Testimony of Jason Phillips
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Before the

Subcommittee on Water and Power,
U.S. Senate Committee on Energy and Natural Resources

On

The Bureau of Reclamation's Title Transfer Process
and Potential Benefits to Federal and Non-Federal Stakeholders

January 17, 2018

Good morning Chairman Flake, Ranking Member King and Members of the Subcommittee.

My name is Jason Phillips, and I am the Chief Executive Officer of the Friant Water Authority in California. The Friant Water Authority (Authority) is a public agency formed under California law to operate and maintain the Friant-Kern Canal, a component of the Central Valley Project (CVP) owned by the Bureau of Reclamation (Reclamation).

Thank you for the opportunity to testify on Reclamation's process for transferring ownership – title – of its facilities to non-Federal interests that are eligible to take title under Reclamation Law. Like Reclamation, the Authority regards title transfer as a means of increasing the flexibility of non-Federal interests to improve water management and address the challenges of aging infrastructure, while at the same time reduce costs to the Federal government and relieve it of potential liabilities.

The Authority and its 15 member agencies are eager to engage Reclamation in discussions to acquire title to the Friant-Kern Canal and related distribution facilities (and possibly to the Madera Canal). But Reclamation's current title transfer process, though developed with substantial input from Reclamation's customers, remains lengthy, overly complex and costly for the non-federal parties. And once the administrative process is successfully completed, an act of Congress is still required to transfer the title to a facility from Reclamation to a non-federal entity. Time, cost and uncertainty are powerful disincentives to undertaking a title transfer effort.

To its credit, Reclamation has worked to improve the title transfer process, actively engaging with water-user organizations such as the Family Farm Alliance, of which the Authority is a founding member, to simplify and speed development of transfer agreements and implementing legislation.

The agency, however, can only go so far to facilitate a process that must conform to the requirements of existing laws, which sometimes serve little useful purpose but nevertheless entail substantial time, complexity and cost. Only Congress can address these issues, and the Authority is encouraged by the Committee's interest in doing so.

The Friant-Kern Canal presents a good example of how title transfer can benefit both the non-Federal project beneficiaries and the Federal taxpayer. It also illustrates how Congress can act to facilitate title transfers in a manner that continues to safeguard the interests of the public.

The Friant Division

The 152-mile-long Friant-Kern Canal and the 36-mile-long Madera Canal, together with Friant Dam and Millerton Lake on the San Joaquin River, form the Friant Division of the CVP. On average, the Division delivers 1.2 million acre-feet of irrigation water annually to approximately 15,000 farms on one million acres of the most productive farmland in the world. Friant Division deliveries also are vital to meeting the domestic water needs of many small communities in the San Joaquin Valley, as well as larger metropolitan areas, including the City of Fresno.

Built between 1945 and 1951, the Friant-Kern Canal carries water south from Millerton Lake along the foothills of the Sierra Mountains on the eastern edge of the San Joaquin Valley to its terminus at the Kern River, four miles west of Bakersfield. The canal is lined by concrete for most of its length, and has an initial capacity of 5,000 cubic feet per second (cfs) at the San Joaquin River that gradually decreases to 2,000 cfs at the Kern River. The width of the Canal ranges from 128 feet where it starts to 64 feet at its lower end.

The shorter Madera Canal carries water north from Millerton Lake on the San Joaquin River to the Chowchilla River. Completed in 1945, the Madera Canal has an initial capacity of 1,000 cfs that decreases to 625 cfs at its terminus.

The Authority (initially the Friant Water Users Authority) has operated and maintained the Friant-Kern Canal as a "transferred work" under contract to the Bureau of Reclamation since 1986. Reclamation retains ownership of the Canal and its related distribution works, and Reclamation administers the contracts governing the purchase and delivery of CVP water in the Friant Division. The Authority is responsible for all aspects of the Canal's operation, maintenance and replacement (OM&R) as well as all costs related to those activities.

Two of the Authority's member agencies receive water via the Friant Division's Madera Canal, which is operated as a transferred work by the Madera and Chowchilla Water and Power Authority. The Madera and Friant-Kern canals are in similar circumstances and their operating authorities are interested in pursuing title transfers.

