



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

IN REPLY REFER TO:

MP-440
WTR-4.10

NOV 7 2018

Mr. Erik Ekdahl
Deputy Director of Water Rights
Attention: Mitchell Moody
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Subject: Notice of Petitions to Revise Declaration of Fully Appropriated Stream (FAS) Status of the Kings River Stream System

Dear Mr. Ekdahl:

Bureau of Reclamation (Reclamation) is in receipt of the subject Notice and Petitions.

Petitioner Consolidated (Consolidated Irrigation District, Alta Irrigation District, and Fresno Irrigation District) has submitted a petition requesting the State Water Board (Board) consider its accompanying application A032810 in the event the State Water Board ever changes the FAS designation of the Kings River and considers any Kings River water to be unappropriated or otherwise not currently used under current licenses. The Notice states that Consolidated's petition acknowledges that the Kings River Water Association's member units have not always been able to utilize all the runoff of the Kings River in years of extreme flood. The accompanying application seeks to appropriate 1,000,000 acre-feet (AF) per year of excess flood flows for compliance with the Sustainable Groundwater Management Act (SGMA) and for use within Fresno, Kings, and Tulare counties.

Petitioner Semitropic Water Storage District has submitted a petition requesting that the Board determine whether it is proper to revoke and/or revise the FAS declaration of the Kings River system upon a showing that there is unappropriated Kings River water available for appropriation. Application A032815 to appropriate Kings River water, accompanying the petition, requests to divert and use up to 1,600,000 AF per year of Kings River flows for irrigation and groundwater replenishment and in furtherance of SGMA.

The Notice indicates that the Board is only seeking comment to the petitions at this time to assist the Board in making a determination whether reasonable cause exists to conduct a hearing on the question of whether the FAS status of the Kings River stream system should be revised.

Reclamation will provide any comments to the Petitioners' accompanying applications at such time those applications are accepted and noticed for public comment.

In making this determination, it would be helpful here to provide the Board with a brief review of the relationships among the Kings River, the San Joaquin River, the Fresno Slough, and the various contracts held by Reclamation in the area of the Fresno Slough.

During times that flood water is present in the Kings River, Kings River water enters the Fresno Slough when the Kings River is at a higher elevation than the San Joaquin River.

The court finds that at such times as the floods are sufficiently high to bring the Kings River water to Fresno slough, the waters of the two rivers often flow at different stages or elevations, and that when the San Joaquin is the higher, a part of the water thereof flows or "backs up" into Fresno slough and runs southerly therein for some fourteen miles to the south end thereof, until the slough is filled to the level of the river, or until it meets the rising water of Kings River coming into the slough from the south. Also, that the slough, when not fed from Kings River water, is kept filled by water from the San Joaquin, and rises and falls with that river. It necessarily follows that such current as there may be in the slough changes from time to time, flowing northerly when the San Joaquin River is falling and also when Kings River is the higher of the two, and southerly when the San Joaquin is rising, or when it is higher than Kings River. *Turner v. James Canal Co.* 155 Cal. 82, 86 (1909).

It has become well established that riparian lands of the Fresno Slough are deemed riparian to the San Joaquin River except with the presence of Kings River flows.

The necessary effect of these conditions is that, except during the unusual floods from Kings River, and except said surface waters, the waters of Fresno Slough remain stationary or rise and fall precisely as do the waters of the San Joaquin River, the waters of the slough being absolutely governed and controlled thereby. The lands of the J. G. James Company, the rights pertaining to which give rise to this litigation, are not riparian to the San Joaquin River proper, but are riparian to Fresno Slough. By virtue of that fact they are also riparian to the San Joaquin River, itself, except when the waters of Kings River are flowing therein. (citing *Turner*). *Miller & Lux v. Enterprise Canal and Land Co.*, 169 Cal. 415, 420-421 (1915);

If Kings River flood waters do not reach the Fresno Slough, those lands remain riparian to the San Joaquin River, and when those flood waters do reach the Fresno Slough, those lands are riparian to the Kings River:

While the water is running into the slough from Kings River the slough is a part of that river, and the reasonable share of the water apportionable to the lands riparian to the slough is to be fixed by reference to the rights and needs of other lands riparian to Kings River. When Kings River does not run into the slough, the latter

becomes a part of the San Joaquin River, with which it is then connected, and during that period the lands riparian to the slough are entitled to a share of the water of the whole San Joaquin River, including the slough. *Turner* at 91.

