

# **FINAL Environmental Assessment**

**One-Year Recapture of San Joaquin River  
Restoration Flows at Patterson Irrigation District  
and/or Banta-Carbona Irrigation District**

## **Attachment C – Public Comments and Responses**



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## List of Abbreviations and Acronyms

2013 Water Rights Order	State Water Resources Control Board Division of Water Rights Order Approving Change and Instream Flow Dedication, October 21, 2013
2016 Water Rights Order	State Water Resources Control Board Division of Water Rights Order Approving Temporary Transfer of up to 76,069 Acre- feet of Water from the U.S. Department of the Interior, Bureau of Reclamation to Friant Water Contractors, March 23, 2016
AF	acre-feet
BCID	Banta-Carbona Irrigation District
CEQ	Council on Environmental Quality
cfs	cubic feet per second
CVP	Central Valley Project
D-1641	State Water Resources Control Board Water Right Decision 1641
Delta	Sacramento–San Joaquin River Delta
DMC	Delta-Mendota Canal
EA	Environmental Assessment
NEPA	National Environmental Policy Act
PEIS/R	Program Environmental Impact Statement/ Report
PID	Patterson Irrigation District
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
Settlement	Stipulation of Settlement in <i>NRDC, et al., v. Kirk Rodgers, et al.</i>
SJRRP	San Joaquin River Restoration Program
SWRCB	California State Water Resources Control Board
TBI	The Bay Institute
Restoration Flows	San Joaquin River Restoration Flows
WCY	Water Contract Year

# 1.0 Introduction

This attachment contains the comments and responses to comments for the Draft Environmental Assessment (EA) for recapturing San Joaquin River Restoration Flows (Restoration Flows) at Patterson Irrigation District (PID) and/or Banta-Carbona Irrigation District (BCID) to the Central Valley Project (CVP) for Water Contract Year (WCY) 2016 released by U.S. Department of the Interior, Bureau of Reclamation (Reclamation) for public review on December 21, 2015.

This attachment contains the comments received on the Draft EA and responses to those comments. Five comment letters were received. Section 2 contains a list of all agencies and organizations who commented on the Draft EA and presents the comment letters. Section 3 presents the responses to comments.

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## 2.0 Comments

This section contains copies of comment letters received. Table 2-1 indicates the commenting entity and abbreviation used to identify commenters. Individual comments within a comment letter are delineated by the abbreviation and sequential number (e.g., NRDC-1). Responses to comments are provided in Section 3 – Responses to Comments and are numbered corresponding to the numbers assigned in the letter. Modifications to the Draft EA made in response to comments are included in the Final EA.

**Table 2.1.  
Summary of Comment Letters Received and Abbreviations Used to Identify and Respond to Comments**

<b>Abbreviation</b>	<b>Agency</b>	<b>Affiliation</b>
TBI	The Bay Institute and Natural Resources Defense Council	Organizations
SEWD	Stockton East Water District	Local Agency
SJRXC	San Joaquin River Exchange Contractors Water Authority	Local Agency
SLDMWA	San Luis & Delta-Mendota Water Authority	Local Agency
WSID	West Stanislaus Irrigation District	Local Agency

## 2.1 Comments from The Bay Institute and Natural Resources Defense Council



January 21, 2016

Alicia Forsythe  
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RE: Comments on Draft EA for the one-year recapture of San Joaquin River Restoration Flows

The Bay Institute and the Natural Resources Defense Council appreciate the opportunity to provide comments related to the December 2015 Draft Environmental Assessment (EA) for the one-year recapture of San Joaquin River Restoration Flows at the Patterson Irrigation District (PID) and Banta-Carbona Irrigation District (BCID). We continue to support the San Joaquin River Restoration Program's (SJRRP) efforts to improve water management in the San Joaquin Valley as part of the implementation of the San Joaquin River Restoration Settlement Agreement (Settlement). However, as currently drafted, the draft EA is not consistent with Paragraph 16(a)(1) of the Settlement, which requires that "any recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows shall have no adverse impact on the Restoration Goal, downstream water quality, or fisheries."

In the Record of Decision for the San Joaquin River Restoration Program, the Bureau of Reclamation (Reclamation) acknowledged that recirculation and recapture upstream of Vernalis was only analyzed at the program level in the PEIS/PEIR, and that "[r]ecapture of Interim or Restoration flows at existing facilities would occur only if doing so would not adversely affect downstream water quality or fisheries, consistent with the requirements of Paragraph 16(a)(1) of the Settlement." See Record of Decision at 24. While the ROD acknowledges this requirement, the EA and the proposed approach do not appear to address this limitation. The EA must be revised to do so.

TBI-1

The draft EA inaccurately concludes that the quantity of potential recapture is minimal in relation to the flow in the San Joaquin River and thus will have no adverse impact on the Restoration Goal, downstream water quality or fisheries. This conclusion is not supportable given the inadequate and incomplete analysis in the EA and the recent

TBI-2

findings of the State Water Resources Control Board regarding flows in the lower river.	TBI-2, cont
As elaborated below, the EA's analysis of the environmental impacts:	
a) Makes a misleading comparison of the recapture at the PID pumps in relation to the flow at the Vernalis gage, located 40 miles downstream, with significantly greater flow. The analysis for the PID recapture should use the flow gage at Patterson as the recapture percentage of the river flow could be significantly higher.	TBI-3
b) Is incomplete because it calculates the recapture percentage in relation to the average monthly flow in the different year types; using daily flows would be more robust and reflective of what the fish would experience.	TBI-4
c) Fails to analyze whether recapture would contribute to violation of existing Vernalis water quality standards (including pulse flow standards) as well as violation of Delta outflow standards.	TBI-5
d) Fails to adequately analyze, using sound science, the impacts of the reduction of flow as a result of recapture on salmon survival, downstream water quality, and achievement of the Restoration Goal.	TBI-6
Thus the analysis fails to adequately analyze the impacts of flow diversion for recapture at the PID and BCID pumps, particularly in drier periods when the recapture amount could potentially represent up to 20% of the river flow, and when the existing water quality and flow standards are not being met.	TBI-7
Moreover, we are concerned that Reclamation may rely on similar analyses in future analyses of recapture programs using existing or new facilities, which are also inconsistent with Paragraph 16(a)(1).	TBI-8
Based on the State Water Resources Control Board proceeding regarding flows in the lower San Joaquin River, current flows are inadequate to protect water quality and fisheries, particularly during the months of February to June. The California Department of Fish and Wildlife, National Marine Fisheries Service, U.S. Fish and Wildlife Service, independent scientific reviews, and non-governmental organizations have all submitted written comments and/or public testimony concluding that existing Vernalis flow requirements are inadequate to protect downstream fisheries and water quality, and that increased flows in the Lower San Joaquin River at Vernalis are necessary to restore and sustain the abundance and viability of salmon and steelhead in the San Joaquin basin. There is strong scientific evidence that higher flows in the lower San Joaquin River from February to June support higher survival rates for migrating salmon and higher escapement and abundance several years later, and improve water quality in the Delta. <sup>1</sup> Therefore, recapture upstream of Vernalis during the months of February to June in most years, and potentially all water-year types, would likely have adverse effects on	TBI-9

<sup>1</sup> Our detailed 2013 comments to the State Water Resources Control Board regarding the best available science on the effects of San Joaquin River flow on salmon survival and abundance are available online at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/hearings/baydelta\\_pdsed/docs/comments032913/jonathan\\_rosenfield.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/baydelta_pdsed/docs/comments032913/jonathan_rosenfield.pdf). They are hereby incorporated by reference.

downstream water quality and fisheries, and would impede achievement of the Restoration Goal. Such an approach is inconsistent with Paragraph 16(a)(1).<sup>2</sup>

TBI-9, cont

In addition, in the Drought Contingency Plan submitted to the SWRCB earlier this month,<sup>3</sup> Reclamation has indicated to the State Water Resources Control Board that it intends to seek approval to not meet existing Vernalis water quality standards in 2016, even under a 50% exceedance hydrology. See Drought Contingency Plan, Attachment 1 and Attachment 2. Therefore, it appears that recapture will contribute to violation of existing water quality standards at Vernalis. At a minimum, the EA must be revised to exclude recapture when existing flow and water quality standards are not being met, and should exclude recapture and recirculation during the February to June period.

TBI-10

In addition, below are several specific comments on the EA:

1. In a number of places, basic context information that would help the reader understand the existing conditions and analysis is lacking. This includes:

- a. Somewhere in the document (in Section 2.2 Alternatives or a Project Description section), there should be a more complete description of the range of possible additional Restoration flows in WY 2016 at the Merced River confluence based upon the known constraints and estimated gains and losses in Reach 4 and 5 of the river and East Side Bypass. The document's only quantitative description of the additional Restoration flow is on P 3-6 and Table 3-1 noting a "flow capacity restriction in Reach 4 (between Mendota Pool and the Merced River confluence) of 350 cfs".<sup>4</sup>

TBI-11

The document should describe the monitoring that will be done to ascertain the quantity of additional Restoration flow that will be available at the PID and BCID pumps including any additional gaging that will be done in the East Side Bypass.

TBI-12

- b. Section 1-2 (Recapture Facilities): The location of the San Joaquin River gaging stations at Vernalis (which is the gaging station used in the analysis) and at Patterson (which we recommend should be used in the analysis) should be identified on Figure 1-1 and the appropriate Figures that show the recapture facilities. This would help the reader understand where the gaging stations are in relation to the pumps.

TBI-13

- c. Section 2.2.1 (Alternative A): This section states, "Pumping from the San Joaquin River in excess of the 40 cfs limit would be to satisfy PID's

TBI-14

<sup>2</sup> We have been led to believe that Bureau interprets 16(a)(1) as only applying to "additional" violations of water quality standards. However, such an interpretation of Paragraph 16(a)(1) would be wholly inconsistent with the requirements of the Settlement, as discussed in our comments and footnote in our August 27 submittal on the Notice of Intent (NOI) for the Long-Term Recapture and Recirculation of San Joaquin River Restoration Program Flows Environmental Impact Statement (EIS). Those comments are also incorporated by reference.

