture of Restoration Flows, and Section 215¹⁰ deliveries before making any releases downstream of Friant Dam that would be subsequently delivered to the CVP contractors and wildlife refuges. Conditions 2, 4, 5, 6, 13, and 14 have been included in this Order to ensure there is no injury to other legal users of water caused by the proposed changes, including to ensure that all existing Exchange Contractor demands in Mendota Pool are satisfied prior to diversion or rediversion under this Order.

Accordingly, granting these TUCPs as conditioned will not result in injury to any other lawful user of water. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change order for the protection of all other lawful users of water.

8.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

Prior to approval of a TUCP, the State Water Board must find that the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses. In addition, the State Water Board has an independent obligation to consider the effect of approval of Reclamation's petitions 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.) Public trust resources may include, but are not limited to, wildlife, fish, aquatic habitat, and recreation in navigable waterways, as well as fisheries located in non-navigable waterways. It is also the policy of this state that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall use their authority in furtherance of the purposes of the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). State agencies should not approve projects that would jeopardize the continued existence of any endangered species or threatened species if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat that would prevent jeopardy. (Fish & G. Code, §§ 2053 & 2055.)

¹⁰ Section 215 of the Reclamation Reform Act, Public Law 97-293 authorizes Reclamation to provide temporary water service contracts (215 contracts) for unstorable flood flows (section 215 water) as a result of: (1) an unusually large water supply not otherwise storable for Project purposes; or (2) infrequent and otherwise unmanaged flood flows of short duration.

This Order is conditioned to require that Reclamation continue to provide required SJRRP flows prior to diverting water at the Mendota Dam. Further, approval of the TUCPs will be protective of the downstream San Joaquin River and Sacramento-San Joaquin Bay Delta as diversions and rediversions will be subject to compliance with State Water Board Revised Decision 1641 (D-1641), all biological opinions, and any other restrictions applicable to the operations, including the provisions of Reclamation's License 1986 and Permits 11885, 11886, and 11887 and the 2013 Order.

If previously stored water is being released to make room in Millerton Reservoir for flood control, the portion of that release that is called for under the SJRRP can continue to remain an instream flow dedication. Once previously stored water has been vacated and conditions are such that inflow must pass Friant Dam and the maximum direct diversion of 6,500 cfs is occurring in the Madera and Friant-Kern Canals¹¹, deliveries to the canals would be reduced by the amount of Restoration Flows called for, and that amount released below Friant Dam and recaptured downstream for the benefit of Friant contractors to the extent possible.

Restoration Flows can occur concurrently and should be dedicated instream and available for rediversion downstream by the Friant Contractors to the extent possible. This Order is conditioned to ensure that up to 300 cfs that will flow past Mendota Pool remains dedicated instream for fish and wildlife enhancement purposes consistent with the Settlement. The selection of 300 cfs is for the purposes of this Order only and reflects current seepage-related channel capacity limitations downstream of Sack Dam¹². Greater than 300 cfs of SJRRP flow could be scheduled by the Restoration Administrator pursuant to the Settlement in the future, however 300 cfs is the maximum amount currently possible to be conveyed to support maintaining a connected San Joaquin River.

This Order is also conditioned to ensure that Reclamation maximizes Level 2 and Level 4 deliveries to wildlife refuges prior to conducting deliveries pursuant to Article 215 contracts to ensure consistency with the requirements of the CVPIA and support meeting the needs of fish and wildlife within these refuges.

This Order conditions Reclamation on meeting all applicable Water Quality Control Plan objectives and D-1641 requirements.

¹¹ Given the capacity impacts subsidence has caused to the middle reach of the Friant-Kern Canal, it likely not possible for the canals to make full use of the 6,500 cfs direct diversion capacity of the Friant Division water rights.

¹² The seepage limitations are described in the *SJRRP Flow Bench Evaluation* dated November 25, 2022, which identifies a maximum flow estimate of 315 cfs below Sack Dam before Seepage Management Plan thresholds are approached. Available at https://www.restoresjr.net/?wpfb_dl=2712.

Accordingly, granting these TUCPs will not result in an unreasonable effect upon fish, wildlife, or other instream beneficial uses and public trust resources will be protected to the extent feasible and in the public interest. Pursuant to Water Code section 1439, the State Water Board shall supervise diversion and use of water under this temporary change Order for the protection of instream beneficial uses.

