



United States Department of the Interior

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

BOARD OF SUPERVISORS

2017 APR 14 A 10:32

IN REPLY REFER TO:

MP-170
ENV-6.00

APR 10 2017

Ms. Elizabeth A. King
Clerk
Stanislaus County
1010 10th Street, Suite 6700
Modesto, CA 95354

Subject: Request to Participate as a Cooperating Agency for the San Joaquin River Restoration Program (SJRRP) Long-term Recapture and Recirculation of Restoration Flows Environmental Impact Statement/Environmental Impact Report

Dear Ms. King:

The Bureau of Reclamation, in compliance with the National Environmental Policy Act (NEPA), is serving as the Federal lead agency in preparation of the SJRRP Long-term Recapture and Recirculation of Restoration Flows Environmental Impact Statement/Environmental Impact Report (Recapture and Recirculation EIS/EIR). As the Federal lead agency, Reclamation is soliciting cooperation from your agency to ensure that issues relating to your jurisdiction and special expertise are properly addressed in the Recapture and Recirculation EIS/EIR. Friant Water Authority (Friant) is the lead agency in accordance with the California Environmental Quality Act (CEQA) in preparing the Recapture and Recirculation EIS/EIR.

This planning effort aims to help achieve the SJRRP Water Management Goal to reduce or avoid water supply impacts to the long-term Friant contractors (Friant Contractors) that may result from releasing Restoration Flows in accordance with the Settlement in *NRDC, et. al., v. Rodgers, et. al.* (Settlement). Specifically, long-term recapture and recirculation actions are needed to satisfy the requirements of Paragraph 16(a) of the Settlement, which directs the Secretary of the Interior 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 to all the Friant Division long-term contractors, caused by the Restoration Flows (Plan). The Recapture and Recirculation EIS/EIR will support the development of the Plan in accordance with the criteria identified in Paragraph 16(a) of the Settlement.

The Recapture and Recirculation EIS/EIR will serve as the site-specific environmental documentation for actions required to implement a long-term plan to recapture up to the full amount of Restoration Flows and recirculate them to the Friant Division. The Recapture and Recirculation EIS/EIR will analyze a range of alternatives, including the potential construction

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of expanded or new infrastructure to increase recapture pumping capacity along the San Joaquin River below the Merced River confluence and to convey recaptured Restoration Flows to the Delta-Mendota Canal or California Aqueduct.

The study area for recapture and recirculation activities includes water district service areas, their associated infrastructure, and other areas that may be affected directly or indirectly by implementing recapture, recirculation, and storage actions. The study area also includes Central Valley Project (CVP) and State Water Project (SWP) service areas that may be affected by the transfer of recirculated water from Friant Contractors to CVP or SWP contractors.

On July 27, 2015, Reclamation issued a Notice of Intent to conduct public scoping meetings and prepare the Recapture and Recirculation EIS. Reclamation held four public scoping meetings in August 2015 for the purposes of initiating the NEPA process and collecting input from stakeholders and the public on options for consideration in the EIS along with potential environmental effects to be considered. The public scoping comment period ended on August 27, 2015. In March 2017, Friant was identified as the CEQA lead agency for this planning effort. Reclamation and Friant are now beginning to prepare the Recapture and Recirculation Draft EIS/EIR.

As the Federal lead agency for the Recapture and Recirculation EIS/EIR, Reclamation has requested that the U.S. Fish and Wildlife Service, National Marine Fisheries Service, the Environmental Protection Agency, and the U.S. Army Corps of Engineers participate in this planning effort as cooperating agencies in accordance with NEPA. Reclamation is also providing non-Federal agencies with the opportunity to participate in the NEPA process for the Recapture and Recirculation EIS/EIR as cooperating agencies. Eligible governmental entities include state and local agencies and Federally-recognized tribes that are qualified to participate in preparation of an EIS by virtue of jurisdiction by law or by virtue of special expertise in regard to any environmental impact associated with the action being considered.

Cooperating agencies must meet the following criteria, which are based on NEPA regulations and Council on Environmental Quality guidance:

- Be a governmental entity (tribal, state or local)
- Be qualified to participate in the development of the Recapture and Recirculation EIS/EIR by virtue of:
 - Jurisdiction by law, such as: agency authority to approve, veto, or finance all or a part of the proposal, or
 - Special expertise with respect to any environmental impact associated with the action being considered.