<sup>3</sup> Available online at: [http://www.water.ca.gov/waterconditions/docs/2016-DroughtContingencyPlan-CVP-SWPOperations-Feb-Nov\\_1.19.16-FINAL.pdf](http://www.water.ca.gov/waterconditions/docs/2016-DroughtContingencyPlan-CVP-SWPOperations-Feb-Nov_1.19.16-FINAL.pdf).

<sup>4</sup> The statement misleadingly implies Reach 4 is between Mendota Pool and the Merced River.

<p>agricultural demands and governed by PID's existing water rights, as represented by the baseline conditions." There is no description of the baseline conditions or documentation of the existing water rights anywhere in the document despite this section making reference to them. At a minimum the EA should summarize the baseline conditions with table(s) showing the average monthly agricultural water demands and pumping from the San Joaquin River in the different year-types to ascertain when available capacity for recapture is most likely to occur. In addition, the baseline conditions for the operations of the pumps in the different months under the current Biological Opinions should be described to assist in the site-specific assessment of the proposed recapture on listed species.</p>	TBI-14, cont
<p>d. Please explain why the section documenting the existing water rights that was in the Administrative Draft was removed from this document.</p>	TBI-15
<p>2. Section 3.0 (Climate Change and Greenhouse Gases): Even though this is a one-year program and the energy consumed is relatively small, the EA should quantify the additional pumping energy required to lift the water from the San Joaquin River to the DMC.</p>	TBI-16
<p>3. Section 3.2.2 (Environmental Consequences) The analysis of the recapture at PID and BCID pumps based upon comparing the potential recapture amount to the average monthly flow in each year type at Vernalis is inadequate and incomplete.</p>	TBI-17
<p>a. First, in Alternative A the analysis of the recapture at the PID pumps should use the San Joaquin River at Patterson gage, which is located just upstream of the PID pumps, in addition to the San Joaquin River at Vernalis gage, which is located approximately 40 river miles downriver and includes the flow contribution from the Tuolumne and Stanislaus Rivers. The flow at Vernalis is significantly higher than at Patterson, particularly in the drier years and the percentage of the river flow that may be recaptured under the EA is likely to be much higher than shown in Table 3-2.</p>	TBI-18
<p>b. Second, the BCID diversion is about 10 miles downstream of the Vernalis gage. The EA should estimate any additional withdrawals from the River between the Vernalis gage and the BCID diversion facility as that would affect the calculation of the percentage of the flow diverted in Alternative B and Alternative C.</p>	TBI-19
<p>c. Third, the potential recapture amount is analyzed in comparison to the average flow in each month for each particular year-type. However the EA should be revised to compare the recapture amount to the river flow using daily flows (better reflecting what the fish would experience) within each month for each year-type. A daily flow analysis would, for example, allow calculation of the frequency distribution of percentage recaptured to ascertain how often the recapture is greater than a given percentage of the river flow.</p>	TBI-20
<p>d. Fourth, the EA should document and analyze, based upon the historical record and model simulations, when the flows in the river are in violation of</p>	TBI-21

existing Vernalis water quality and pulse flow standards. As stated above, the EA should be revised to exclude recapture when existing flow and water quality standards are not being met.

TBI-21, cont

Thank you for consideration of our views.

Sincerely,



Peter Vorster  
Hydrogeographer  
The Bay Institute



Monty Schmitt  
Senior Scientist  
Natural Resources Defense Council

## 2.2 Comments from Stockton East Water District



Karna E Harrigfeld  
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VIA ELECTRONIC MAIL

January 20, 2016

Ms. Becky Victorine  
Natural Resources Specialist, San Joaquin  
River Restoration Program  
Bureau of Reclamation  
E-Mail: rvictorine@usbr.gov

Re: Draft Environmental Assessment for One-Year Recapture of San Joaquin River  
Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation  
District

Dear Ms. Victorine:

Stockton East Water District ("District") submits the following comments on the Draft Environmental Assessment for the One-Year Recapture of San Joaquin River Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District ("Draft EA").

At the outset, the District continues to support the San Joaquin River Restoration Program (SJRRP) as the District believes these restoration flows will provide a real opportunity for the Friant Project to contribute to Central Valley Project (CVP) obligations at Vernalis, which have been to date disproportionately burdened on the New Melones Project and its CVP contractors. There is potential that restoration flows could decrease flows needed from New Melones to meet San Joaquin River flow and salinity requirements at Vernalis.

The San Joaquin River Settlement Agreement directs that the implementation of the Settlement shall not result in the involuntary reduction of contract water allocations to CVP long-term contractors. The District is concerned that, as structured in the Draft EA, recapture of restoration flows in the San Joaquin River upstream of Vernalis could result in the need for increased releases from New Melones, resulting in a possible reduction of contract water allocations to the District and Central San Joaquin Water Conservation District, CVP long-term contractors. The Draft EA does not address this issue. To date, no environmental document for implementation of the SJRRP has addressed removing the water upstream of Vernalis and the corresponding effects that may occur at New Melones.

SEWD-1

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# San Joaquin River Restoration Program

January 20, 2016  
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The Draft EA tiers from the Final Program Environmental Impact Statement/Report ("PEIS/R") for the San Joaquin River Restoration Program ("SJRRP"). In previous comments submitted on the PEIS/R, the District asserted the modeling was flawed because it assumes that New Melones will exclusively meet all Vernalis water quality requirements imposed by D 1641. Release of restoration flows in the San Joaquin River will assist in meeting water quality and river flows at Vernalis in the San Joaquin River, this is the baseline current condition. Current conditions allow water to be retained in New Melones Reservoir. If the restoration flows are recaptured above Vernalis, New Melones CVP contractors could be adversely impacted. Such adverse impacts are specifically prohibited by the San Joaquin River Settlement and must be analyzed in the Draft EA. SEWD-2

The modeling done in support for the PEIS/R was further fundamentally flawed as it assumes that Vernalis Adaptive Management ("VAMP") "like" flows will be implemented throughout the SJRRP. This is a flawed assumption as the San Joaquin River Agreement expired and the VAMP flow requirements are no longer being implemented. Moreover, the State Water Resources Control Board has failed to adopt new Vernalis flow objectives to replace the VAMP flow requirements and the Bureau of Reclamation asserts that it is not responsible for meeting the Vernalis flow requirements and therefore is not making releases to meet the requirements. SEWD-3

The Draft EA includes Tables 3-2 and 3-4 which purportedly depict the percentage reduction in Vernalis flows as a result of diversion of restoration flows upstream of Vernalis. These percentage reductions are the basis of the Draft EA for the statement that the amount recaptured upstream is minimal in comparison to total Vernalis flows. First, there is no mention of the source data for the projected Vernalis flows. Second, assuming it came from model runs from the PEIS/R, those runs are completed distorted as the Vernalis flows in the model runs are not actually occurring in the San Joaquin River. Finally, the District is unclear how the numbers are derived and question the accuracy of the Table 3-4 in light of the fact that Banta-Carbona Irrigation District diversion facilities are downstream of Vernalis compliance point. SEWD-4

Should you have any questions, please feel free to contact me.

Very truly yours,



KARNA E. HARRIGFELD  
Attorney-at-Law

cc: Scot A. Moody

## 2.3 Comments from San Joaquin River Exchange Contractors Water Authority

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January 20, 2016

VIA E-MAIL

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U.S. Bureau of Reclamation  
Mid-Pacific Region, MP-170  
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Sacramento, CA 95825  
[rvictorine@usbr.gov](mailto:rvictorine@usbr.gov)

Re: COMMENTS Of The San Joaquin River Exchange Contractors Water Authority  
To The Draft Environmental Assessment and Finding Of No Significant Impact  
For The Proposed One Year Recapture of Restoration Flows Pursuant To The San  
Joaquin River Restoration Program

Dear Ms. Victorine:

These comments are submitted on behalf of the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) to the above-referenced proposed recapture of restoration flows.

#### Introduction

The United States Bureau of Reclamation (USBR) has petitioned the State Water Resources Control Board (Water Board) requesting that two new points of diversion (PORD) be added to their license and permits for operations at Friant Dam (Millerton Reservoir) in conjunction with the implementation of the San Joaquin River Restoration Program (SJRRP). The two PORDs would be at Patterson Irrigation District and Banta-Carbona Irrigation District. These PORDs represent a new phase in the SJRRP and raise some issues of concern for the Exchange Contractors.

If the new PORDs are used to recirculate restoration flows, water will pass through the Mendota Pool, past Sack Dam and through the bypass system. These flows are distinct from flood flows.

**SJRX-1**

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Page 2

The total capacity of the combined PORs is 76,069 AF. Flows would be released possibly as soon as February 2016.

Both the Petition and the EA state that the conditions included in the long term permits for the USBR to implement the SJRRP ("SJRRP permit terms") would apply to this one-year proposed change to the POR. The current points of diversion (PODs) are Mendota Pool and the Delta.

Nothing in the EA or the water rights Petition state why the new PORs are necessary at this time or what advantage would be gained. In the long term, should the SJRRP become a functioning program, these additional PORs are needed because the Mendota Pool will be utilized for Exchange Contractor deliveries from the Delta Mendota Canal and the points of diversion for the SJRRP flows will either be the Delta or these upstream PORs.

SJRXC-2

This is a particularly difficult time for USBR to decide to pass water downstream of the Mendota Pool. By so doing, the Friant Division is at great risk of continuing to suffer significant water supply shortages. Current regulatory actions are creating great uncertainty in the availability of supplies for south of the Delta, including meeting the USBR's obligations under the Exchange Contract, which will more likely than not require full deliveries. Actions by the National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS) and Water Board limiting pumping at the Delta, increasing carryover in upstream reservoirs and requiring substantial Delta outflows under dire water supply circumstances continue to create pressure on south of Delta water users and increases the likelihood that USBR will have to provide water from Friant to the Exchange Contractors.

