Appendix G

Public Input to the Draft EIS/EIR

Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014–2038

Final
January 2013

G.1 Public Input to the Draft EIS/EIR

The *Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014-2038, Draft EIS/EIR* was released on May 3, 2012, for public review under CEQA to the State Clearinghouse with notices mailed to 235 agencies, organizations, and individuals. Under NEPA, the Notice of Availability was published on May 4, 2012, in the *Federal Register* for public review and comment. Public notices were also placed in the following newspapers in general circulation in the project area: Los Banos Enterprise and Modesto Bee. The public review period closed on July 3, 2012.

On June 13, 2012, Reclamation and the Exchange Contractors held a public hearing to obtain comments on the contents of the Draft EIS/EIR, including the identification and analysis of impacts and effects, alternatives, and mitigation monitoring and reporting. Individuals and representatives of agencies and organizations were invited to comment orally and to submit written comments. All comments received in writing and at the hearing are included in this Appendix G.

The list of commenting agencies, organizations, and individuals is provided in Section G.2 below. Twelve written comments were provided, and three persons commented at the hearing. The comment letters, hearing transcript, and responses to the comments are provided in Section G.2.

Changes to the text of the Draft EIS/EIR were made, where applicable and in response to some of the comments received, to produce the Final EIS/EIR. A summary of these revisions to the text is included in Section G.3.

Based upon material contained in the responses to comments and minor revisions of the Draft EIS/EIR provided in the Final EIS/EIR and identified in Section G.3, recirculation of the EIS/EIR is not required under CEQA Guidelines Section 15088.5 because no new significant information is added to the EIR, and under Subsection (b) recirculation is not required where the new information added merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

G.2 Comments Received

Written comments received on the Draft EIS/EIR are presented in the pages that follow the list of commenting agencies, organizations, and individuals.

List of Commenters

Federal Agency Comments

Letter F-1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

JUL 02 2012

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, California 95825

Subject: Draft Environmental Impact Statement for the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2014 to 2038, California (CEQ# 20120145)

Dear Mr. Hubbard:

The Environmental Protection Agency has reviewed the Draft Environmental Impact Statement (EIS) for the above referenced document. Our review is pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

EPA submitted scoping comments on the proposed project on July 26, 2011. We commend the Bureau of Reclamation and the Exchange Contractors for proposing to provide water for transfer to improve water supply reliability for areas served by the Central Valley Project. If carefully implemented, this purpose can be carried out while also attending to other issues in the region, notably management of agricultural drainage and water quality to protect beneficial uses. The San Joaquin Basin faces interrelated problems of short water supplies, instream flow deficits, and water quality impairments. For this reason, actions such as the transfer proposal, which could alter the distribution, timing, and quality of water in the Basin, must be carefully designed and coordinated with other water quality, quantity, and drainage programs. Provided that these concerns are adequately taken into account, we support water management practices that increase the reliability of scarce existing water supplies and provide for flexibility in the allocation, management, and use of the water supply. F-1-1

We note that the Draft EIS provides limited information about water quality issues that the Exchange Contractors and potential in-basin transfer recipients are trying to address and which could affect the transfer proposal. The Final EIS should discuss the relationship between the proposed transfer program and measures currently developed for water quality improvement in the San Joaquin Valley, such as the salt/boron Total Maximum Daily Load (TMDL) program, management of agricultural drainage, and implementation of the Regional Water Quality Control Board irrigated lands conditional waiver requirements. The Final EIS should also explain any potential direct and indirect effects to wetlands from conservation measures (e.g., modification of tailwater recovery ponds and construction of pump stations). F-1-2

Additionally, given that land fallowing is one source of transfer water, we encourage the Final EIS to explore ways in which fallowing could be encouraged in areas near the San Joaquin River where the
F-1-3 direct and indirect effects of San Joaquin River flows, such as an increase in shallow groundwater, have conflicted with farming practices. The water transfer program should seek to avoid any adverse effects on the River or on activities and plans associated with San Joaquin River restoration.

Based on our review of the Draft EIS, we have rated the Proposed Action as Environmental Concerns - Insufficient Information (EC-2). This rating reflects the need for full disclosure of San Joaquin Valley water quality, agricultural drainage, irrigated lands conditional waivers, and restoration issues; as well as our concerns regarding the potential impacts of the proposed project on efforts to resolve these issues, and our concerns regarding potential impacts to wetlands from the proposed conservation measures. Please see the enclosed Summary of EPA Rating Definitions for a description of the rating system.
F-1-4 Further discussion of our concerns is provided in the enclosed Detailed Comments.