Entities that have met the specified criteria for cooperating agencies will be required to enter into a Memorandum of Understanding (MOU) (enclosed) with Reclamation to document their participation as a cooperating agency. If your agency is interested in being a cooperating agency, and has met the criteria listed above, please complete the enclosed MOU. The purpose of the MOU is to define the needs of Reclamation in regards to coordination with cooperating agencies, the scope of participation by the cooperating agencies, and roles and responsibilities of

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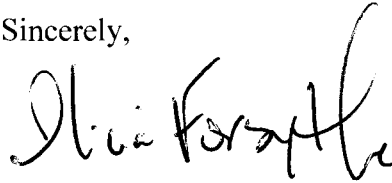
the cooperating agencies and Reclamation. Reclamation and Friant retain all decision making authority for preparation of the Recapture and Recirculation EIS/EIR.

Please submit your executed MOU to:

Becky Victorine
Bureau of Reclamation
San Joaquin River Restoration Program
2800 Cottage Way, W-1727
Sacramento, CA 95825

If you have any further questions regarding this process, please contact Becky Victorine at rvictorine@usbr.gov or (916) 978-4624.

Sincerely,



Alicia Forsythe
Program Manager

Enclosure

cc: Jason Phillips
Chief Executive Officer
Friant Water Authority
854 N. Harvard Avenue
Lindsay, CA 93247

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

AND
THE COUNTY OF STANISLAUS

FOR
COOPERATIVE DEVELOPMENT OF THE SAN JOAQUIN RIVER RESTORATION
PROGRAM LONG-TERM RECAPTURE AND RECIRCULATION OF RESTORATION
FLOWS ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT
REPORT

I. Preface

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 2017, by and between the United States Bureau of Reclamation (Reclamation) and the County of Stanislaus for the purpose of coordination in preparing the San Joaquin River Restoration Program Long-Term Recapture and Recirculation of Restoration Flows Environmental Impact Statement/Environmental Impact Report (EIS/EIR). This MOU is specific to the role of the County of Stanislaus as a cooperating agency in accordance with the National Environmental Policy Act (NEPA).

Reclamation is a party to the 2006 Stipulation of Settlement in *Natural Resources Defense Council, et al. v. Kirk Rodgers, et al.* (Settlement), which involves restoration of flows and fisheries in the main stem of the San Joaquin River between Friant Dam and the confluence of the Merced River, and a series of water management actions. The Settlement includes a Restoration Goal and a Water Management Goal. The San Joaquin River Restoration Settlement Act (Public Law 111-11) authorizes and directs the Secretary of the Interior (Secretary) to implement the Settlement. Reclamation is implementing the Settlement on behalf of the Secretary.

To contribute to achieving the Water Management Goal, the Settlement calls for a plan for recirculation, recapture, reuse, exchange, or transfer of Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to Friant Contractors caused by the release of Restoration Flows. The EIS/EIR will analyze alternatives that would implement Section 16(a) of the Settlement, which requires the Secretary of the Interior and Settling Parties to develop a plan for recirculation, recapture, reuse, exchange, or transfer of Restoration Flows. The EIS/EIR will consider alternatives to recapture Restoration Flows, primarily downstream of the Restoration Area (downstream of the confluence with the Merced River), and recirculate these flows to Friant Contractors. These actions would reduce the water supply impact on Friant Contractors associated with the Settlement and help achieve the Water Management Goal.

In accordance with Code of Federal Regulations 40 CFR 1501.6, Reclamation, as the NEPA lead agency in preparing the EIS/EIR, is requesting participation in development of the EIS/EIR from qualified agencies with specialized expertise. Friant Water Authority is the lead agency in accordance with CEQA in preparing the EIS/EIR. Potential cooperating agencies include Federal, State, tribal, or local agencies with specialized expertise relevant to the analysis to be described in the EIS/EIR.

II. Purpose of this MOU

The purpose of this MOU is to formalize the commitment among the parties to work collaboratively in preparation of the EIS/EIR. This MOU is intended to clarify and define the roles and responsibility of Reclamation as the lead agency and the County of Stanislaus as a cooperating agency in preparation of the EIS/EIR.