If current hydrologic conditions persist, as is predicted by the National Oceanic and Atmospheric Administration, due to El Niño conditions, it is likely that this will be a 100% of delivery contract year for the Exchange Contractors. If so, over 700,000 acre-feet of water will have to be delivered to the Exchange Contractors from the San Joaquin River if current hydrologic modeling is correct. This will again exacerbate groundwater conditions within the Friant Division and likely, once again, to result in loss of water supply to local towns and residents. There is no reason for this catastrophe to repeat itself in a relatively plentiful water year.

The 76,000 acre-feet of water otherwise proposed to be diverted and recirculated at Patterson Irrigation District (PID) or Banta-Carbona Irrigation District (BCID) should instead be recirculated at the Mendota Pool with credit given to the Exchange Contractors at that point. Recirculation at the Mendota Pool will instantly deposit on an acre foot for acre foot basis water into San Luis Reservoir for credit to the Friant Division. On the other hand, if water is allowed to flow downstream beyond the Mendota Pool, the 76,000 acre-feet will be eroded by system losses and water quality will degrade in the Delta Mendota Canal. Further, USBR will still have to deliver the same 76,000 acre-feet, plus additional water to the Exchange Contractors, with a net loss to the Friant Division.

SJRXC-3

Duane Morris

Ms. Becky Victorine  
U.S. Bureau of Reclamation  
January 20, 2016  
Page 3

SJRX-3, cont

USBR has cited paragraph 16 of the SJRRP Settlement Agreement (set forth below) as the basis upon which it intends to pursue recirculation at PID and BCID. A simple review of that paragraph indicates there is no timeline upon which recirculation at PID or BCID must or may be pursued. There is no legal reason why USBR should be pursuing recirculation this year. It is far more important to recover water supplies, try to restore groundwater, and let communities get back on their feet than it is to conduct an experiment involving new PORD's. Further, there is no scientific compulsion to conduct recirculation at these PORD's this year, if ever.

SJRX-4

General Comments

When the SJRRP was created USBR took the position that they did not need to conduct a feasibility study. USBR recognized that they have not publicly "evaluated the feasibility of the SJRRP Settlement, the likely efficacy of the Settlement actions in achieving the Restoration or Water Management goals, or the interactions or individual Settlement actions with other Settlement actions." (Final PEIS/R, Page 2-3, July 2012) The Water Board approved the flows for the SJRRP in several orders concerning the release of Interim and Restoration flows. Now, the SJRRP is about to enter a phase of the program where it could regularly be attracting salmonids into the Restoration Area. Yet, not one of the SJRRP Phase 1 or Phase 2 actions have even been started. Further there is no indication that Congress is going to fund the SJRRP at more than nominal levels. NEPA requires that (1) project alternatives be feasible and (2) that USBR consider a range of alternatives that could achieve the project purposes. (*Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 551, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978); *Westlands Water District v. U.S. Department of the Interior, et al.*, 376 F.3d 853, 868 (9th Cir. 2004).)

SJRX-5

SJRX-6

The Settlement Agreement in the litigation, which led to the SJRRP, sets forth a water management goal that includes recapture of restoration flows at unspecified points downstream. Paragraph 16 of the Settlement states:

- 16. In order to achieve the Water Management Goal, immediately upon the Effective Date of this Settlement, the Secretary, in consultation with the Plaintiffs and Friant Parties, shall commence activities pursuant to applicable law and provisions of this Settlement to develop and implement the following:*
- (a) A plan for recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to all of the Friant Contractors caused by the Interim Flows and Restoration Flows. The plan shall include provisions for funding necessary measures to implement the plan. The plan shall:*
- (1) ensure that any recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows shall have no adverse impact on the Restoration Goal, downstream water quality or fisheries;*

Duane Morris

Ms. Becky Victorine  
U.S. Bureau of Reclamation  
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*(2) be developed and implemented in accordance with all applicable laws, regulations and standards. The Parties agree that this Paragraph 16 shall not be relied upon in connection with any request or proceeding relating to any increase in Delta pumping rates or capacity beyond current criteria existing as of the Effective Date of this Settlement;*

*(3) be developed and implemented in a manner that does not adversely impact the Secretary's ability to meet contractual obligations existing as of the Effective Date of this Settlement; and*

*(4) the plan shall not be inconsistent with agreements between the United States Bureau of Reclamation and the California Department of Water Resources existing on the Effective Date of this Settlement, with regard to operation of the CVP and State Water Project.*

As is obvious from the language of paragraph 16, nothing therein dictates where recapture should occur or when USBR should pursue recapture at PID or BCID. While the draft EA attempts to define the scope of the project more narrowly to be limited to recapture at PID and/or BCID, in fact the underlying authority does not compel such a limited scope. Hence, in considering the point of diversion at PID and BCID, USBR must also consider alternatives thereto. Recapture at the Mendota Pool is a reasonable alternative, particularly given that this is a one-year proposal. SJRXC-7

The Exchange Contractors note that there is no fishery enhancement purpose compelling recapture at PID or BCID. USBR and its co-agencies are operating a non-volitional fish passage program within the Restoration Area. Any fish that are captured within the Restoration Area are going to be trapped and hauled to Reach One of the San Joaquin River below Friant Dam or taken to the conservation hatchery where they will be killed. This trap and haul program was conducted in other water years and the Restoration flows are not needed to move these fish upstream. Further, there will be more than adequate water in the San Joaquin River below the Restoration area due to the contribution of the eastside tributaries and base flows plus possibly additional restoration flows coming from the upper San Joaquin River. SJRXC-8

Specific Comments

1. USBR has filed a petition with the Water Board pursuant to Water Code section 1725. Section 1725 authorizes short-term water transfers. However, there is nothing within the draft EA that identifies any water transfer. Rather, the draft EA describes a project whereby, pursuant to existing permit conditions, USBR proposes to release water at Friant Dam and have it flow to points of recapture below the Restoration area. This water will then be returned to the Delta Mendota Canal (DMC) and placed into San Luis Reservoir for return to the Friant Division (See FONSI, PDF page 4). Pursuant to Section 1725, if this were a water transfer, the water would have to be water that is otherwise consumed or retained in storage as the basis for the transfer. The water USBR is proposing to release is SJRXC-9

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water that it contends it must release downstream per the Settlement hydrographs, i.e. this water will not otherwise be consumed for human purposes or retained in storage, so it does not fit within the foregoing conditions. The draft EA fails to analyze the requisite conditions under section 1725 and, based on the facts, cannot make the requisite showing. If USBR is contending that it has discretion to not release water down the San Joaquin River pursuant to the Settlement hydrographs even if inflow into Millerton exceeds 400,000 acre-feet and the needs of the Exchange Contractors are met, it must make this contention public. The Exchange Contractors are not aware of any such position by USBR even though, they make the point in their protest to the water rights petition, the release of this water in this year under potentially continuing dire human conditions would not be in the public interest. A copy of that protest has been provided to USBR in the person of Bob Colella.

SJRX-9, cont

2. USBR characterizes the change as merely adding two new PORDs. However, these additions are very significant. They potentially will attract salmonids into the Restoration Area where they will perish. In past years, fall-run have reached the restoration area and, if not rescued, they died. It is estimated 70-100 fish died in 2012. This is unreasonable given the other options to divert SJRRP flows.

SJRX-10

3. As was explained above, to the extent capacity is available, SJRRP flows should be diverted at the Mendota Pool where the Friant Division will receive a 1 for 1 credit in San Luis Reservoir. This decreases losses as compared to lower river diversions, improves water quality to the Exchange Contractors, reduces net pumping and consumption of energy with attendant reductions in GHG emissions, and, if 2016 is another year where the Exchange Contractors are taking water off the San Joaquin River, as appears to be the case, accounting is much easier.

SJRX-11

4. Using the new PORDs likely will decrease water quality in the DMC. As the SJRRP water flows down to the PORDs water quality decreases. This lower quality water is then placed into the DMC which already has reduced water quality from the Delta. Hence the recirculation impairs water quality. Diversion at the Mendota Pool avoids this problem. While the draft EA discusses water quality in the San Joaquin River, it fails to discuss water quality in the DMC.

SJRX-12

5. In the 2015 water year, despite the fact that under the terms of the Second Amended Exchange Contract the Exchange Contractors were entitled to continued flows from the San Joaquin River through Millerton Reservoir and down the San Joaquin River under the terms of the Purchase Contract with the United States and the Power Contracts, in an attempt to cooperate with the United States Department of Interior, amounts of water to which the Exchange Contractors were entitled were maintained within Millerton Reservoir and upstream Reservoirs and not delivered downstream to the Exchange Contractors. This retention of water was pursuant to an attempt to cooperate in providing operational flexibility and a margin of safety for both the United States, its Friant Project contractors

SJRX-13

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and the Exchange Contractors. The Exchange Contractors did not receive the full amounts of water to which they were entitled from the San Joaquin River as a result in 2015 with the understanding and consent that those amounts retained in the San Joaquin River watershed would be carried over to the extent of the delayed flows not received by the Exchange Contractors and available in 2016 for the Exchange Contractors' use if the United States' operations were curtailed from the Sacramento-San Joaquin Delta and/or the San Joaquin system. The Exchange Contractors are informed and believe that the amounts proposed to be made subject to the "transfer" are in fact, in part or in whole, flows attributable to these riparian right and pre-1914 water rights of the Exchange Contractors that, with the consent of the Exchange Contractors, were to be conserved and made subject to regulation and delivery to the Exchange Contractors at later times in certain conditions. Until the full amount of flows to which the rights of the Exchange Contractors attach to San Joaquin River flows in 2015 are identified, accounted for and delivered in the San Joaquin River or through Sacramento-San Joaquin Delta, diversions as "exchanged water," the proposed "transfer," should be denied or conditioned upon that compliance and accounting occurring before any "transfer" is permitted.