EPA appreciates the opportunity to provide comments for this project. When the Final EIS is released for public review, please send one hard copy and one CD to the address above (Mail Code: CED-2). If you have any questions, please contact me at (415) 972-3521 or contact Stephanie Skophammer, the lead reviewer for this project. Stephanie can be reached at (415) 972-3098 or skophammer.stephanie@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)
Communities and Ecosystems Division

Enclosures: Summary of EPA Rating Definitions
Detailed Comments

cc: Dan Russell, US Fish and Wildlife Service
Joy Winckel, US Fish and Wildlife Service
Rudy Schnagl, Central Valley Regional Water Quality Control Board
Joann White, San Joaquin River Exchange Contractors Water Authority

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

EPA DETAILED COMMENTS FOR THE DRAFT EIS WATER TRANSFER PROGRAM FOR THE SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY 2014-2038, CA, JULY 3, 2012

Relationship of the Proposed Action to Ongoing Efforts to Improve Water Quality

Reaches of the San Joaquin River and tributaries are listed as "impaired" pursuant to Section 303(d) of the Clean Water Act for a number of pollutants. A total maximum daily load (TMDL) has been developed by the Regional Water Quality Control Board (Regional Board) for selenium, salt/boron, low dissolved oxygen, and pesticides. These efforts are complemented by the Regional Board's Conditional
F-1-5 Waiver Program (updated March 2012) for managing discharges from irrigated lands. Implementation of monitoring and actions to manage salinity and other pollutants is likely to influence the Exchange Contractors' conservation activities, regardless of the transfer program, although this is not discussed in the Draft EIS. Improving water quality and flows along the San Joaquin River system is a complex problem. Shifts in the timing and intensity of water use, improved conjunctive use of surface and ground water, improved coordination and routing of existing supplies, and water conservation can contribute to solutions.

Recommendations:

F-1-6 The Final EIS should address the potential relationships, including any dependencies, between the water transfer program and efforts to achieve water quality goals for the San Joaquin River, including the San Joaquin River Restoration Program, TMDLs and the irrigated lands conditional waiver program.

F-1-7 The Final EIS should disclose actions that the Exchange Contractors have taken (existing conditions baseline) and might expect to take (under future "no project" conditions) to manage their agricultural drainage water. For example, explain whether activities pursuant to the Regional Board water quality programs or drainage management programs would be undertaken in the future, even if the transfer program is not pursued. Discuss possible constraints and issues associated with discharges of agricultural drainage.

Impacts on Salinity and Other Constituents in Receiving Waters

Elements of the transfer program involving groundwater pumping and tailwater recovery may have the potential to alter the quality of water available for irrigated lands, including refuges that receive water by means of the Exchange Contractor conveyance system. For example, the Draft EIS provides a brief description of groundwater water quality (p.5-6), mentioning areas of high salinity, but does not contain enough detail for the reader to understand whether, in blending pumped groundwater with surface
F-1-8 supplies, there is potential to introduce additional loads of salts, particularly into water which is transferred to other users in the Basin, such as the San Joaquin Valley refuges (refuges).

Achieving a salt balance that safeguards continued agricultural productivity in the San Joaquin basin is a challenging problem which is being addressed by a number of parties at the local, state, and federal levels. While the transfer proposal could help the Exchange Contractors manage salinity in their area, it is important to ensure that this is not at the expense of transferees, such as the refuges.

We note that the Mendota Pool is listed by the State Water Resources Control Board as "impaired" for selenium associated with agricultural irrigation, agricultural return flows, and groundwater withdrawals [CWA 303(d) list, October 2011], although this is not mentioned in the Draft EIS. F-1-9

Recommendation:

The evaluation of potential water quality impacts of increased inputs of groundwater and recovered tail water should be expanded in the Final EIS. Explain whether the proposed project could increase the proportion of tailwater and groundwater in water reaching refuges (as transfers, or indirectly), streams, the San Joaquin River, or other water users, and, if so, what impact(s) that would be expected to have on the quality of those receiving waters. F-1-10

The Final EIS should discuss flows in and out of the Mendota Pool as they relate to the water transfer program, and current efforts regarding the Mendota Pool bypass and Reach 2B improvements. F-1-11

Relationship to Operation of New Melones Dam

The environmental effects of the water transfer program depend, in part, on the relationship between the disposition of transfer water, San Joaquin River flows and water quality, and New Melones Reservoir operations (e.g p. 4-27). For instance, in some transfer scenarios, development of transfer water via reuse of tailwater reduces agricultural return flows to the San Joaquin River, reducing overall San Joaquin River flows that could trigger a release from New Melones Reservoir, reducing the storage level of New Melones Reservoir. The level of storage in New Melones Reservoir is a key component of the Central Valley Project (CVP) because water releases from this reservoir are used to meet flow and water quality requirements at the Vernalis compliance point (p. 4-27-4-28).

Recommendations:

The Final EIS should include a diagram and supporting text to describe the operational relationship between the transfer water, San Joaquin River water quality and flows, and the operation of New Melones Reservoir. It should discuss any impacts that the Exchange Program could have on the availability of sufficient water releases from New Melones Reservoir to ensure that downstream flow requirements, water supply needs, and water quality standards at Vernalis are met. F-1-12

Effects on Mud and Salt Slough, and Upstream of Vernalis

The evaluation of effects focuses on State Water Resources Control Board and CALFED requirements such as the Vernalis flow and salinity objectives, and "Delta supplies" (inflows from the San Joaquin River) under the San Joaquin River Restoration Program (p. 4-8). Potential water quality and flow impacts to other beneficial uses, such as those above and within Mud and Salt Sloughs, and upstream of Vernalis are not addressed. F-1-13

Recommendation:

The Final EIS should provide more information on conditions in, and potential impacts to, reaches of the river above Mud and Salt sloughs, and within those sloughs.