Other components of the CVP outside of the Friant Division also are operated as transferred works by non-federal authorities composed of project beneficiaries, but the Friant Division is unique in that its water users have fully repaid the capital construction costs allocated to the Friant Division. This action was authorized by the *San Joaquin River Restoration Settlement Act of 2009* (P.L. 111-11, Title X, Subtitle A, Sec. 10010).

Having paid their capital obligation, Friant Division water users are eligible to take title to its components.

The *Settlement Act* authorized the Interior Department to accept prepayment of Friant's outstanding capital obligation and to convert Friant Division "water service" (9(e)) contracts to "repayment" (9(d)) contracts. Friant water users subsequently paid approximately $215 million to the Federal government for cost of constructing the elements of the Friant Division, including the Friant-Kern and Madera Canals and related distribution works. Per the *Settlement Ac*t, the $215 million was deposited into the San Joaquin River Restoration Fund, where most of it remains available to implement the San Joaquin River Restoration Settlement, agreed to in 2006 by the Authority, the Federal government and a coalition of environmental organizations.

In late 2016, Congress approved similar "prepayment" provisions in the *Water Infrastructure Improvements for the Nation Act* (WIIN Act; P.L. 114-322, Sec. 4011), giving the Secretary general authority to accept early repayment of capital costs from project beneficiaries, and to make 9(e)-to-(9d) contract conversions. Because 9(e) water service contracts are not common anywhere but California, the WIIN Act provisions are likely to have the greatest effect there, potentially increasing requests for title transfers for elements of the CVP and other stand-alone Reclamation projects in the State.

Aging Infrastructure

The Friant Division was designed and is operated as a conjunctive-use project to convey surface water for direct beneficial uses, such as irrigation, *and* to recharge groundwater basins in the southern San Joaquin Valley. Relative to the amount of water runoff into Millerton Reservoir, 1.8 million acre-feet per year, the operational surface storage capacity of Friant Dam is minimal – only about 385,000 acre-feet. The ability to move significant water through the canals in wetter years to store in groundwater recharge basins is critically important to make the project work as intended. The system delivers two classes of water: Class I, the first 800,000 acre-feet of firm supply; and Class II, up to an additional 1.4 million acre-feet of non-firm supply available only during wetter years. Historically, the Friant Division has received a combination of Class I and Class II totaling about 1.2 million acre-feet annually. Much of the Class II water is directed to groundwater recharge.

This system has been hugely successful. When the Canal came on-line in 1951, severely depleted groundwater levels immediately began to rise and stabilize. As planned, ample groundwater supplies became available to carry farmers through in dry periods, and those groundwater supplies were replenished in wet years with surface water delivered via the Friant-Kern Canal.

At nearly 70 years old, the Friant-Kern Canal is the very definition of "aging infrastructure." Since taking over the responsibility for the Canal in the 1986, the Authority has taken an aggressively proactive approach to maintenance and repairs. Despite those efforts, however, the water-carrying capacity of the Canal has gradually diminished over time, partly because of natural "settling" and partly because of land subsidence resulting from groundwater pumping in the Valley. The Canal is a gravity-fed facility and does not rely on pumps to move water. Subsidence has caused parts of the Canal to sink in relationship to other parts. This negatively affects the Canal's ability to convey water. When the land elevation lowers, the Canal must be operated at a lower flow-stage to ensure that water doesn't overflow the banks.

From 2012-2017, California weathered its worst drought on record at the same time that increasingly stringent environmental regulations required more surface water to flow to the ocean. This forced San Joaquin Valley water users to rely heavily on groundwater supplies.

In addition, in 2014 and 2015 Reclamation made a decision not allocate any surface water to Friant water-supply contractors for the first time in the history of the project. This action caused most Friant districts to rely solely on groundwater resources to maintain their crops and protect decades of investments.

Groundwater pumping during the drought, including that done by non-Friant irrigators in the region, caused an alarming rapid subsidence below a portion of the Friant-Kern Canal. The drop is so severe that it has reduced our ability to deliver water to many Friant Division contractors by nearly 60 percent. This means that during the exceptionally wet 2016-2017 water year, when the Friant-Kern Canal should have been recharging badly depleted groundwater supplies, the Canal could function at only 40 percent of its capacity in areas with the greatest ability to store groundwater. A fact sheet on the subsidence problem is attached to my testimony.