SJRXC-13,  
cont

6. 2016 could be far wetter than either 2014 or 2015 and still require USBR to deliver water to the Exchange Contractors from the San Joaquin River. Until USBR is certain that it can meet its obligations to the Exchange Contractors, it cannot release water for the SJRRP. (Existing condition in long term permit. *See also, Westlands Water Dist. v. United States*, 153 F.Supp.2d 1133 (E.D. Cal. 2001) *Westlands Water Dist. v. United States*, 337 F.3d 1092 (9th Cir. 2003).)

SJRXC-14

7. Neither the PEIS nor this draft EA analyze attracting fish into an unimproved river. Since recapturing flows at these lower PORDs are likely to attract at least fall-run fish, the state of the river must be analyzed for impacts of flows attracting fish into the restoration area.

SJRXC-15

8. The draft EA must analyze to what extent do losses below Mendota Pool exacerbate shortages to disadvantaged communities within the Friant Division.

SJRXC-16

9. The draft EA must analyze to what extent losses below Mendota Pool exacerbate USBR's ability to meet its obligations under the Exchange Contract.

SJRXC-17

10. USBR has acquired easements that will allow it to flood certain farms. However, there is no analysis of the impacts to prime farm land from seepage, even if compensated, that will result from allowing flows below Sack Dam.

SJRXC-18

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Duane Morris

In conclusion, thank you for this opportunity to comment on the draft EA and FONSI.

Very truly yours,

*Thomas M. Berliner* (j-a)  
Thomas M. Berliner

cc: Steve Chedester, San Joaquin River Exchange Contractors Water Authority

## 2.4 Comments from San Luis & Delta-Mendota Water Authority

**San Luis & Delta-Mendota Water Authority**



P.O. Box 2157  
Los Banos, CA 93635  
Phone: (209) 826-9696  
Fax: (209) 826-9698

January 20, 2016

**VIA E-MAIL**

Becky Victorine  
Natural Resources Specialist, San Joaquin  
River Restoration Program  
Bureau of Reclamation  
E-Mail: rvictorine@usbr.gov

Re: Draft Environmental Assessment for One-Year Recapture of San Joaquin River  
Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District

Dear Ms. Victorine:

The San Luis & Delta-Mendota Water Authority ("Authority") appreciates the opportunity to submit these comments on the Draft Environmental Assessment for the One-Year Recapture of San Joaquin River Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District ("Draft EA").

The Draft EA tiers from the Final Program Environmental Impact Statement/Report ("PEIS/R") for the San Joaquin River Restoration Program ("SJRRP"). In the PEIS/R, the United States Bureau of Reclamation ("Reclamation") indicates that recirculation of recaptured water "shall not cause adverse impacts to any non-Friant Division south-of-Delta water service contractors" and "water supply deliveries to San Luis & Delta-Mendota Water Authority [will] not change as a result of Settlement implementation." PEIS at pp. 3.8-695, 697, 700-705, 707-708, 710-711. This position is consistent with the settlement in *NRDC v. Rodgers*, United States District Court, Eastern District of California, Case No. CIV. S-88-1658 ("Settlement") and the San Joaquin River Restoration Settlement Act, Pub. L. No. 111-11, tit. X, subtit. A, Part I, §§ 10004-10011 ("Settlement Act"). The Authority supports adoption of the Draft EA based on its understanding that Reclamation will implement the project described in the Draft EA without harming the Authority's member agencies, consistent the PEIS/R, the Settlement, and the Settlement Act.

The Draft EA addresses the environmental effects of recapturing San Joaquin River Restoration Flows ("Restoration Flows") at Patterson Irrigation District and/or Banta-Carbona Irrigation District for Water Contract Year 2016. The Draft EA acknowledges, consistent with the PEIS/R, that the Settlement requires implementation of a recapture and recirculation plan "in a manner that does not adversely impact the Secretary's ability to meet contractual obligations." Draft EA at p. 1-10 (citing Settlement, ¶ 16). This acknowledgement is consistent with the Settlement Act as well, which expressly provides that the Settlement "shall not result in the involuntary reduction in contract water allocations to Central Valley Project long-term contractors, other than Friant Division long-term contractors." Settlement Act, § 10004(f).

**SLDMWA-1**

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The Draft EA correctly states that recapture cannot impair the ability to convey water for the benefit of the Authority's member agencies, regardless of whether at facilities of Patterson Irrigation District, Banta-Carbona Irrigation District, State Water Project, or the Central Valley Project. The Draft EA provides:

Recapture is subject to availability of Restoration Flows and the available capacity of the districts' facilities within the CVP and/or the SWP storage and conveyance facilities, including the California Aqueduct, DMC, San Luis Reservoir, and related pumping facilities. Available capacity is capacity that is available after all statutory and contractual obligations are satisfied to existing water service or supply contracts, exchange contracts, settlement contracts, transfers, or other agreements involving or intended to benefit CVP/SWP contractors served through CVP/SWP facilities.

Draft EA at 1-9. This ensures that recapture will not result in harm to third parties to the Settlement, including the Authority's member agencies.

Finally, the Draft EA analyzes only a very limited project—the recapture of Restoration Flows for just a one-year period. As the Draft EA explains, Reclamation is preparing the Long-term Recapture and Recirculation of Restoration Flows Environmental Impact Statement ("EIS") for the SJRRP. Draft EA at p. 1-2. The Authority anticipates that it will have comments on the forthcoming EIS and reserves the right to raise additional issues and comments regarding any proposed additional recapture and recirculation actions.

SLDMWA-1, cont

Thank you,



Jason Peltier  
Executive Director  
San Luis & Delta-Mendota Water Authority

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## 2.5 Comments from West Stanislaus Irrigation District



VIA EMAIL

January 20, 2016

Ms. Becky Victorine  
Natural Resources Specialist, San Joaquin River  
Restoration Program  
Bureau of Reclamation  
E-Mail: rvictorine@usbr.gov

Re: Draft Environmental Assessment for One-Year Recapture of San Joaquin River Restoration  
Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District

Dear Ms. Victorine:

The West Stanislaus Irrigation District ("**District**") submits the following comments on the Draft Environmental Assessment for the One-Year Recapture of San Joaquin River Restoration Flows at Patterson Irrigation District and/or Banta-Carbona Irrigation District ("**Draft EA**").

The District is pleased to confirm that because the Draft EA tiers from the Final Program Environmental Impact Statement/Report ("PEIS/R") for the San Joaquin River Restoration Program ("SJRRP"), the recirculation of recaptured water "shall not cause adverse impacts to any non-Friant Division south-of-Delta water service contractors" and "water supply deliveries to San Luis & Delta-Mendota Water Authority [will] not change as a result of Settlement implementation." PEIS at pp. 3.8-695, 697, 700-705, 707-708, 710-711. The District presumes that adoption of the Draft EA will therefore confirm the understanding that Reclamation will implement the project described in the Draft EA without harming the District as a CVP contractor, consistent the PEIS/R, the Settlement, and the Settlement Act. Similarly, we confirm that the Draft EA acknowledges that the Settlement requires implementation of a recapture and recirculation plan "in a manner that does not adversely impact the Secretary's ability to meet contractual obligations." Draft EA at p. 1-10 (citing Settlement, ¶ 16).

WSID-1

We are concerned, however, that the Draft EA does not confirm that the project will be implemented in a manner to insure no adverse impact to water diversions made under prior rights on the San Joaquin River below Friant Dam, and above or below any and all recirculation recapture points. This commitment should be made in any Record of Decision in order to make the project consistent with the requirement of the Settlement Agreement prohibiting redirected impacts.

WSID-2

Very Truly Yours,

JEANNE M. ZOLEZZI  
Attorney-at-law

One-Year Recapture of San Joaquin River  
Restoration Flows at Patterson Irrigation District  
and/or Banta-Carbona Irrigation District

## **3.0 Responses to Comments**

The following responses were prepared to answer questions or comments received on the Draft EA as outlined in the letters presented in Sections 2.1 through 2.5.

### **3.1 Responses to Comments from The Bay Institute and the Natural Resources Defense Council**

#### **TBI-1**

Text has been added in the Final EA Section 2.1, “No Action Alternative,” and Section 2.2, “Action Alternatives,” to specifically acknowledge and include the requirements of Paragraph 16(a)(1) in the alternatives.

Since the circulation of the Draft EA, the State Water Resources Control Board (SWRCB) Division of Water Rights Order Approving Temporary Transfer of up to 76,069 Acre-feet of Water from the U.S. Department of the Interior, Bureau of Reclamation to Friant Water Contractors, March 23, 2016 (2016 Water Rights Order) was approved by the SWRCB. In the 2016 Water Rights Order, the SWRCB found that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code Section 1727(b)(2)). Text has been added in the Final EA Section 1.5, “2016 Water Rights Order,” summarizing the SWRCB order and relevant findings.

In addition to the monthly reporting of recaptured flows required by the SWRCB order, Reclamation has included a water quality monitoring plan to better inform future recapture programs in the action alternatives. See Section 2.2, “Action Alternatives,” of the Final EA.

#### **TBI-2**

This comment introduces the overarching theme of comments TBI-3 to TBI-6, which describe the commenter’s concerns about the sufficiency of the analysis for determining impacts to the Restoration Goal, downstream water quality and fisheries. SJRRP PEIS/R Chapter 5, “Biological Resources – Fisheries” and Chapter 14, “Hydrology – Surface Water Quality,” were incorporated by reference in the Draft EA, but further clarified in the Final EA. Clarifying text has been added to the Final EA, as described below.

Furthermore, the SWRCB has agreed with Reclamation’s conclusions related to the potential effects of this one-year program on water quality in the San Joaquin River.

In recognition that 2016 is the first year with the necessary easements to allow Restoration Flows to connect all the way to the Merced River confluence, Reclamation intends to implement a monitoring program along with the action alternatives to document that the action has no adverse impact on the Restoration Goal, downstream

water quality, or fisheries, consistent with Paragraph 16(a)(1). The plan includes monitoring Restoration Flows and lower San Joaquin River flows and water quality.