Tailwater Recovery

The methods for developing up to 150,000 acre-feet of water per year involve tailwater recapture, conserved water land fallowing, and potentially deep percolation (p. 2-18). The Draft EIS does not provide sufficient information regarding the elements of the Exchange Contractor's tailwater recapture program to support an assessment of its likely impacts and effectiveness (p. 2-18). F-1-14

Recommendation:
The Final EIS should provide additional information on the features of the tailwater recovery program, including technologies used, implementation sites, and connections to surface and groundwater effects.

Clean Water Act Section 404

Although the Draft EIS describes Executive Order 11990 Protection of Wetlands, it does not describe the requirements of, or compliance with, the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the Clean Water Act (CWA). Proposed water conservation measures, such as lining of canals, modification of tailwater ponds, and construction of groundwater pumps, could trigger the need for a Section 404 permit. F-1-15

Recommendation:
The Final EIS should clarify whether the conservation actions being considered will require a Section 404 permit. If yes, the Final EIS should address the 404(b)(1) Guidelines and fully disclose compliance with these requirements.

Allocation of Transfer Water

The proposed action would transfer up to 150,000 acre-feet/year (af/yr) of water from the San Joaquin River Exchange Contractors to CVP water service contractors, municipal and industrial (M&I) contractors, and San Joaquin Valley wildlife refuges. Included among the potential recipients are lands on the west side of San Joaquin Valley which may have problems with agricultural drainage and high soil salinity. Some of these lands are also sources of selenium and boron, which are San Joaquin River water quality contaminants of significant concern. F-1-16

Recommendations:
The Final EIS should clearly describe the process and criteria for determining allocations of transfer water. For example, describe who makes the decision (Bureau of Reclamation or Exchange Contractors or both), and how and when the decision is made to allocate transfer water to the refuges, agriculture, and M&I contractors. Describe the criteria for determining the proportion of annual allocation to each type of recipient.

F-1-17 The use of transfer water should maximize beneficial uses and minimize adverse effects of the transfer. The Final EIS should explain whether there are procedures in place to

preclude allocation of transfer water to lands that contribute to agricultural drainage problems or selenium and boron water quality problems.

Given that land fallowing is one source of transfer water, describe the ways in which fallowing could be encouraged in areas near the San Joaquin River where the direct and indirect effects of San Joaquin River flows have conflicted with farming practices. F-1-18

Sources of Water for Refuges

Suitable water quality must be a component of refuge supplies. We observe that the Draft EIS future "no project" conditions assume that substitute refuge supplies would be purchased. However, there is no information regarding potential sources or quality of these alternative supplies.

Recommendation:
Given the significant beneficial effects of transfer water for the wildlife refuges, the Final EIS should consider permanent dedication of a portion of transfer water of suitable quality to Level 4 water for refuges. F-1-19

Miscellaneous

Pages 1-12 through 2-2 are missing from the Draft EIS. F-1-20

Response to Letter F-1 ***US Environmental Protection Agency***

F-1-1
Comment noted. The purpose and need statement clearly states the Proposed Program is to transfer or exchange up to 150,000 acre-feet of water to either the refuges, CVP contractors for existing municipal and industrial (M&I) and/or agricultural areas, and other potential SWP contractors for agricultural and/or M&I uses, or to some combination of these users. The analysis of the distribution, timing, and quality of water in the Basin as it may be affected by the project is described in the subject document.

F-1-2
The subject document directly analyzes the potential effects the Proposed Program would have upon the affected environment including surface water resources (Section 4.2.2) and nearby wetlands (Section 6.2.2). Other activities, programs, and projects within the Basin have been identified in Chapter 1, and they are being addressed in their own forums. They are noted because they could affect the existing baseline and future conditions assumptions for the environmental impact analysis of the Proposed Program. It is not the duty of the subject document to reanalyze these activities, programs, and projects except where they are related to the cumulative impacts discussion. Also, Chapter 15 discusses other regulatory compliance actions; and Section 15.3 discusses hydrology-related requirements, permits, and/or approvals. Concerning the Regional Board's salt/boron TMDL program, water conservation would have a small positive effect due to the removal of poor quality agricultural return flows to the San Joaquin River.

The wetlands are potential recipients of water from the Water Transfer Program and are not impacted by conservation measures as explained above.

This Program would have no additional construction of tailwater recovery; therefore no direct or indirect negative effects would occur from the use of existing conservation measures for Alternatives A, B, and C. Under Alternative D, the additional conservation from canal lining, on-farm irrigation system improvements, and district conveyance improvements including reductions in operational spills could have short-term combustion emissions from equipment use, but not from any long-term uses. Overall energy use is expected to decrease following construction of these infrastructure projects to develop another 20,000 acre-feet per year (page 11-16).

F-1-3
Effects on nearby wetlands are discussed in Section 6.2.2, Impact BIO-7 under each alternative.