The Authority and Reclamation are currently exploring options to address the Canal's subsidence problem both in the short-term and more permanently. The San Joaquin Valley is already facing an estimated 2.5-million-acre-foot per year water supply deficit, and in the near future a new State law regulating groundwater pumping could enlarge that shortfall during drought years. So it is absolutely vital that the Friant-Kern Canal be restored to its original full capacity. Doing so could cost as much as $400 million.

Title Transfer Opportunities and Benefits

The cost for the capacity restoration of the Friant-Kern Canal is largely allocated to the Authority, although there would be considerable costs to Reclamation as well. Transferring ownership of the Canal to the Authority would significantly improve our ability to pay for the capacity restoration project, and reduce or eliminate any Federal costs. Owning the Canal means the Authority would have the asset necessary to secure favorable financing in the market. If the Canal remains in Federal ownership, securing affordable financing terms would be difficult if not impossible. Simply put, it's hard to borrow money with collateral that's not yours.

With ownership of the Canal, the Authority could move more rapidly and efficiently than Reclamation in designing and carrying out repairs. Normal operations, while still governed by existing contracts, laws and agreements, also would become more flexible and responsive to changing circumstances and needs when decisions are not slowed by review and approval of the Reclamation bureaucracy. The Authority would still be bound to meet all contractual obligations to water users, as well as its obligations under the San Joaquin River Settlement and other applicable environmental laws. And the Authority would continue to operate and maintain the Friant-Kern Canal as it has for more than 30 years.

At the same time, Reclamation would be freed from the costs associated with designing and overseeing capacity repairs to the Canal, as well as the cost of overseeing the normal day-to-day operations of the facility and any liability associated with its operations.

But Reclamation would continue to make water-delivery decisions, consistent with the existing contracts, laws, regulations, water rights and agreements that govern the operation of the CVP and the San Joaquin River. And Reclamation would continue to receive the revenues from the sale of CVP water through the Friant Division.

In other words, transferring title of the Friant Kern Canal to the Authority would not and likely could not, change the current operation of the facility, or saddle the Federal taxpayer with the cost of building the Canal – already repaid by Friant water users – or deprive the government of the revenues that the Canal will generate into the future. Instead, with a title transfer, Federal costs would decrease while the Authority's ability to protect the original Federal investment in the project would increase.

Some might argue that transferring the Friant-Kern Canal to non-Federal ownership will undercut environmental protections provided by the Endangered Species Act (ESA), the Clean Water Act (CWA) and other federal and State laws. We see no merit in these assertions. All such laws will continue to apply to Friant-Kern Canal operations regardless of the facility's ownership. For example, two of the largest water projects in California are on the Merced and Tuolumne rivers, tributaries to the San Joaquin River. Both projects were built and are owned and operated by non-Federal irrigation districts. These districts must comply with the Federal and California Endangered Species Acts, as well as Federal and State clean water, fishery and wildlife laws and regulations. In this regard, a locally owned Friant-Kern Canal would be no different from any other locally owned project.

Impediments and Recommendations

One of the impediments to engaging in Reclamation's title transfer process is the complexity and cost associated with reviews under the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA), which apply to title transfers because they are considered major Federal actions. For example, some of the Authority's member irrigation districts considered acquiring title to small Reclamation distributions works within their district boundaries. But the districts concluded that the cost of the NEPA review alone would exceed the benefits of taking ownership to these small facilities, which the districts have operated, maintained and repaired for many decades.

Congress should act to appropriately focus the scope and implementation of NEPA and NHPA as they are applied to Reclamation title transfers while maintaining a transparent process that is open to public participation. We would welcome the opportunity to work with the Committee to develop legislation to that end.

The Committee also should develop legislation to require NEPA and NHPA evaluations to focus on the particulars of an individual *title transfer itself*, and not on hypothetical and unlikely "alternatives" and outcomes, or on the "impacts" of existing, well-established operations that would not otherwise be subject to review.