Clarifying text has been added to the following sections of the Final EA:

- Section 1.5, “2016 Water Rights Order” summarizing the SWRCB order and relevant findings.
- Section 2.1, “No Action Alternative” and Section 2.2, “Action Alternatives” summarizing the monitoring plan for the Restoration Area and the lower San Joaquin River.
- Section 3, “Affected Environment and Environmental Consequences” under the bullet “Biological Resources” summarizing the findings from the SJRRP PEIS/R Chapter 5, “Biological Resources – Fisheries” and the conclusions from the SJRRP Biological Opinion for screened diversions.
- Section 3.1.2, “Environmental Consequences,” summarizing the findings from the SJRRP PEIS/R Chapter 14, “Hydrology – Surface Water Quality.”

### **TBI-3**

Tables 3-3 through 3-6 of the Final EA present the average monthly Restoration Flow able to be recaptured under the No Action Alternative and under the action alternatives as a percentage of the simulated average monthly San Joaquin River flow at Vernalis, based on water operations simulations using Reclamation’s 2012 CalSim II model, as explained in Section 3.2.1, “Affected Environment,” of the Draft EA. The San Joaquin River at Vernalis was used for two main reasons, 1) it is the San Joaquin River compliance location for flow and water quality under the SWRCB D-1641, so it is representative of potential downstream impacts, and 2) when the same comparison point is used, the No Action Alternative and all the action alternatives can be compared to each other.

Although suggested by the commenter, the San Joaquin River gage at Patterson was not used for the analysis because historical gage data only reflects the current system operations at that time and can’t control for the influence of land-use change or upstream flow regulation. Under recent drought conditions (including no Restoration Flows), the gages in the San Joaquin River have been malfunctioning due to the low flows in the river. Therefore, this unreliable gage data would not be appropriate for the analysis in this EA.

The purpose of using simulated data is to understand the conditions that might exist under current operations for a broader number of water year types with a more representative sample of each year type. As described in the Draft EA Section 3.2.1, “Affected Environment,” CalSim II uses an 82-year hydrologic record, and can apply the SJRRP operations while holding facilities, land-use, water supply contracts, and regulatory requirements constant over this period, representing a fixed level of development. Similar to the conditions in the 2013 Water Rights Order, CalSim II accounts for the characteristic change in flows between the Merced River to the Delta under all hydrologic conditions. Additionally, CalSim II presumes that there are no losses of

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SJRRP flows between Patterson and Vernalis. Thus, the volume of Restoration Flow available at Vernalis exists along the entire length of the San Joaquin River and the location of the diversion relative to the gage would not influence the analysis. See comment response TBI-4 for additional CalSim II information.

Clarifying text has been added to the following sections of the Final EA:

- Section 3.1.2, “Environmental Consequences,” explaining the use of the San Joaquin River at Vernalis; and
- Section 3.1.2, “Environmental Consequences,” comparing the recaptured percentage of San Joaquin River flow at Vernalis between each of the action alternatives and the No Action Alternative.

#### **TBI-4**

As explained in Draft EA Section 3.2.1, “Affected Environment,” CalSim II output was used for analysis. CalSim II uses a monthly timestep and therefore the analysis in this EA is based on the monthly timestep. CalSim II is the best available tool for evaluating system-wide water operations throughout the Central Valley and is the standard operations model used for CVP/SWP systems analysis. CalSim II uses an 82-year hydrologic record, and can apply the SJRRP operations while holding facilities, land-use, water supply contracts, and regulatory requirements constant over this period, representing a fixed level of development. The purpose of using CalSim II simulated data is to understand the conditions that might exist under current operations for a broader number of water year types with a more representative sample of each year type. CalSim II accounts for the characteristic change in flows between the Merced River and the Delta under all hydrologic conditions.

Exhibit B of the Settlement provides a Restoration Flow release schedule and allows for the default stair step hydrograph to be transformed to a more continuous hydrograph based on recommendations made by the Restoration Administrator. For the purpose of the EA analysis, the default hydrograph was used. Because of the stair step nature of the default hydrograph and the flow constraints in the Restoration Area, the release and availability of Restoration Flows that could be recaptured at PID and/or BCID does not vary greatly from day to day. Therefore, the monthly timestep is appropriate for the analysis in this EA and is adequate for estimating the flows in the river and what fish would experience in terms of flow continuity through the Restoration Area.

Clarifying text has been added to the following sections of the Final EA:

- Section 3.1.1, “Affected Environment,” describing the Release Schedule for Restoration Flows.

#### **TBI-5**

The impact of the SJRRP on Delta water quality and flow standards was analyzed at a project level in the SJRRP PEIS/R. As stated in Section 1.3, “Incorporation of Related Environmental Documents,” this EA incorporates by reference SJRRP PEIS/R Chapter 14 – Hydrology – Surface Water Quality, and notes “the analysis performed in this

[SJRRP PEIS/R] chapter related to impacts on water quality in the CVP/SWP water service areas and in the San Joaquin River from the Merced River to the Delta. All impacts for these factors associated with the implementation of the SJRRP were determined to be less than significant or less than significant and beneficial.”

Clarifying text has been added to the following sections of the Final EA:

- Section 1.5, “2016 Water Rights Order,” summarizing the SWRCB order and relevant findings.
- Section 3.1.2, “Environmental Consequences” describing the analysis in the SJRRP PEIS/R regarding the long-term effects on water quality.

### **TBI-6**

As introduced in the response to comment TBI-1 and TBI-2, the net effect of the SJRRP is an increase in flows (not a reduction) along the lower San Joaquin River and into the Delta, with a corresponding less than significant or beneficial effect on downstream water quality and fish, as shown in the SJRRP PEIS/R and discussed in Section 3.0, “Affected Environment and Environmental Consequences.” Pursuant to Condition 1 of the State Water Resources Control Board Division of Water Rights Order Approving Change and Instream Flow Dedication, October 21, 2013 (2013 Water Rights Order), under both the action alternatives and the No Action Alternative, Reclamation can only recapture Restoration Flows that originate from Friant Dam. Any inflows downstream from Friant Dam, such as Cottonwood Creek or Salt Slough, may contribute to the flow targets described in Exhibit B of the Settlement, but may not be diverted by Reclamation under License 1986 and Permits 11885, 11886, and 11887. Thus, total flows reaching the Merced River confluence will exceed the amount of Restoration Flows available for recapture.

A primary focus of the Restoration Goal in 2016 is achieving flow connectivity through the Restoration Area. The existing flow constraints within the Restoration Area are the key factors for achieving that goal. Once Restoration Flows reach the Merced River confluence, the San Joaquin River is continuously wet all the way to the Delta. Because recapture at PID and BCID is constrained to the lesser of Restoration Flows existing the Restoration Area, as shown in Table 3-1 of the Final EA (300 cfs maximum), and by PID’s 40 cfs and BCID’s 65 cfs instantaneous pumping capacity up to the DMC, the action would not affect, and may improve, continuity of flows to the Delta consistent with the SJRRP’s commitment to have no adverse impact on the Restoration Goal.

Once Restoration Flows pass the Merced River confluence and mix with water in the lower San Joaquin River, recapture at any location cannot physically change the concentration of any constituents in the San Joaquin River water column and, therefore, will have no effect on water quality. As described in Draft EA Section 1.2, “Recapture Facilities,” and in Final EA Section 3.1.1, “Affected Environment,” subsection, “Hydrology – Surface Water Supplies and Facilities Operations,” PID and BCID’s pumping plants on the San Joaquin River have modern fish screens that are designed, operated, and maintained to meet NMFS, USFWS and DFW criteria, as appropriate, for

various fish species. Recapture of Restoration Flows at PID and BCID would occur within the approved operating criteria, consistent with the SJRRP's commitment to have no adverse impact on fisheries downstream from the Restoration Area.

On page 104 of the September 18, 2012 SJRRP Biological Opinion, NMFS concluded that "Recapture at existing facilities on the San Joaquin River that will not require structural modifications, are screened to NMFS fish criteria, have undergone ESA consultation regarding the facilities operations, are unlikely to cause any additional impacts to listed species." Operations of these facilities under the action alternatives would fall within the current operational requirements at each diversion, so additional impacts to listed species will not occur from diversion operations as proposed in the action alternatives analyzed in the EA.

Clarifying text has been added to the following sections of the Final EA:

- Section 3.0, "Affected Environment and Environmental Consequences" summarizing conclusions from the SJRRP Biological Opinion for screened diversions.
- Section 3.1.1, "Affected Environment," to include the 2016 Water Rights Order.
- Table 3-1 and 3-2 notes to clarify that tributary inflows downstream from Friant Dam cannot be recaptured and are not included in the table values.

#### **TBI-7**

The analysis presented in Final EA Tables 3-3 to 3-6 shows recapture of available Restoration Flows as a percentage of simulated average flows for each month for each of the Restoration year-types. The purpose of using simulated data is to understand the conditions that might exist under current operations for a broader number of water year types with a more representative sample of each year type, including normal-dry, dry, and critical high year types. Table 3-4, 3-5, 3-6 and 3-3 (Alternative A, B and C and the No-Action Alternative, respectively), show that Alternative A, B and C would recapture an equal or smaller percentage of the total San Joaquin River flow at Vernalis as compared to the No Action Alternative (SJRRP Selected Alternative [Alternative C1]).

No basis for the assertion that recapture could be 20 percent of the river flow has been provided. As explained in TBI-6, and in the Final EA, Reclamation may only recapture Restoration Flows originating from Friant Dam that reach the Merced River confluence, as shown in Table 3-1. Recapture is further limited to the lesser of available Restoration Flows and the capacity at PID and/or BCID. The 2016 Water Rights Order states that License 1986 and Permits 11885, 11886, and 11887 are not currently conditioned on achieving the San Joaquin River flow objectives and that this program is not the appropriate forum for doing so. Any future exceedences of water quality or flow standards in the lower San Joaquin River are not a result of this recapture program.