8.4 The Proposed Change is in the Public Interest

On July 28, 2020, Governor Gavin Newsom released the Water Resilience Portfolio, providing a road map for California to respond to multiple water related stressors, including over-reliance on groundwater. On March 28, 2022, the Governor issued EO N-7-22, which requires the State Water Board to prioritize permits to accelerate approvals for projects that enhance the ability of a local or state agency to capture high runoff events for local storage or recharge, consistent with water rights priorities and protections for fish and wildlife. In August of 2022, the Governor released California's Water Supply Strategy – Adapting to a Hotter, Drier Future. This document outlines California's strategy and priority actions to adapt and protect water supplies in an era of rising temperatures and calls on the State Water Board water right staff to prioritize projects that support groundwater recharge.

Issuance of this Order will allow Reclamation the opportunity to divert and deliver to its CVP contractors surface water that will enable a corresponding reduced reliance on groundwater by those CVP contractors. Operations approved by this Order would allow Reclamation to capture high flows that would otherwise go unused, reduce demand for percolating groundwater within the service areas of CVP contractors, alleviate pressure on flood control infrastructure by freeing up capacity in the Chowchilla and Eastside Bypasses, and assist in slowing land subsidence.

Control and use of peak flood flows is becoming increasingly important as various groundwater basins develop and implement groundwater sustainability plans pursuant to SGMA. (Wat. Code, § 10720 et seq.) Capturing and storing surface water generally requires an appropriative water right. Parties can obtain new water rights or change existing water rights to authorize groundwater recharge projects, subject to appropriate conditions. A majority of California's critically overdrafted areas are located within the Friant Division water rights place of use. These areas have experienced exceptional undesirable results such as chronic lowering of groundwater levels and subsidence. The TUCPs reference several small and disadvantaged communities that were unable to meet their water needs during the drought conditions present since 2020. The statewide distribution of dry wells available through <https://mydrywell.water.ca.gov/report/publicpage> demonstrates that a significant proportion of locally reported household water shortages due to dry wells is concentrated within the Friant Division place of use. Additional deliveries of surplus flood flows for recharge and subsequent offset of groundwater extractions in these areas is in the public interest. In furtherance of Water Code section 106.3 and the State Water Board's Resolution No. 2016-0010 adopting the Human Right to Water as a core

value, Condition 2 of this Order will require prioritization of Article 215 deliveries that will assist groundwater recharge activities that stabilize or improve groundwater conditions in the vicinity of community drinking water wells.

Should the conditions that support the approval of this Order change, whether in alterations to water supply or identification of additional impacts to aquatic habitat, water quality, or other matters within the public interest, the State Water Board has the authority to revoke this Order or modify its terms and conditions as necessary to promote the interests of the public.

9.0 CONCLUSIONS

The State Water Board has adequate information to make the evaluation and findings required by Water Code section 1435.

I conclude that, based on the available evidence:

1. The right holder has an urgent need to make the proposed change;
2. The proposed change will not operate to the injury of any other lawful user of water;
3. The proposed change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,
4. The proposed change is in the public interest.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT: the petitions filed by the U.S. Bureau of Reclamation (Reclamation) for temporary urgency changes to water right License 1986 (Application 23) and Permits 11885, 11886, and 11887 (Applications 234, 1465, and 5638) are approved and effective on March 15 through July 30, 2023.

All existing terms and conditions of the subject license and permits remain in effect, except as temporarily amended by the following provisions:

1. Up to 2,200 cubic feet per second (not to exceed 602,182 acre-feet) may be diverted or rediverted at Mendota Dam located as follows:

California Coordinate System, NAD 83, Zone 3, North 1,745,375 feet and East 6,598,943 feet, being within the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 19, T13S, R15E, MDB&M.