Nor should a NEPA or NHPA reviews of a proposed title transfer include expected project repairs or rehabilitations by the non-Federal owner. Such projects will be reviewed and permitted separately under all applicable Federal and state laws and regulations in the normal course of events. There is no need delay a title transfer by including NEPA reviews of repair projects that will, or may occur in the future.

In cases where only the ownership of a project will change and not its operations or "footprint," NEPA and NHPA reviews should be deemed to not apply or be addressed in a programmatic fashion through categorical exclusions. The Committee should consider establishing criteria for waivers and exclusions for title transfers where no material change in project operations will occur under non-Federal ownership.

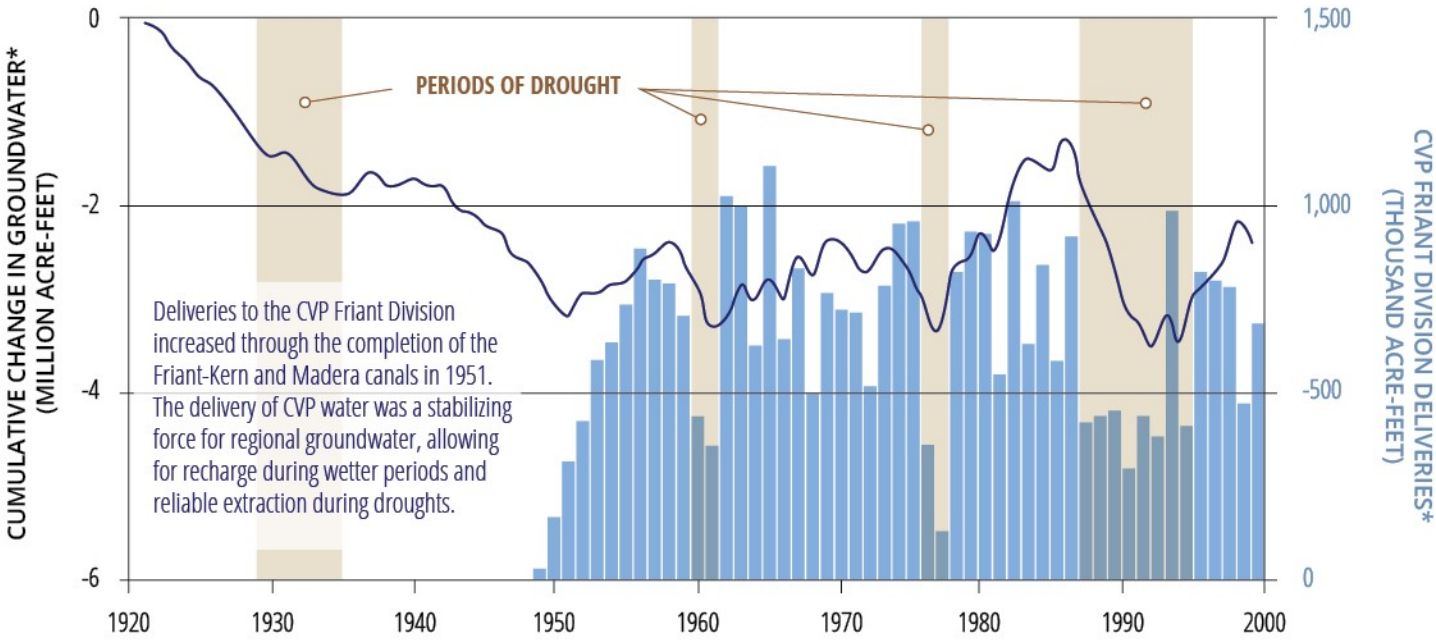
Reclamation has supported NEPA reviews of title transfers though categorical exclusions, but only for uncomplicated, stand-alone projects. This would appear to exclude components of large projects, such as the CVP's Friant-Kern Canal. The Authority recommends that the committee consider establishing criteria that will ensure facilitation of title transfers and explicitly include large project elements, such as the Friant-Kern Canal, when no change in operations will occur as a result of a title transfer.

Finally, the Authority joins the Family Farm Alliance and other water-user organizations in urging Congress to grant the Secretary of Interior broad authority to make title transfers without the necessity of further action by Congress. Of course, such authority should be appropriately conditioned to ensure the fairness and transparency of the title transfer process, while also including specific direction and criteria, such as those the Authority has suggested above, to genuinely facilitate title transfers for all types of projects.