F-1-4
The overall comments that the EIS/EIR provides insufficient information and that a need exists for full disclosure of San Joaquin Valley issues are noted and addressed in the responses to the Detailed Comments. In short, the EIS/EIR document's objective is to focus on the potential for significant effects to pertinent environmental resources from the proposed actions to develop water for transfer while avoiding both "encyclopedic

documentation," wherein an encyclopedic, far-ranging document could foster confusion with the public, and "speculation" on the outcome of plans and projects still in the planning stage. A substantial amount of analysis has been completed for related actions with independent utility (i.e., have their own CEQA and/or NEPA documents) on water use, and these relevant environmental documents are referenced as appropriate.

F-1-5
The conservation practices used to develop the transfer water are described in the previous 2004 and current 2012 environmental documents. These practices are, in fact, partially the result of the water quality programs and efforts. Section 1.3.1 discusses the Exchange Contractors' participation in the Irrigated Lands Program. At least 19 monitoring sites are within the Westside Coalition (of which the Exchange Contractors are 60 percent); and they all have salinity, boron, and selenium monitoring conducted along with other constituents and pesticides.

F-1-6
See Response F-1-2 above. The Proposed Program is explicitly the transfer of water. No potential relationships or dependencies exist between the transfer program and efforts to achieve water quality goals for the San Joaquin River, except as they incidentally occur because of the Program, and they have been described in the subject document. The Exchange Contractors are participating in the Westside San Joaquin River Watershed Coalition (page 1-15).

F-1-7
Since 1990, the Exchange Contractors have implemented both district-wide and on-farm projects that both conserve water and help manage drainage. We have transferred conserved water to aid neighboring water agencies and wildlife areas, supplementing their short water supplies. The districts and their farmers have invested more than $90 million, primarily from transfer proceeds, in their recent conservation efforts. The conservation effort includes installing projects such as system modernization and automation, drip and microsprinklers, regulating reservoirs, canal compacting, lining or pipelining, long crested weirs, variable-speed pumps, and booster pumps. Each of the districts offers grants and low-interest loans to assist landowners with on-farm conservation projects, such as upgrading irrigation systems to drip and microsprinkler systems. Without these transfers in the future, further funding for these types of projects is uncertain. Therefore, without transfers, the major constraint in meeting the challenges associated with discharges of agricultural drainage would be the funding for beneficial projects and best management practices.

F-1-8
The future program proposed by the Exchange Contractors does not utilize developed groundwater for transfer. The return of agricultural return flow has no impact on the wildlife areas and refuges for two reasons:

- Agricultural return flows occur during the irrigation season. The Exchange Contractors' irrigation demand hydrograph peaks in the summer months of June, July, and August when the refuge hydrograph is at a minimum (2,600 cfs

Exchange vs. 200 cfs refuge demand). On the flip side, the refuges usually "flood up" duck ponds for the hunting season in September and October. The presence of agricultural return flow in the system is minimal since irrigation is minimal (200 cfs Exchange vs. 1,000 cfs refuge demand).

- The water quality in the canals is monitored and managed carefully to provide sufficient water quality to both the agricultural lands and refuges to maximize drainage management.

F-1-9
The comment is noted and considered.

F-1-10
To clarify, the Proposed Program does not include groundwater pumping to make water available for transfer. The comment to expand the water quality impact analysis does not appear to consider the analysis described in Chapter 4 or the substantial analysis in Appendix B regarding surface water and water supplies. The EIS/EIR analysis concludes that very little or no change in tailwater runoff to the refuges or water courses would occur. The analysis also concludes that groundwater would not be affected. As such, water quality would not be affected.

F-1-11
The comment may not be relevant to analysis. Compared to the affected environment, which already includes a significant portion of the total potential transfer, the effect of the transfer has already been experienced in terms of "flows in and out of Mendota Pool," which vary every year. Regarding a relationship to the proposed Mendota Pool bypass and Reach 2B improvements, the transfer has none.

The comment that current efforts regarding the Mendota Pool bypass and Reach 2B improvements should be discussed is noted. This component of the SJRRP is in the plan formulation stage; a range of reasonable alternatives for accommodating restoration flows and salmon production is currently under discussion by the responsible and cooperating agencies and settlement parties. The selected alternatives will be reviewed in a project-level EIS/EIR that is not available at the present time.

F-1-12
The operational relationship of the proposed transfer, New Melones Operation, and San Joaquin River conditions and requirements is thoroughly described and discussed throughout Chapter 4 and Appendix B, starting with an introduction on page 4-3. The operational relationship and effects are specifically cited as CEQA impact criteria (page 4-11) and the method of analysis is described in the modeling approach on page 4-21. Explicitly for each alternative, the potential effects are described regarding changed releases and storage and flow and water quality compliance.

F-1-13
The comment is not sufficiently descriptive. If referring to Mud Slough (North), the analysis describes no change attributable to the Proposed Program. For Salt Slough (and Mud Slough South), Appendix B provides an estimated retrospective and prospective

analysis of hydrologic changes that have or may occur due to the transfers. The changes in those boundaries can be extrapolated to the San Joaquin River upstream of Vernalis.

