

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

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

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

2.0 CRITERIA FOR APPROVING THE TEMPORARY CHANGE

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

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

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

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

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

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

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

9.0 WATER CODE SECTION 1707 FINDINGS

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

10.0 MONITORING AND REPORTING

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

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

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

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

11.0 ADDITIONAL PROPOSED TERMS

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

During the times that water is being rediverted at the BCID facility pursuant to this temporary transfer order, San Joaquin River flows used to inform NDOI conditions in D-1641 will be reduced by the quantity of water rediverted by the BCID facility pursuant to this temporary transfer order.

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

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

12.0 STATE WATER BOARD’S DELEGATION OF AUTHORITY

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

13.0 CONCLUSIONS

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

I conclude that, based on the available evidence:

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

ORDER

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

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

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

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

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

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

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated: APR 20 2020