Clarifying text has been added to the following sections of the Final EA:

- Section 1.5, “2016 Water Rights Order,” summarizing the 2016 Water Rights Order and relevant findings.
- Section 3.1.2, “Environmental Consequences,” stating that Reclamation can only recapture Restoration Flows that originate from Friant Dam (pursuant to Condition 1 of the 2013 Water Rights Order).
- Section 3.1.2, “Environmental Consequences,” comparing the recaptured percentage of San Joaquin River flow at Vernalis between each of the action alternatives and the No Action Alternative.

#### **TBI-8**

Reclamation anticipates that this one year program will provide important information about recapture on the lower San Joaquin River; this information can be used in subsequent years to inform the development and analysis of long-term recapture actions. See comment response TBI-2 and TBI-6 for more information on how the action alternatives in this EA are consistent with Paragraph 16(a)(1) of the Settlement.

#### **TBI-9**

As stated in the Draft EA Section 1.1, “Background,” the Restoration Goal of the Settlement applies to the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River. Paragraph 5 of the Settlement further states “[t]he Parties acknowledge that to achieve the Restoration Goal will require a combination of channel and structural improvements along the San Joaquin River below Friant Dam, and releases of additional water from Friant Dam to the confluence of the Merced River for restoration purposes [emphasis added]...” As long as recapture downstream from the Merced River confluence does not cause a loss of flow connectivity, recapture in 2016 will have no impact on the Restoration Goal. Also see TBI-2.

In the 2016 Water Rights Order, the SWRCB found that the temporary transfer should not be conditioned to meet the Vernalis objectives.

The commenter’s information on the Bay-Delta Plan update proceeding is not reviewed or discussed in this document as it is an on-going process outside of the scope of this EA. See comment response TBI-2 and TBI-6 and TBI-7 for information on how the action alternatives in this EA are consistent with Paragraph 16(a)(1) of the Settlement.

Regarding the comment in footnote 2, Reclamation has interpreted Paragraph 16(a)(1) to mean that release and recapture of Restoration Flows downstream from the Restoration Area shall have no adverse impact on downstream water quality or fisheries, consistent with the analysis in the SJRRP PEIS/R for the selected alternative, and consistent with the 2016 Water Rights Order.

The commenter implies that recapture would prevent any Restoration Flows from reaching the Delta. However, Draft EA Section 2.2, “Action Alternatives,” clearly states that Restoration Flows that are not recaptured at PID and/or BCID would be available for

One-Year Recapture of San Joaquin River  
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recapture in the Delta, and Impact FSH-39 on SJRRP PEIS/R page 5-107 states that the selected alternative would increase San Joaquin River inflows to the Delta.

Clarifying text has been added to the following sections of the Final EA:

- Section 1.5, “2016 Water Rights Order,” summarizing the 2016 Water Rights Order and relevant findings.
- Section 3.1.2, “Environmental Consequences” describing water quality impacts analyzed in the SJRRP PEIS/R.

### **TBI-10**

As the commenter points out, DWR and Reclamation have identified in the 2016 Drought Contingency Plan that D-1641 objectives on the San Joaquin River will be impossible to meet with only the severely depleted storage available from New Melones. The up to 40 cfs of Restoration Flow that Reclamation proposes to recapture upstream from Vernalis would not be enough to change the conclusions in the Drought Contingency Plan nor change the need to modify D-1641 standards in 2016.

As discussed in TBI-6, and reiterated in the 2016 Water Rights Order, once Restoration Flows pass the Merced River confluence and mix with water in the lower San Joaquin River, recapture at any location cannot physically change the concentration of any constituents in the San Joaquin River water column and, therefore, will have no effect on water quality.

The commenter’s conclusion that recapture should be excluded during February to June would severely impede achievement of the Settlement’s Water Management Goal. Reclamation has an obligation under the Settlement and a condition under the 2013 Water Rights Order to document Restoration Flows are recaptured and used consistent with the Settlement, Settlement Act, and other conditions of the 2013 Water Rights Order. A large portion of Restoration Flows (60 percent to 80 percent) are released during this time period. Release of Restoration Flows and recapture of up to 1,000 cfs on the lower San Joaquin River as evaluated in the SJRRP PEIS/R showed less than significant or less than significant and beneficial impacts on water quality and fisheries.

Additional text has been added to the Final EA clarifying that Reclamation intends to implement a monitoring program along with the action alternatives to document that the action has no adverse impact on the Restoration Goal, downstream water quality, or fisheries, consistent with Paragraph 16(a)(1). The plan includes monitoring Restoration Flows and lower San Joaquin River flows and water quality. See Final EA Section 2.2, “Action Alternatives.”

Clarifying text has been added to the following section of the Final EA:

- Section 2.1, “No Action Alternative” and Section 2.2, “Action Alternatives” summarizing the monitoring plan for the Restoration Area and the lower San Joaquin River.

### **TBI-11**

See Section 3.2.1, “Affected Environment,” of the Final EA for information on the estimated portion of the Restoration Flows that would reach the lower San Joaquin River (at PID and BCID) and/or in the Delta and that would be available for recapture under different water year types during the one-year period of this action, as permitted by the 2016 Water Rights Order. Given that this will be the first year for flow continuity through the Restoration Area and the Restoration Flow schedule for the current year is unknown, more detail about actual flow amounts on the part of the SJRRP is equally unknown.

The description of Reach 4’s geographic extent has been revised in the Final EA as, “Reach 4 (Sack Dam to Eastside Bypass Confluence).” Text has been added to Table 3-1 notes in the Final EA clarifying that the values in the table do not include tributary inflows downstream from Friant Dam and no losses were assumed for Reach 4 and the Eastside Bypass, consistent with Exhibit B of the Settlement.

### **TBI-12**

Additional text was added to the No Action Alternative in Section 2.2, “No Action Alternative,” to describe the planned monitoring in the Restoration Area consistent with Condition 5 of the 2013 Water Rights Order and the Restoration Flow Guidelines.

Clarifying text has been added to the following sections of the Final EA:

- Section 2.1, “No Action Alternative” and Section 2.2, “Action Alternatives” summarizing the monitoring plan for the Restoration Area and the lower San Joaquin River.

### **TBI-13**

Figure 1-1 was revised to show Vernalis and the Restoration Area. Figures 2-2 and 2-3 were added to show the location of existing flow and water quality stations that will be included in the recapture monitoring plan.

### **TBI-14**

As described in Section 2, “Alternatives,” the no action alternative represents the NEPA baseline. Both facilities have modern fish screens that meet NMFS and/or USFWS criteria as appropriate. The action alternatives would not exceed the maximum permitted diversion rates. See comment response TBI-2 for additional information regarding biological impacts.

### **TBI-15**

PID and BCID’s water rights have been described in sufficient detail for the purposes of this Final EA. As explained in Section 2.2, “Action Alternatives,” there would be no expansion of use of PID and BCID’s existing water rights. The recaptured Restoration Flows would be covered under Reclamations’ License 1986 and Permits 11885, 11886, and 11887, as approved by the 2016 Water Rights Order (Reclamation water rights for Millerton Lake are listed in Table 13-1 of the SJRRP PEIS/R), even though these flows are recaptured using the districts’ facilities.

Clarifying text has been added to the following sections of the Final EA:

One-Year Recapture of San Joaquin River  
Restoration Flows at Patterson Irrigation District  
and/or Banta-Carbona Irrigation District

- Section 1.5, “2016 Water Rights Order,” summarizing the 2016 Water Rights Order and relevant findings.

**TBI-16**

As stated in the Draft EA Section 3.0, “Affected Environment and Environmental Consequences,” “the action alternatives are one-year actions and would not result in a substantial increase in long-term regional or local emissions. The action would not add to the global inventory of gases that would contribute to global climate change and would not result in increases in GHG emissions. Additionally, the action alternatives would be temporary and occur over one year, and thus would not be affected by long term effects of climate change.”

Clarifying text has been added to the following sections of the Final EA:

- Section 1.3, “Incorporation of Related Environmental Documents,” and Section 3.0, “Affected Environment and Environmental Consequences,” referencing the SJRRP PEIS/R Chapter 7, “Climate Change and Greenhouse Gas Emissions.”

**TBI-17**

See response to comment TBI-2 and TBI-3.

**TBI-18**

See response to comment TBI-2 and TBI-3.

**TBI-19**

See response to comment TBI-2 and TBI-3.

**TBI-20**

See response to comment TBI-4.

**TBI-21**

See response to comment TBI-5.

## **3.2 Responses to Comments from Stockton East Water District**

**SEWD-1**

As described in the Final EA Section 2, “Alternatives,” the action alternatives in this EA are essentially subsets of the No Action Alternative (SJRRP Selected Alternative [Alternative C1]) being implemented in phases as constraints in the system (e.g., existing channel capacity restrictions) are removed; therefore, in most cases, the action alternative impacts evaluated in this EA reflect the impacts under the No-Action Alternative (SJRRP Preferred Alternative [Alternative C1]), but to a lesser degree. Therefore, the water supply and water quality impacts of the action alternatives analyzed in this EA would be within those analyzed and disclosed in SJRRP PEIS/R Chapter 13, “Hydrology – Surface Water Supplies and Facilities Operations.” As described in the SJRRP PEIS/R, the

program-level analyses in the SJRRP PEIS/R demonstrate that, as compared to the No-Action Alternative, recapture of Restoration flows in the San Joaquin River upstream from Vernalis would not result in the need for increased releases from New Melones to meet water quality requirements at Vernalis, and would not result in an associated reduction of contract water allocations to Stockton East Water District or Central San Joaquin Water Conservation District. See results of CalSim-II simulations presented in Water Operations Modeling Output – CalSim Attachment to Appendix H, “Modeling,” of the Draft SJRRP PEIS/R. These results indicate that in most years, storage at New Melones Reservoir would be higher with the action alternatives in place, even with recapture upstream from Vernalis.