2. The water diverted or rediverted at Mendota Dam shall first be delivered to any unmet demand in San Joaquin wildlife refuges in compliance with the Central Valley Project Improvement Act. Reclamation shall then follow the priority of deliveries identified in the National Environmental Policy Act categorical exclusion checklist titled "Friant Division 215 Contracts for Contract Year 2023" where Friant Division Contractors shall receive first priority to deliveries of Section 215 water.
3. The water diverted or rediverted at Mendota Dam may also be temporarily stored underground for subsequent use provided that storage does not last beyond September 30, 2023 and withdrawal from storage by either a Central Valley Project (CVP) contractor or its customers occurs prior to exercise of any other basis of water right for extraction of water from the aquifer underlying the CVP contractor.
4. To ensure that the San Joaquin River maintains connectivity for instream use, no water may be diverted or rediverted at Mendota Dam unless Reclamation ensures that flows exceed 300 cfs at past Sack Dam downstream of the Mendota Pool or at an amount satisfactory pursuant to the requirements of the San Joaquin River Restoration Program (SJRRP).
5. Reclamation shall operate the SJRRP concurrently with flood operations such that a portion of the flood flows released from Friant shall be treated as SJRRP restoration flows and given Water Code section 1707 protection, in an amount that is the lesser of either 300 cfs or the Restoration Administrator flow recommendation, consistent with the requirements of the 2013 Order, the Settlement, and the Restoration Administrator's flow schedule for simulating the natural hydrograph. Reclamation shall coordinate with the SJRRP Restoration Administrator to ensure that the San Joaquin River remains connected during flood control operations at Friant Dam.
6. Diversion or rediversion at Mendota Dam may only occur when the following circumstances are occurring:
 - a. Friant Dam is making flood control releases;
 - b. Inflows to Mendota Pool exceeds current demands in Mendota Pool, including satisfaction of San Joaquin River Exchange Contractor demands reported to Reclamation via ongoing coordination of SJRRP;
 - c. Demands of water right holders senior to License 1986 and Permits 11885, 11886, and 11887 are satisfied pursuant to existing agreements;
 - d. The Delta is in excess conditions without restrictions as defined in the CVP-State Water Project Coordinated Operation Agreement (COA), dated November 24, 1986, and as updated in the December 12, 2018 COA Addendum. Diversion or rediversion pursuant to the Order will not cause the Delta to transition out of excess conditions.

- e. Reclamation is in compliance with Water Quality Control Plan objectives in the Delta and meeting all applicable requirements specified in State Water Board Revised Decision 1641 (D-1641).
7. No agricultural field shall be inundated for infiltration under this Order unless:
 - a. the field has been in compliance with the Irrigated Lands Regulatory Program for, at minimum, the two most recent growing seasons; or
 - b. the following apply:
 - i. the field has been operated under management practices for fertilizer application for at least two growing seasons; and
 - ii. the field has not had fertilizer applied within the last three months.
8. No on-farm recharge shall occur in Dairy Land Application Areas unless the CVP Contractor receiving delivery under an Article 215 Contract has provided notification and received concurrence from staff of the Central Valley Regional Board. Reclamation shall provide evidence of concurrence within 15 days of issuance of any concurrence.
9. Reclamation shall monitor and report diversions and rediversions made pursuant to this Order in accordance with its existing requirements, including the conditions of the November 7, 2022 Order approving petitions for temporary transfer of up to 45,000 af for instream flow dedication and rediversion (2022 Order). The Operations Spreadsheet developed pursuant to the 2022 Order shall be submitted with Reclamation's annual water use reporting for 2023 for License 1986 and Permits 11885, 11886, and 11887, or within 14 days following a request by State Water Board staff for a copy of the Operations Spreadsheet.
10. Reclamation shall include copies of each Article 215 contract executed pursuant to this Order as attachments to the annual water use reporting for 2023 for License 1986 and Permits 11885, 11886, and 11887.
11. Diversion or rediversion of water pursuant to this Order is subject to compliance with the requirements set forth in D-1641, or any future State Water Board regulation, order, or decision implementing Bay-Delta water quality objectives.
12. Diversion or rediversion of water pursuant to this Order is subject to compliance with all existing biological opinions and court orders and any other conditions imposed by other regulatory agencies applicable to these operations.
13. Rediversion of water pursuant to this Order is authorized only to the extent that it is surplus to the Friant Division contractors and SJRRP.

14. Approval of the temporary urgency change petitions shall not modify or amend the rights or obligations of the parties to the San Joaquin River Exchange Contract (amended February 14, 1968) or other contracts.
15. Pursuant to Water Code Sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this 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.
16. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a “take” will result from any act authorized under this temporary transfer, Reclamation shall obtain authorization for an incidental “take” permit prior to construction or operation. Reclamation shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.
17. The State Water Board reserves authority to supervise the 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.

Dated: March 8, 2023



Eileen Sobeck
Executive Director