The impacts of the Program on flows in Mud and Salt sloughs and the San Joaquin River upstream of Vernalis are discussed on pages 6-27 through and 6-28, with their associated effects on biological resources continuing on through page 6-32. These sections describe the magnitude of flow reductions resulting from Alternative A, which would result in the largest potential impact on stream flows. Under this alternative, flow reductions would be 0 to 2 cfs, representing less than 0.5 percent of the San Joaquin River flow at Vernalis and less than 3 percent of the flow in Mud or Salt Slough, even assuming all of the depletion occurred in only one of these waterways, which is unlikely to be the case. These minor changes in flow are unlikely to affect biological resources, as described in detail in the pages listed above. Alternative D would result in the same impacts on flows in these waterways as described for Alternative A, with the same effects on biological resources.

F-1-14
Sufficient information has been provided regarding each component of activity that develops transfer water. Proof of the effectiveness of these activities has been the ability of the Exchange Contractors to provide transfer water over the last decade. Additional descriptions in the EIS/EIR are not necessary. The "connections" to surface and groundwater effects are described in Chapters 4 and 5.

F-1-15
The infrastructure for conservation/tailwater recovery up to 130,000 AFY is in place. Only conservation projects for an additional 20,000 AFY would need to be implemented. These projects are unlikely to trigger the need for a permit under the Section 404(b)(1) Guidelines because they are either installation of on-farm conservation projects or lining or compaction projects within district owned conveyance laterals.

F-1-16
All transfers are subject to the water transfer policy of the Exchange Contractors and requirements contained therein to reduce impacts from the water transferred upslope. Priorities of who receives the transferred water are first based upon a willing buyer and willing seller basis. In addition, all transfers are at the discretion of the Exchange Contractors' Transfer Committee and full Board of Directors, and member agency Boards of Directors. On the Reclamation side, all transfers will be in compliance with CVPIA Section 3405 and Reclamation's Interim Water Transfer Guidelines. Proposed transfers will be submitted to Reclamation in advance for review and approval and determination of any conditions. However, Reclamation's review and approval does not extend to the question of to whom or on what terms and conditions the Exchange Contractors' Board decides to sell water.

F-1-17
The use of the proposed transfer water maximizes the beneficial uses of water consistent with (1) existing CVP contracts for surface water deliveries for agricultural and M&I uses (to minimize reliance on groundwater resources) and (2) Reclamation's Refuge

Water Supply Program (RWSP) Incremental Level 4 water needs to the refuges as required under the CVPIA (see Section 1.2.1). Neither lead agency has a policy to preclude transfer water deliveries to either the refuges or to drainage-impaired lands and will not introduce such a policy (and implementing procedures) in the EIS/EIR, which would be inconsistent with the proposed Water Transfer Program's purpose and need/objectives as stated in Section 1.2. The drainage-impaired lands/districts have approved and are implementing projects and procedures to improve water quality by reducing selenium and salt loads in discharges to the San Joaquin River (Grassland Bypass Project, 2010–2019), though implementation of the Westside Regional Drainage Plan (a cooperative effort to solve drainage issues among both transferors and transfer recipients) and fulfill the requirements through the Central Valley Regional Water Quality Control Board's Irrigated Lands Program. Also, see Response F-1-7.

F-1-18
The fallowing of land is at the landowner's sole discretion. The Exchange Contractors do not encourage fallowing in any particular area.

F-1-19
As stated in Response F-1-16, the movement of water is based upon a willing seller and willing buyer basis. In addition to purchases from the Exchange Contractors, the RWSP has purchased water in the past from numerous willing sellers including, but not limited to, Merced Irrigation District, Panoche Water District, Santa Clara Valley Water District, Stevenson Water District, Grassland Water District, and Kern-Tulare Water District.

F-1-20
The missing pages were provided on July 16, 2012.

State Agency Comments

Letter S-1

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT

EDMUND G. BROWN JR.
GOVERNOR

KEN ALEX
DIRECTOR

July 5, 2012

Joann White
San Joaquin River Exchange Contractors Water Authority
P.O. Box 2115
Los Banos, CA 93635

Subject: 25-Year Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority (2014-2038)
SCH#: 2011061057

Dear Joann White:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on July 2, 2012, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

> "A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

S-1-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

Document Details Report
State Clearinghouse Data Base

SCH# 2011061057
Project Title 25-Year Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority (2014-2038)
Lead Agency San Joaquin River Exchange Contractors Water Authority

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Type EIR Draft EIR

Description Note: Review Per Lead

This EIS/EIR examines the environmental effects of the proposed transfer and/or exchange of up to 150,000 acre-feet of substitute water from the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) to the San Joaquin Valley wetland habitat areas, to other Central Valley Project (CVP) contractors, and/or selected State Water Project (SWP) contractors. This report has been prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the CEQA of 1970.