### **SEWD-2**

Additional text has been added to Final EA Section 2.1, “No Action Alternative,” describing that the action alternatives in this EA are essentially subsets of the No Action Alternative (SJRRP Selected Alternative [Alternative C1]) being implemented in phases as constraints in the system (e.g., existing channel capacity restrictions) are removed; therefore, in most cases, the action alternative impacts evaluated in this EA reflect the impacts under the No-Action Alternative (SJRRP Preferred Alternative [Alternative C1]), but to a lesser degree. As discussed in the Final EA Section 1.5, “2016 Water Rights Order,” “[r]Regarding Delta flow requirements, the 2016 Water Rights Order states that License 1986 and Permits 11885, 11886, and 11887 are not currently conditioned on achieving San Joaquin River flow objectives. Pursuant to Water Code section 1727, subdivision (e), the SWRCB shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Therefore, the SWRCB found that the temporary transfer should not be conditioned to meet the Vernalis objectives or any other request submitted that is outside the scope of consideration of the petitions.” Additionally, the SWRCB found that the transfer should not increase fish stranding beyond an amount that would otherwise occur absent the transfer. The SWRCB found that the percentage of redirection at PID and BCID is minimal compared to the San Joaquin River flows and would not have a significant impact on water quality or fisheries in the south Delta.

See comment response SEWD-1.

### **SEWD-3**

The action alternatives involve the recapture of Restoration Flows at PID and BCID. The progress of the State Board adopting new Vernalis flow objectives is beyond the scope of this EA. In the absence of new objectives, Reclamation assumed continued agency direction, which includes VAMP like flows.

### **SEWD-4**

Tables 3-3 through 3-6 of the Final EA relate the potential recapture of Restoration Flows to the modeled flow at Vernalis, not the percentage reduction in Vernalis flows as the commenter states. The alternatives were compared to Vernalis flow, whether diversion facilities are upstream or downstream, so all alternatives can be compared to each other. See comment response TBI-3 for information on why the San Joaquin River at Vernalis was used as the compliance point in the analysis of this EA. As described in Section 3.2

of the Draft EA, “[t]he flows presented in the analysis in this EA are based on 2012 CalSim II water operations simulations, using Reclamation’s 2012 CalSim II model.” For more information regarding the source of the data, see response to comment TBI-4.

The commenter correctly notes that BCID’s diversion facilities are downstream from the Vernalis gage, which is a compliance point for D-1641 water quality and flow standards. As mentioned previously, recapture is compared to flow at Vernalis.

### **3.3 Responses to Comments from San Joaquin River Exchange Contractors Water Authority**

#### **SJRXC-1**

The action alternatives only involve potential recapture of Restoration Flows at PID and BCID. Restoration Flows pass through the Restoration Area under the No Action Alternative and the action alternatives, as authorized pursuant to the 2013 Water Rights Order, and as described in the 2012 ROD and analyzed in the PEIS/R. The commenter is correct that the flows being recaptured are not flood flows.

#### **SJRXC-2**

As stated in Section 1.6, “Purpose and Need,” of the Final EA, the proposed action is needed to contribute to achieving the Water Management goal of the Settlement. The proposed action would contribute to implementation of the SJRRP Selected Alternative, as analyzed in the SJRRP PEIS/R and described in the 2012 ROD.

The need for recapture at PID and BCID is motivated by the anticipation of Restoration Flows reaching the Merced River confluence for the first time in 2016. In Section 2.1, the No Action Alternative states that the volume of Restoration Flows recaptured in the Delta and at Mendota Pool would likely be less than in combination with PID and/or BCID facilities.

#### **SJRXC-3**

As stated in SJRXC-1, the action alternatives involve potential recapture of Restoration Flows at PID and BCID, and have no bearing on whether or not Restoration Flows will pass through the Restoration Area. The potential impacts of the action alternatives are being analyzed and disclosed to allow for the recapture of Restoration Flows that may be released in accordance with the Settlement, and as analyzed and disclosed in the SJRRP PEIS/R and 2012 ROD. Reclamation acknowledges the gravity of 2016 water supply conditions in California, and the importance of managing all available water supplies in a manner that is responsible and within the scope of existing laws and regulatory requirements. Reclamation’s obligation under the Exchange Contract remains unchanged. Flows allocated to the Restoration Program will be made so as not to conflict with making necessary deliveries under the Exchange Contract. As stated in the Final EA Section 1.5, “2016 Water Rights Order,” the SWRCB stated that the approved change in no way modifies the obligations and rights under the San Joaquin River Exchange Contract and other contracts. The conditions of the 2013 Water Rights Order remain in force and effect. The SWRCB found that the petitioned change is only to add recapture

at PID and BCID and has no bearing on whether or not Restoration Flows will pass through the Restoration Area. Therefore, it was found that the temporary change petition does not alter any existing obligations and requirements.

The proposed recapture at PID and BCID would not affect recapture at Mendota Pool, as stated in Section 2.2 of the Draft EA, “Action Alternatives,” “Restoration Flows that are not recaptured at PID or BCID would be available for recapture either in the Restoration Area or in the Delta.” The Settlement calls for the release of water from Friant Dam to the confluence of the Merced River (Restoration Area) to achieve the Restoration Goal. Restoration Flow that reaches the Merced River confluence, after accounting for channel losses and capacity constraints, has the potential to be recaptured at PID and BCID in 2016, up to the amounts proposed in the action alternatives analyzed in this EA. Mendota Pool is within the Restoration Area and recapture is only permitted when there is not sufficient channel capacity downstream to safely convey flows in the downstream reaches, such as when Restoration Flow reaching Mendota Pool exceeds downstream channel capacity.

#### **SJRX-4**

While the Settlement doesn’t dictate specific recapture activities, it does state “immediately upon the Effective Date of this Settlement, the Secretary...shall commence activities pursuant to applicable law and provisions of this Settlement to develop and implement” a plan for recirculation, recapture, reuse, exchange or transfer of the Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries. Furthermore, Paragraph 13(i) of Settlement dictates that the Secretary shall commence the Restoration Flows at the earliest possible date and that if full Restoration Flows are not able to be released that the Secretary shall release as much of the Restoration Flows as possible, in light of then existing channel capacity.

Reclamation is pursuing recapture in the lower San Joaquin River this year in anticipation of Restoration Flows reaching the Merced River confluence for the first time since release of Interim Flows in 2010. The volume and pattern of Restoration Flows to be released is determined according to procedures outlined in the Restoration Flow Guidelines and consistent with the Settlement, the Settlement Act, and conditions of Permits 11885, 11886, and 11887 and License 1986. As part of the Restoration Flow allocation process, Reclamation will consider then-existing channel capacities, in-channel construction activities, and any deliveries from the San Joaquin River under the terms and conditions of the Second Amended Contract for Exchange of Waters (Contract Ilr-1144) (Exchange Contract), dated February 14, 1968. The 2013 Water Rights Order provides that “Reclamation shall document that it has taken all practicable measures to provide contract water to the Friant Contractors, while complying with all other conditions of this water right. One of these practicable measures includes implementation of the February 2011 Draft Plan for the Recirculation, Recapture, Reuse, Exchange or Transfer of Interim and Restoration Flows.” Recapture at PID and BCID is included in the Draft Plan.

Recapture of Restoration Flows at existing facilities in the lower San Joaquin River, such as PID and BCID, was addressed at a program level in the SJRRP Selected Alternative

(Alternative C1), as described in the 2012 ROD and analyzed in the SJRRP PEIS/R as a means to contribute to meeting the Water Management Goal.

#### **SJRXC-5**

As discussed in the SJRRP PEIS/R Section 2.1, “MCR-1: Analysis of Program Feasibility, Potential to Achieve Restoration and Water Management Goals,” “[a]s described in Reclamation’s Directive and Standards, CMP-05-02 (2000), ‘Feasibility studies are detailed investigations specifically authorized by law to determine the desirability of seeking congressional authorization for implementation.’ In addition, ‘feasibility studies cannot be initiated until specifically authorized in accordance with the Federal Water Project Recreation Act (Public Law 89-72, Section 8; 79 Statute 217).’”

The text goes on to explain that, “[t]he Settlement does not require a feasibility study, as defined in Reclamation’s Directive and Standards (2000), for any part of the SJRRP or for the SJRRP as a whole...A feasibility study on implementing the Settlement consistent with the San Joaquin River Restoration Settlement Act was not required before, or as a condition of, Settlement implementation.”

#### **SJRXC-6**

This EA analyzes a one-year program for recapture of Restoration Flows at PID and/or BCID. Any long-term program would be implemented in accordance with the Settlement. There is nothing in this EA that would affect Phase 1 actions, Phase 2 actions, or Congressional funding. Reclamation has addressed the commenter’s concerns about attracting salmonids and other endangered species into the Restoration Area in Appendix D of the 2015 Revised Framework for Implementation. Furthermore, in the 2016 Water Rights order, the SWRCB found that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code Section 1727(b)(2)).

#### **SJRXC-7**

The SJRRP PEIS/R provides project-specific environmental analysis of recapture of Restoration Flows at Mendota Pool, when necessary, and in the Delta, however it only provides program-level analysis of recapture of Restoration Flows in the lower San Joaquin River between the Merced River confluence and the Delta. The action alternatives being analyzed in this EA focus on recapture at PID and BCID since recapture at Mendota Pool and the Delta are already included in the No Action Alternative, and PID and BCID are the only existing pump stations on the San Joaquin River that have screens meeting NMFS and/or USFWS fish criteria and connect to the DMC for recirculation, transfer or exchange with Friant Contractors. Nothing in this EA would prevent recapture at Mendota Pool or the Delta, as described in the 2012 ROD and analyzed in the SJRRP PEIS/R, which is anticipated to some extent in 2016, and is defined as part of the No Action Alternative of this EA. However, recapture at Mendota Pool in 2016 would only be implemented for those Restoration Flows beyond what can be released downstream from Mendota Pool due to channel capacity constraints, as per Environmental Commitment 4 in Attachment B of the 2012 ROD. Recapture of Restoration Flows as suggested by the comment would interfere with meeting

Restoration Goal flow targets, and thus would be inconsistent with Paragraph 16(a)(1) of the Settlement.