Recognizing the importance of Congress' role in oversight of agency operations, the Authority welcomes the opportunity to work with the Committee to develop legislation that would provide periodic review by the Committee regarding implementation of title transfer legislation to ensure that both the agencies and the beneficiaries are meeting their obligations under the law in a timely fashion.

Thank you again for the opportunity to present the views of the Friant Water Authority to the Subcommittee. I am happy to answer any questions you may have.

CVP WATER DELIVERIES TO THE FRIANT DIVISION KEPT REGIONAL GROUNDWATER STABLE THROUGH MULTIPLE CYCLES OF DROUGHT



*Conditions represented for eleven Friant Division contractors with early participation in the CVP, and collectively representing about half of the Friant Division (55-percent of Class 1 and 46-percent of Class 2 contracts). Information for the combination of conditions at: Delano-Earlimart Irrigation District (ID), Ivanhoe ID, Lindmore ID, Lower Tule ID, Porterville ID, Saucelito ID, Shafter Wasco ID, South San Joaquin Municipal Utility District, Stone Corral ID, and Tulare ID.

FRIANT
WATER AUTHORITY

SUBSIDENCE – A CRITICAL CHALLENGE TO FRIANT-KERN CANAL WATER DELIVERIES

The Friant Water Authority is facing a critical challenge right now -- one that has **reduced our ability to deliver water to many Friant Division Contractor's by nearly 60%.** It is a challenge that must be met today if we are to ensure our long-term commitment to delivering high-quality, dependable water, in the amounts needed by farmers and cities in the San Joaquin Valley.

Alarming Signs of Subsidence

Evidence of subsidence was noticed when, at full capacity, water in the canal was running up against bridges it would normally pass under quite easily.

The picture on the left shows water passing under the bridge at Road 96 as it likely looked prior to the most recent subsidence. The picture on the right shows water hitting the bridge at Road 96 under similar flow conditions.

A Legacy of Innovative Water Management

The Friant Division was designed to bring stability to the San Joaquin Valley's groundwater supply, which was threatened at the beginning of the 1900s by decades of groundwater pumping. The Friant Division's two canals – the Friant-Kern and the Madera – source high-quality surface water from the San Joaquin River that supports crops, cities, and groundwater recharge. This investment to establish the Friant Division has paid off by providing stable surface and groundwater supplies that created and sustain a world-class agricultural sector that in turn supports numerous communities and businesses. But in recent years, several challenges have reduced the ability of the Friant Division's existing infrastructure to serve its intended purposes.

The Challenge

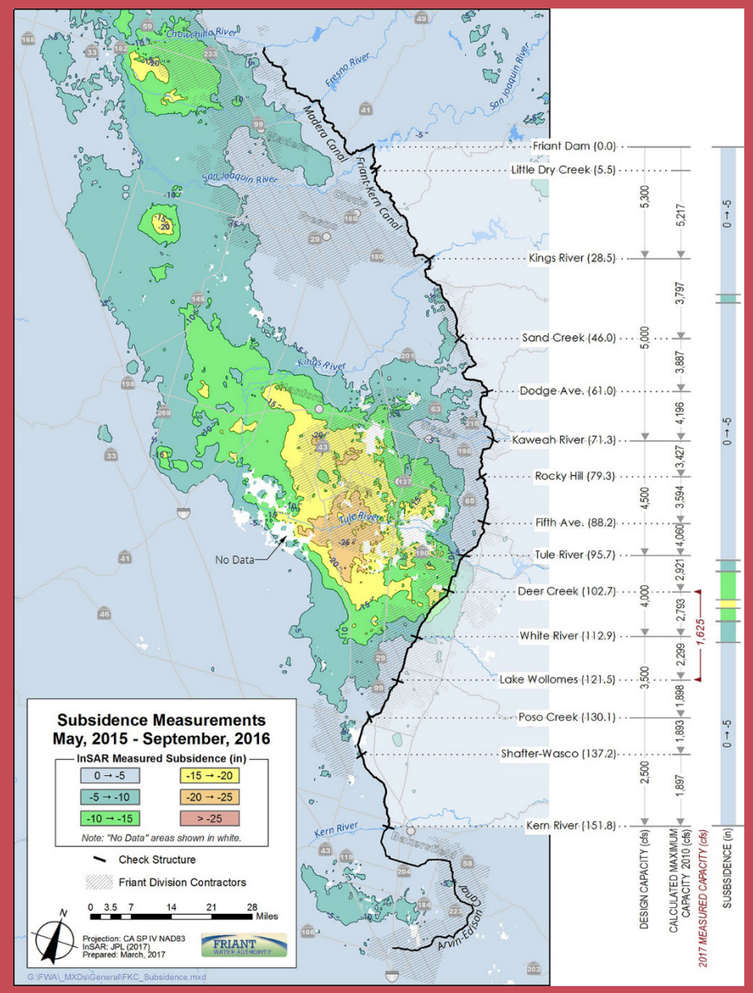
In early 2017, Friant Water Authority discovered a problem related to land subsidence that affects the Friant-Kern Canal's carrying capacity and its ability to deliver water to Friant contractors near the southern portion of the canal.