Lead Agency Contact

Name Joann White
Agency San Joaquin River Exchange Contractors Water Authority
Phone 209-827-8616 **Fax**
email
Address P.O. Box 2115
City Los Banos **State** CA **Zip** 93635

Project Location

County Fresno, Madera, Merced, Stanislaus
City
Region
Lat / Long
Cross Streets
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways Hwy 99, 5, 145, 33, 152
Airports
Railways Yes
Waterways San Joaquin, Stanislaus, Tuolumne & Merced Rivers
Schools Yes
Land Use Open Space, Agriculture in Exchange Contractors' 240,000 acre service area, adjacent Wildlife Refuge

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Project Issues Air Quality; Archaeologic-Historic; Biological Resources; Economics/Jobs; Other Issues; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife; Growth Inducing; Landuse; Cumulative Effects

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Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 4; Office of Historic Preservation; Department of Parks and Recreation; Central Valley Flood Protection Board; Department of Water Resources; Caltrans, District 6; Caltrans, District 10; State Water Resources Control Board, Division of Water Rights; Regional Water Quality Control Bd., Region 5 (Fresno); Native American Heritage Commission; State Lands Commission

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Date Received 05/03/2012 **Start of Review** 05/04/2012 **End of Review** 07/02/2012

Note: Blanks in data fields result from insufficient information provided by lead agency.

Response to Letter S-1 ***Governor's Office of Planning and Research State Clearinghouse and Planning Unit***

S-1-1
The attached letter from the Native American Heritage Commission is responded to separately from the Clearinghouse letter. No further response to the Clearinghouse is needed.

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Letter S-2

STATE OF CALIFORNIA — Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net

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e

June 4, 2012

RECEIVED
JUN 12 2012
STATE CLEARING HOUSE

Ms. Joann White
Exchange Contractors
P.O. Box 2115
Los Banos, CA 93635

Mr. Brad Hubbard
U.S. Department of the Interior
Bureau of Reclamation
2800 Cottage Way, Room 410
Sacramento, CA 95814

Re: SCH#2011061057; Joint NEPA/CEQA Notice; draft Environmental Impact Statement & draft Environmental Impact Report (DEIS/DEIR) for the **"San Joaquin River Exchange Contrac ts Water Authority Water Transfer Program 2014 - 2038);"** located in Alameda, Contra Costa, Fresno, Kern, Kings, Madera, Merced, Monterey, San Benita, Santa Clara, Santa Cruz, San Joaquin, Stanislaus and Tulare Counties, California

Dear Ms. White and Mr. Hubbard:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604).

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC did not conduct a Sacred Lands File (SLF) search within the 'area of potential effect (APE) due to the absence of the USGS coordinates. However, at the point of origin, Lake Oroville, is known to the NAHC to be very culturally sensitive.

S-2-1

The NAHC "Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq*. and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

S-2-2

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built

around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a). S-2-2

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List S-2-3

Response to Letter S-2 ***Native American Heritage Commission***

S-2-1
The description of the statues is noted and considered.

S-2-2
Unanticipated discoveries of cultural resources or burial sites are not anticipated because the water transfer would be accomplished using existing conveyance and conservation facilities. Any additional conservation measures for making water available under Alternative D, such as canal lining and irrigation efficiencies, would occur in previously disturbed agricultural areas.

S-2-3
The Native American contacts are noted.

STATE OF CALIFORNIA – THE RESOURCES AGENCY
EDMUND G. BROWN, Jr., *Governor*

DELTA PROTECTION COMMISSION
2101 STONE BLVD., SUITE 210
West Sacramento, California 95691
Phone (916) 375-4800
Fax (916) 376-3962
Home Page: www.delta.ca.gov

Letter S-3

June 13, 2012

Exchange Contractors
Attn: Joann White
PO Box 2115
Los Banos, California 93635

Subject: San Joaquin River Exchange Contractors Water Authority Water Transfer Program

Dear Ms White,

The Delta Protection Commission (Commission) is responding to the request for comments on the San Joaquin River Exchange Contractors Water Authority Transfer Program. In reviewing the proposal, staff has determined that a portion of the proposed project is located within the Primary Zone of the Legal Delta and is under the jurisdiction of the Land Use and Resource Management Plan for the Primary Zone (Management Plan) as well as the Delta Protection Act (Johnston 92) (Act). While the current proposal is not considered "development", it should be consistent with the Management Plan's and the Act's goals and policy's to protect, maintain and enhance Delta agriculture, recreation, and habitat. Transferring water from the San Joaquin River may negatively impact these resources. This project should evaluate potential and actual impacts to the Delta environment and those impacts should be mitigated as part of the planning and permitting authorization. A copy of the Management Plan and the Act are available at www.delta.ca.gov. S-3-1 S-3-2

Sincerely,

Michael Machado

Michael Machado
Executive Director

Response to Letter S-3 ***State of California – The Resources Agency Delta Protection Commission***

S-3-1
The portion of the Program that is located within the Primary Zone is a portion of Contra Costa Water District (CCWD), which takes delivery of its CVP supply within the Delta and the Freeport Diversion point for East Bay Municipal Utility District's (EBMUD's) CVP supply. Both of these districts are potential users of transfer water subject to any additional environmental compliance documentation that is required. No changes would occur to any of the CVP or SWP facilities or contracts for water delivery, and no changes to land use within the Delta due to the development of water supplies by the Exchange Contractors under the proposed transfer program. No adverse effect, or a less than-significant impact, would occur to Delta CVP/SWP water supplies. Therefore, the proposed transfers would be consistent with the Commission's Land Use and Resource Management Plan for the five-county Primary Zone of the Delta by maintaining the overall quality of the Delta environment.