See also response to comment SJRXC-4.

### **SJRXC-8**

As discussed in Section 1.6 of the Final EA, “Need for the Proposal,” “[t]he purpose of the proposed alternatives in this EA are to implement the provisions of the Settlement pertaining to the Water Management Goal by providing mechanisms to ensure that recapture of Restoration Flows occurs on the lower San Joaquin River at existing facilities at PID and/or BCID.” Restoration Flows contribute to achieving the Restoration Goal of the Settlement, and are included in the No Action Alternative.

The comment discusses the trap and haul program, which is not analyzed in this EA. The proposed action would not impact the current practices of the SJRRP Implementing Agencies in relation to fisheries management in the lower San Joaquin River.

The commenter mentions “additional restoration flows coming from the upper San Joaquin River,” which is inferred to mean inflows upstream from the Merced River confluence from creeks and sloughs. These tributary inflows downstream from Friant Dam are not recapturable pursuant to the 2013 Water Rights Order, and are not included in the values shown in Table 3-1 of the EA. Additional text has been added to the table footnotes explaining this.

See also comment response SJRXC-4.

### **SJRXC-9**

Reclamation petitioned the SWRCB to add points of diversion to its Permits 11885, 11886, and 11887 and License 1986 to facilitate the recapture of dedicated Restoration Flows. Water diverted at the proposed locations would be made available for use by certain water users as authorized by Reclamation.

On March 23, 2016, the SWRCB Division of Water Rights provided the requested water rights order granting Reclamation a temporary, one year change to add two points of diversion to transfer up to 76,069 acre-feet, as summarized in Final EA Section 1.5, “2016 Water Rights Order.” The order has a complete discussion of why the Reclamation proposal fits with Water Code Section 1725 as a temporary transfer. The commenter is referred to the order for further legal analysis of Water Code Section 1725. See Appendix D to the Final EA for the entire 2016 Water Right Order.

The commenter refers to Reclamation’s petitions to add the points of diversion on a temporary (less than one year) basis on other grounds, yet at the same time they urge that Reclamation proceed to file a petition for a permanent change instead under section 1701. Reclamation does not desire to pursue a permanent change at this time.

**SJRXC-10**

The proposed diversions at PID and BCID would occur at existing facilities located downstream from the Restoration Area (as shown in Figure 1-1 of the Final EA), and have no ability to change conditions attracting salmonids into the Restoration Area. As noted in Final EA Section 1.5.3, “No Unreasonable effect on Fish, Wildlife, or Other Instream Beneficial Uses,” the SWRCB found that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code Section 1727(b)(2)).

The purpose of the SJRRP is the establishment of a self-sustaining population of spring-run Chinook salmon on the San Joaquin River below Friant Dam. Doing so necessarily requires continuity of flows to provide a migration pathway. The SJRRP PEIS/R analyzed and disclosed the potential impacts of implementing the Settlement, including release of Restoration Flows, which allows for this continuity. The determination of whether flows will be available in 2016 for providing this continuity is separate from the proposed actions analyzed in this EA. The potential impacts of the proposed action are analyzed and disclosed to allow for the recapture of Restoration Flows that may be released in accordance with the Settlement, and as analyzed and disclosed in the SJRRP PEIS/R and 2012 ROD. The recapture of these flows at PID or BCID is not anticipated to have any effect on salmon migration.

The comment notes that “in past years, fall-run have reached the Restoration Area,” however Reclamation has not released Restoration Flows past Mendota Pool since the first year of the Restoration Program (2009-2010), and hasn’t released any Restoration Flows at all since mid-February 2014. Fall-run salmon that pass the Merced River, stray past the Hills Ferry Barrier and get into Reach 5 of the Restoration Area are doing so independent of Restoration Program activities.

Since fall 2012 the Restoration Program has been implementing a trap and haul program to capture stray fall-run salmon that are able to get past the Hills Ferry Barrier and transport these fish to spawning areas in Reach 1 of the Restoration Area, where they have the opportunity to spawn before dying. As discussed previously, these salmon have bypassed the tributaries to the San Joaquin River even with no Restoration Flow released downstream from Sack Dam, and likely would have been lost but for the Restoration Program’s trap and haul actions.

**SJRXC-11**

See response to comment SJRXC-3.

**SJRXC-12**

Additional text was added to Final EA Section 3.1.2, “Environmental Consequences,” describing water quality impacts in the DMC. In the 2016 Water Right Order the SWRCB agreed that there would be a less than significant change in electrical conductivity due to recapture at PID and BCID.

**SJRX-13**

This proposed action only involves potential recapture of Restoration Flows at PID and BCID for a period of up to one year, from March 23, 2016 through March 22, 2017, as defined in the 2016 Water Rights Order.

Reclamation further notes that Term 17 in the 2013 Water Rights Order, states, among other things, that approval of the SJRRP water right change petitions shall not modify or amend the rights and obligations of the parties to the San Joaquin River Exchange Contract, Ilr-1144, as amended February 14, 1968.

One of the factors that Reclamation considers before making releases for the Restoration Program is maintaining the ability to make deliveries as necessary under the Exchange Contract. Reclamation does not interpret the Settlement, the Settlement Act or the proposed action as modifying the obligations of the United States under the Exchange Contract.

**SJRX-14**

See response to comment SJRX-3.

**SJRX-15**

This proposed action only involves potential recapture of Restoration Flows at PID and BCID for a period of up to one year, from March 23, 2016 through March 22, 2017, as defined in the 2016 Water Rights Order. See Final EA Section 1.5, “2016 Water Rights Order,” for additional information.

The Restoration Goal of the Settlement is to restore and maintain fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, which requires attracting fish into the river. Similarly, the 2013 Water Rights Order authorized flow dedicated for preservation of fish and wildlife pursuant to Water Code section 1707 and conditions of the Settlement and Settlement Act. The 2016 Water Rights Order found that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses (Water Code Section 1727(b)(2)).

See also response to comment SJRX-10.

**SJRX-16**

The proposed action is potential recapture of Restoration Flows at PID and BCID. This comment appears to question the allocation of water to the Restoration Program consistent with the Settlement and applicable law. Authorization for instream flow dedication to facilitate implementation of the SJRRP has already been received pursuant to the 2013 Water Rights Order. Additionally, as described in Final EA Section 1.5, “Water Rights Order,” on March 23, 2016, the SWRCB, Division of Water Rights granted a water rights order to enable a temporary change of one year commencing on the date of the order (March 23, 2016) in Reclamation’s water rights on the San Joaquin River to allow a transfer of up to 76,069 acre-feet (AF) of dedicated instream flows (Restoration Flows) previously stored in Millerton Reservoir and/or taken under control

at Friant Dam pursuant to direct diversion rights. The approval allows for Restoration Flows to be rediverted through the PID and BCID screened facilities into the DMC for reuse by CVP contractors through direct delivery, exchange, and/or transfer. The order also granted the request to modify the Net Delta Outflow Index (NDOI) consistent with the purpose of the transfer.

The impacts of releasing Restoration Flows were analyzed in the SJRRP PEIS/R, including effects on minority and low-income populations. The action alternatives analyzed in this EA would have no impacts to minority or low-income populations as compared to the No Action Alternative.

#### **SJRXC-17**

The action alternatives involve the potential recapture of Restoration Flows at PID and BCID. Neither the Settlement nor the Settlement Act modify or amend the rights and obligations of the parties to the San Joaquin River Exchange Contract, Ilr-1144, as amended February 14, 1968.

#### **SJRXC-18**

As described in Final EA Section 3.1.1, “Environmental Consequences,” Restoration Flows will be released as allowed by hydrology (the Restoration Allocation) and current channel capacity, including constraints based on avoiding seepage impacts, as described in the SJRRP PEIS/R. The effects of Restoration Flows on adjacent land in the Restoration Area are analyzed in the SJRRP PEIS/R. The proposed action is being analyzed to provide the ability to recapture Restoration Flows on the lower San Joaquin River, should they occur, in accordance with the Settlement, Settlement Act, and consistent with the analysis in the SJRRP PEIS/R.

### **3.4 Responses to Comments from San Luis & Delta-Mendota Water Authority**

#### **SLDMWA-1**

Reclamation confirms the commenter’s understanding that the action alternatives, as described in the EA, will be implemented in a manner that does not adversely impact Reclamation’s ability to meet contractual obligations, consistent with the SJRRP PEIS/R, the Settlement, and the Settlement Act.

### **3.5 Response to Comments from West Stanislaus Irrigation District**

#### **WSID-1**

See response to SLDMWA-1.

**WSID-2**

The action alternatives involve the recapture of water that has been dedicated to instream flow to implement the provisions of the Settlement and Settlement Act. The two locations proposed for recapture of Restoration Flows under the action alternatives are within river reaches authorized for instream flow dedication under existing terms and conditions of Permits 11885, 11886, and 11887 and License 1986. Other than PID and BCID, whose facilities are proposed to be used, Reclamation is unaware of other persons who may be affected by the recapture of its dedicated flows.

Per the 2016 Water Rights Order, the SWRCB found the temporary change will not injure any legal users of the water. See Appendix D for the entire 2016 Water Rights Order. Furthermore, additional text has been added to the Final EA clarifying that Reclamation intends to implement a monitoring program along with the action alternatives to document that the action has no adverse impact on the Restoration Goal, downstream water quality, or fisheries, consistent with Paragraph 16(a)(1). The plan includes monitoring Restoration Flows and lower San Joaquin River flows and water quality. See Final EA Section 2.2, “Action Alternatives.” See comment response TBI-2.

## 4.0 References

Reclamation. *See* U.S. Department of the Interior, Bureau of Reclamation.

SWRCB Division of Water Rights. 2016. In the matter of License 1986 and Permits 11885, 11886 and 11887 of the Bureau of Reclamation Petitions for Temporary Change Involving the Temporary Transfer of Up to 76,069 Acre-Feet of Water from the U.S. Bureau of Reclamation to Friant Water Contractors. March 23, 2016.

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