III. Statutory and Regulatory Authority

This MOU is being entered into pursuant to NEPA, 42 U.S.C. § 4331, *et seq.*; the Council of Environmental Quality's NEPA regulation regarding Cooperating Agencies, 40 CFR § 1501.6; and the U.S. Department of Interior's NEPA regulations, 43 CFR § 46.225 and 43 CFR § 46.230.

IV. Responsibilities

The parties to this MOU herein commit as follows:

a. Reclamation

Reclamation, as the lead agency, is responsible for the preparation, quality, and content of the alternatives and impact analysis and selection and implementation of alternatives analyzed in the Draft and Final EIS/EIR. Other Reclamation responsibilities include:

1. Preparing or overseeing the preparation of all aspects of the EIS/EIR in compliance with NEPA and the NEPA implementing regulations;
2. Providing direction to and reviewing the work products of the consultants preparing the EIS/EIR and related documents;
3. Clearly identifying and acknowledging the roles and responsibilities of all cooperating agencies in the EIS/EIR;
4. Informing the public and decision makers of the potential direct, indirect, and cumulative impacts of the alternatives that are analyzed in the EIS/EIR, and potential means to mitigate those impacts, including measures to avoid, minimize or compensate for potentially significant adverse impacts;
5. Providing invitations and adequate notice for meetings to cooperating agencies;
6. Providing preliminary EIS/EIR deliverables, as appropriate, to the cooperating agencies for review and comment;

7. Providing technical analyses and information to the cooperating agencies and soliciting their review and comment, particularly with respect to key subject areas pertaining to issues within their jurisdiction by law or special expertise as appropriate;
8. Taking those actions necessary to permit cooperating agencies to accomplish their responsibilities, including the provision of those documents to be reviewed by the cooperating agency, as determined to be appropriate by Reclamation, as the NEPA lead agency;
9. Making all final decisions on the content of public documents;
10. Informing the cooperating agencies of schedule changes that could affect their input to the EIS/EIR or ability to provide timely review of the document; and
11. Making all decisions in the Record of Decision (ROD).

b. Cooperating Agency

As a cooperating agency pursuant to NEPA for the EIS, to the extent that its fiscal, staff and other resources permit, the responsibilities of the County of Stanislaus include taking the following actions in a timely manner consistent with the schedule for developing and completing the EIS/EIR and with direction provided by Reclamation:

1. Identifying their special expertise or jurisdiction related to the analysis in the EIS/EIR;
2. Devoting staff resources sufficient to provide technical assistance to fulfill its role as a cooperating agency;
3. Attending meetings as appropriate and identified in advance by Reclamation;
4. Providing review and comment on preliminary EIS/EIR deliverables as appropriate;
5. Providing responses to data requests pertaining to issues within their jurisdiction by law or special expertise;
6. Providing technical information and expertise directly associated with their statutory responsibilities or related experience, including review of technical analyses of key subject areas, as requested by Reclamation;
7. Raising potential issues as early in the process as reasonably feasible to avoid delay and inefficiency;
8. Identifying data and analysis in the EIS/EIR that may be needed to fulfill their role as potential regulatory agencies and any other requirements regarding jurisdictional permits and/or other approvals required for implementation of the project;
9. Providing review and comment on an Administrative Draft EIS/EIR prior to public review of the Public Draft EIS/EIR, as requested by Reclamation;
10. Providing review of an Administrative Final EIS/EIR, as requested by Reclamation, prior to public release of the Final EIS/EIR;
11. Complying with the confidentiality requirements and procedures specified below for all documents received as part of this MOU; and

12. Funding their own expenses associated with their participation in the environmental compliance documentation process, including development of information, reviewing, and providing comments on the EIS/EIR and related documents pertaining to the cooperating agency's jurisdiction and special expertise.

V. Representation

Reclamation and the County of Stanislaus shall designate their representatives for purposes of this MOU. The representatives shall be responsible for ensuring that the information sharing, collaboration, and document review procedures established by this MOU are implemented: (1) by the employees and consultants of Reclamation directly responsible for the technical analyses and preparation of the environmental documents, and (2) by the employees and consultants of the County of Stanislaus. The County of Stanislaus shall designate one representative and one alternate responsible for attendance at all meetings requested by Reclamation. Changes to the identified representative and/or alternate should be provided in writing to Reclamation.