Furthermore, a related state-federal collaborative planning exercise is the Bay Delta Conservation Plan (BDCP), a 50-year, ecosystem-based plan designed to restore fish and wildlife species in the Delta in a way that also provides for the protection of reliable water supplies while minimizing impacts to Delta communities and farms. The Framework Brochure includes the following water management action that would meet the goals of the element to improve operational efficiency and transfers/exchanges (DWR 2012):

> Transfers/Exchanges: Historically private transactions, voluntary water transfers and exchanges pose a considerable opportunity to improve water supply reliability. Examples include the 25-year Exchange Contractor Transfer Program and the North/South Transfer Program currently under federal and state environmental review. State and federal agencies can facilitate voluntary transfers, finding ways to limit procedural and administrative barriers while protecting water rights and the environment.

S-3-2
The subject document identifies and addresses potential impacts to the affected environment, being primarily associated with the transfer of water between "South of Delta" water users, therefore not changing the current Delta environment. For certain potential transferees, e.g., CCWD and EBMUD, it was stated that if existing environmental documentation does not exist at the time of transfer, additional separate analysis and documentation will be needed.

The issue of whether the development of water for transfer by the Exchange Contractors (to EBMUD, CCWD, or any of the other south of Delta water users identified) affects the Delta is addressed in the surface water resources analysis, specifically Section 4.2.2, for each alternative. The maximum land fallowing, maximum conservation Alternative D would result in either no change or a very small change in flow to the San Joaquin River

and, therefore, to CVP/SWP Delta water supplies. The removal of tailwater due to fallowing is approximately up to 2 cfs in a month (or about 120 acre-feet in a month) and is small, if not practically indiscernible, within the hydrology and operation of the San Joaquin River and Delta, where exports by the CVP and SWP have averaged historically over 5,000,000 acre-feet per year. The impact was determined to be less than significant, and no mitigation is required.

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Regional / Local Agency Comments

FRIANT
WATER AUTHORITY

Letter R-1

July 3, 2012

VIA ELECTRONIC MAIL

Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, Room 2905
Sacramento, CA 95825
bhubbard@usbr.gov

Re: Comments on Draft EIS/EIR on Proposed 25-Year Extension of San Joaquin River Exchange Contractors Water Transfer Program

Dear Mr. Hubbard,

Thank you for the opportunity to comment on the Draft EIS/EIR on the Proposed 25-Year Extension of San Joaquin River Exchange Contractors Water Transfer Program. After reviewing the document, we have three primary concerns regarding issues that we identified in our scoping comments that do not appear to have been addressed in the document or appendices. We also have some detailed comments regarding specific information or statements in the Draft EIS/EIR that follow the three primary issues. R-1-1

Primary source of transferrable water

During the July 13, 2011 scoping meeting and in our July 20, 2011 scoping comment letter (Scoping Letter), we questioned whether the substitute CVP water delivered to

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the Mendota Pool by Reclamation via the DMC was the sole source of water used to develop the transferable quantities; we asked Reclamation to clarify whether the transfer involves only substitute CVP water or whether it also includes San Joaquin River water diverted by the Exchange Contractors under their prior rights. As you know, the Exchange Contractors continue to exercise their prior rights to divert San Joaquin River water, which primarily occurs when there are flood management flows released into the river and when Reclamation is temporarily unable to deliver substitute water from the DMC or other sources. The project description in the DEIR/EIS only uses the term "substitute water" to define the water being transferred, but the scoping report creates confusion because it states, in response to a question (raised by Steve Ottemoeller during the July 13, 2011 public scoping meeting about whether the source of the transferred water would be water delivered from DMC or water diverted from the river), that "*It was determined that all water will be covered under the transfer program.*"

As noted in our Scoping Letter, we believe that the transfer of non-CVP water diverted pursuant to the Exchange Contractors' reserved appropriative water rights should occur under a different mechanism and legal authority than the CVP water described in the Proposed Project. (Of course, the Exchange Contractors' reserved riparian rights cannot be transferred away from the appurtenant properties.) In addition, the Proposed Project relies on an exchange mechanism whereby water exported from the Delta that is not needed by the Exchange Contractors due to conservation, groundwater pumping or land fallowing can be readily made available for storage and/or delivery to transferees using existing CVP facilities. It is not clear how such an exchange would work when the Exchange Contractors are taking all of their supplies from the San Joaquin River.

We therefore request that the final EIR/EIS clarify that the proposed action only covers CVP water delivered by Reclamation to the Exchange Contractors as substitute water from the DMC and not water diverted from the river.