Reclamation has entered into contracts with numerous entities that divert water from the Fresno Slough¹ by means of water rights settlement and supplemental Central Valley Project (CVP) supply contracts. These water rights settlement contracts include approximately 38,087 AF per year of "Schedule 2" water that is supplied from the Delta Mendota Canal (DMC), and "backed up" at the Mendota Pool, in furtherance of subarticle 9(d) of the Contract for Purchase of Miller & Lux Water Rights, Contract No. Ilr-1145, executed July 27, 1939. Subarticle 9(d) provides the following.

It is further understood and agreed that the quantities of water set forth in said Schedule Two (2) of this Article are intended for the purpose of supplying the actual diversions of the Tranquillity [sic] Irrigation District and the James Irrigation District, and all persons, firms or corporations (other than Vendors) having the right to divert or use waters of the San Joaquin River from Fresno Slough...

Reclamation's settlement and supply contracts at the Fresno Slough involve approximately 38,087 AF in Schedule 2 settlement deliveries that may be scheduled during the months of February through September, as well as approximately another 7,000 AF in refuge deliveries to be scheduled throughout the year according to contract terms and conditions, and another 108,685 AF of supplemental CVP irrigation supplies that may be scheduled for the contract year beginning March 1.

Table 1 included as part of the Petitions shows total acre-feet of historical floodwater discharge at James Bypass Station (JBP) into the San Joaquin River since construction of Pine Flat Dam in 1955 versus the percentage of the water year average hydrology, beginning water year 1955 through water year 2011. Table 1 indicates that in approximately 36% of the years, floodwaters are available at the James Bypass, with associated figures showing that floodwater often becomes available in late spring before irrigation demands increase for the summer. Data from the Department of Water Resources' California Data Exchange Center show that in the more recent years of 2006 through 2018, despite San Joaquin Valley Official Year Classifications running predominantly in the Critical and Dry Year Index classifications for those years, significant sustained flows have occurred at the JBP in the classified Wet years of 2006, 2011, and 2017. Flows in those years have ranged from approximately one to three months in length with peaks exceeding 4,000 cubic feet per second. Reclamation's deliveries for Fresno Slough water users under water right settlement and supplemental supply contracts during most of the

¹ These are contracts for the adjustment and settlement of certain claimed water rights executed with the following entities: Marvin A. & Patricia Meyers; M.L. Dudley and Company, John G. Indart, Doris J. Indart; Reclamation District No. 1606; Tranquillity Irrigation District; James Irrigation District; Tranquillity Public Utility District (assigned from Melvin D. Hughes and Mardella Hughes); Fresno Slough Water District; State of California (acting through the Department of Fish and Wildlife for the Mendota Waterfowl Management Area); and Virginia L. Lempesis as Trustee of the Virginia L. Lempesis Separate Property Trust.

the spring (May through June) for the classified Wet years 2006, 2011 and 2017 nevertheless have been approximately as great as 15,690 AF, 13,284 AF and 25,587 AF, respectively.

The State Water Board, in making its determination regarding the FAS, needs to consider the effects that such a revision could have on Reclamation's water rights settlement and supply obligations at the Fresno Slough. Reclamation's concern is to ensure that CVP water rights and operations be considered in determining the extent of any availability of unappropriated water to accommodate any new applications on the Kings River. That is, the State Water Board needs to take into account the satisfaction of Fresno Slough water right settlement contractors' riparian demands from Kings River flows, at such times those contractors are deemed riparian to the Kings River. Reclamation is concerned that failure to take into account the satisfaction of those demands from Kings River flood flows could lead to increased DMC deliveries from the DMC under Reclamation's San Joaquin River settlement contracts for the provisions of Schedule 2 flows to Fresno Slough users as a result of the reduced occurrences or levels of flood flows in the Kings River. Similarly, Reclamation is also concerned about any resulting increased demand for deliveries from the DMC at the Mendota Pool that results from reduced Kings River flows that otherwise would have been available for meeting south-of-Delta demands of supplemental CVP supply and refuge contractors at the Fresno Slough, even in wetter years for which initial and potentially final allocations nevertheless could be less than one hundred percent².

Any questions on this matter may be referred to Mr. Bob Colella at 916-978-5256 or by email to rcolella@usbr.gov.

Sincerely,



Richard J. Woodley
Regional Resources Manager

cc: Semitropic Water Storage District
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² For south-of-delta water supply contractors, the initial allocation in early 2017 was 65% with a final allocation in that year of 100%. The initial allocation in early 2011 was 50% with a final allocation in that year of 80%. The initial allocation in early 2006 was 65% with a final allocation in that year of 100%.