VI. Confidentiality

The cooperating agency will not release any pre-decisional information (including meeting notes, data, draft documents, and working discussions) obtained from Reclamation or from other cooperating agencies unless the information is deemed a public record pursuant to the Freedom of Information Act or the applicable state public records act. This information may be shared with pertinent cooperating agency staff for purposes of review. Any questions concerning the release of information and all media contacts will be referred to the Reclamation project manager.

The County of Stanislaus agrees to keep all documents, including drafts, provided by Reclamation in accordance with its cooperating agency status and pursuant to this MOU confidential to the extent allowable by law. The County of Stanislaus will provide notice to Reclamation before disclosing any document required by law to be disclosed to outside parties that has been shared with the County of Stanislaus in accordance with their cooperating agency status and pursuant to this MOU.

Notwithstanding the foregoing, the County of Stanislaus may disclose such materials to its officers, members of its staff and its contractors, who are also subject to the confidentiality requirements of this MOU.

VII. Additional Provisions

1. **Effect of MOU.** This MOU shall take effect when signed by the County of Stanislaus and Reclamation. This MOU shall terminate upon issuance of the ROD by Reclamation, or upon written agreement of the parties.
2. **Modification of or Withdrawal from the MOU.** Any party to this MOU wishing to modify or withdraw from this MOU must provide a written notice to the other party hereto specifying the reason. The parties shall promptly meet and confer in a good faith effort to address and resolve, if possible, the issue(s) causing the notifying party to wish to modify or withdraw from this MOU. This MOU may be modified by

written agreement of the parties. If, following such meeting, the notifying party still wishes to withdraw, such party may withdraw 30 days after the date of the written notice. If the County of Stanislaus withdraws from this MOU it will no longer be considered a cooperating agency for the purposes of the EIS/EIR.

3. **Reservation of Rights.** The County of Stanislaus waives no rights under NEPA or other law to comment upon, dispute, or otherwise challenge the EIS/EIR.
4. **Counterparts.** This MOU may be signed in counterparts.
5. **Anti-Deficiency Act.** The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent on the appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.
6. **Management of information.** The cooperating agency acknowledges that all data and information provided by them will become part of Reclamation's official record and will be available for public review, except as otherwise determined not to be released pursuant to the Freedom of Information Act or restricted by the Privacy Act. The cooperating agency will comply with all aspects of the Privacy Act (43 C.F.R. Part 2; DOI's 383 DM 7), including safeguarding individual's names and addresses. All questions concerning the release of information will be referred to the Reclamation project manager.

If information is requested through the Freedom of Information Act (43 C.F.R. Part 2) or other public disclosure legislation, the following guidelines will be followed: if the originator of the document(s) being requested is the cooperating agency, the cooperating agency will respond to the disclosure request pursuant to applicable law and the cooperating agency will keep Reclamation informed by sending copies of the request and relevant supplemental documents. If the originator of the document(s) being requested is Reclamation, the cooperating agency will refer the disclosure request to Reclamation and a letter will be sent by the cooperating agency to the requester that the request has been referred. If the originator of the document(s) is another cooperating agency, the cooperating agency will refer the disclosure request to the originating agency and a letter will be sent by the cooperating agency to the requester explaining that the request has been referred. The cooperating agency will keep Reclamation informed by sending copies of the request and the letter to the requester.

7. **Conflict of interest.** The parties agree not to utilize any individual for purposes of EIS/EIR development, environmental analyses, or representation, including officials, employees, or third party contractors having a financial interest in the outcome of the EIS/EIR.
8. **Authorities not altered.** Nothing in this MOU alters, limits, or supersedes the authorities or responsibilities of any party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the parties to perform beyond their respective authorities.

9. Immunity and defenses retained. Each party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU and cooperative work on the EIS/EIR.

VIII. Conclusion

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the EIS/EIR fully complies with all applicable requirements and minimizes duplication of effort and project delays.

BUREAU OF RECLAMATION

By: _____ Date: _____
Alicia Forsythe
Program Manager

THE COUNTY OF STANISLAUS

By: _____ Date: _____