Subsidence and Canal Operations

The Friant-Kern Canal was designed as a gravity-fed facility and does not rely on pumps to move water. Subsidence (which is the gradual sinking of an area of land) has caused parts of the canal to sink in relationship to others parts. This negatively affects the canal's ability to convey water. When the land elevation lowers, the canal must be operated at a lower flow-stage to ensure that water doesn't overflow the banks.

Drought is the Driving Factor

From 2012-2017, California weathered its worst drought on record at the same time that increasingly stringent environmental regulations required more surface water to flow to the ocean. This forced San Joaquin Valley water users to rely heavily on groundwater supplies. In addition, in 2014 and 2015, the Bureau of Reclamation made a decision not to allocate to Friant Contractors their water supply from the San Joaquin River. This action caused most Friant districts to rely solely on groundwater resources to maintain their crops and protect decades of investments in what is among the highest-value, highest-production agricultural areas in the world.



The graphic shows the areas of subsidence along the Friant-Kern Canal and the degree to which canal capacity has been compromised from its original design.

The darker blue, green and yellow shown in the far left bar are the areas of highest subsidence along the Friant-Kern Canal. The area of greatest subsidence is between the Tule River and Lake Woollomes, particularly in the area of Deer Creek.

The graphic shows that in that section of the canal the current capacity has been reduced to only 40 percent of designed capacity, with a significant portion of that loss happening in the last 6 years.

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What Does Canal Subsidence Mean to You?

It means that even in 2017 – one of the wettest years on record in the San Joaquin River basin – Friant Water Authority cannot physically move the amount of water we should be able to deliver to farms and communities on the San Joaquin Valley's eastside. It means that the Friant Division cannot operate to its full capability or in the way it was designed.

Is This a New Problem?

The Friant-Kern Canal's carrying capacity has been compromised by various factors, including subsidence, since it began operation in 1951. In the past, water managers could manipulate canal operations to help mitigate some of the lost capacity. However, the new problem that emerged in 2017 is driven by rapid and severe land subsidence in the Corcoran/Tulare Basin areas, which are adjacent to the Friant-Kern Canal near Deer Creek. During 2015-2016, land elevations have dropped by two feet near Corcoran. There is no way to operate the canal to eliminate impacts to water users caused by this amount of subsidence.

Impacts to Contractors

All Friant Contractors who rely on the Friant-Kern Canal will be affected by changes in operations necessary to cope with the subsidence problem as reduced capacity along the canal will likely impact long-standing transfer or exchange partnerships among Friant Contractors, which have helped to balance water supply throughout the Friant Division. The Contractors downstream from the subsidence area (including Arvin-Edison WSD, Shafter-Wasco ID, South San Joaquin MUD, Kern-Tulare WD, Delano-Earlimart ID, Terra Bella ID, Saucelito ID, and Tea Pot Dome WD) will be most affected, however, because they may not get the amount of water they want during the time they need it. This may require farmers to turn to groundwater to make up for the shortage, which could exacerbate the subsidence that is causing the problem in the first place.