Impacts related to SJR Restoration Program (SJRRP) Recaptured Water

There is no analysis of whether or to what extent the alternatives analyzed in the EIS/EIR will impact SJRRP recaptured water. In our Scoping Letter, we stated that storage of any transferred water in San Luis Reservoir under agreements that post-date the SJRRP should not take priority over SJRRP recaptured water. Recaptured and recirculated water are integral to the implementation of the SJRRP and there may be times when a conflict could exist between recaptured water and transferred/transferable Exchange Contractor supplies regarding the use of exchange or storage capacity in south-of-Delta CVP facilities. The SJRRP is currently being implemented and the legally mandated Recapture and Recirculation Plan must be deemed "reasonably foreseeable." Moreover, the SJRRP has conducted enough analysis to determine the framework of the conditions under which the transfer program could impact recapture and recirculation, or vice-versa. This analysis and the associated environmental determinations must be performed and included in the EIR/EIS.

R-1-2

Socioeconomic Impacts – O&M costs for transferred water

Our Scoping Letter said the transfer program should be clear that Friant Division contractors will not pay O&M costs for transferred water. The basis for this comment is that the SLDMWA OM&R Cost Recovery Plan, negotiated between SLDMWA and FWA, specifies that Friant Division long term contractors will pay for the O&M costs to deliver water to the Exchange Contractors, but the Plan does not require FWA to pay O&M costs for water transferred by the Exchange Contractors to others. This analysis should be included in the Socioeconomics effects section. Transfers of up to 150,000 AF of water in any one year could make a significant difference in the amount of O&M costs paid by Friant Division contractors. Who pays those costs will depend on the agreement between the Exchange Contractors and the transferee, but the amount of money paid by Friant Division contractors will vary directly with the amount of water transferred, irrespective of who receives the water. The EIR/EIS should include an analysis of the potential reduction in costs incurred by Friant Division contractors as a result of the proposed alternatives. R-1-3

Specific Document Comments

Page 1-4, Line 36: There are currently 25 districts with contracts for agricultural water in the Friant Division. Kern-Tulare Water District recently obtained a contract for Class 2 water by assignment from another Friant Division contractor. R-1-4

Page 1-9, Table 1-3: The water supply numbers for the Friant Division do not make sense. Even if you assume that Friant Division contractors get 100% of both Class 1 and Class 2 in a wet year, which is very rare, the Annual Irrigation Water Deficit is not in excess of 550,000 acre feet under those conditions. Also, a 25% Class 1 supply typically only occurs in critical years. Even with River restoration, Dry year Class 1 supplies will likely be on the order of 40-50% Class 1. Finally, the Annual Irrigation Water Deficit in a dry year does not appear to have any correlation to the dry year supply and there is no citation as to source of that number (3,739,880 acre-feet). R-1-5

Page 1-16, Lines 4 - 6: The Friant Water Authority (FWA) has replaced FWUA in function and in all legal documents, including the Settlement. Also, all case descriptions use NRDC or NRDC Coalition to represent the plaintiffs. PCFFA is not typically listed although they are one of the NRDC coalition members. It may be more appropriate to cite only the NRDC Coalition and delete reference to an individual member of that coalition. R-1-6

Page 1-16, Line 22: Insert "draft" prior to "Program EIS/EIR..." R-1-7

Page 2-2, Line 9: The text appears to refer to CVP contractors "north" of the Delta as potential transferees. There are no north-of-Delta contractors or counties listed in the following bulleted descriptions of the project location. R-1-8

Page 2-16, Table 2-2: The total Friant Class 1 plus Class 2 contract quantity is listed under Class 1. Contract totals for Friant contractors should be split into Class 1 and Class 2 quantities. R-1-9

Page 4-16, Lines 10-12: The document states:

> *"The VAMP Vernalis flow requirements ended in Spring 2011 and [VAMP] has not been updated or replaced. D-1641 flow objectives for Vernalis are assumed to be required, applicable to Reclamations' operation of New Melones Reservoir."*

The SJRRP PEIS/R handles the ending of VAMP differently. For example, in response to one of the FWA comments, Reclamation says in pertinent part:

R-1-10

> *"As described on page 2-13 and in Appendix H, 'Modeling,' of the Draft PEIS/R, although VAMP expired in 2011, a VAMP-like condition is expected to continue to be in place. The SWRCB indicates that VAMP experimental data will be used to create permanent objectives for the pulse flow period. Reclamation and DWR intend to continue a VAMP-like action for the foreseeable future or until the SWRCB adopts new permanent objectives that replace the current program. It is anticipated that new SWRCB objectives will maintain the same level of protection for fisheries as the current program or increase the level of protection, and that such protections will remain in place through 2030. Because considerable uncertainty remains as to the flows that will occur under future flow requirements in the San Joaquin River, the analyses include the continuation of VAMP as a surrogate for these requirements."*

We recommend that similar language be used in the two documents given the relatively close proximity in time of the final documents.

Page 4-25, Line 39 (and continuing to line 2 on Page 4-26): The draft makes a very definitive statement that under the SJRRP, storage will increase in New Melones, making more water available for other purposes. While raw modeling may produce such a result with the numbers, it has not been determined as a matter of Reclamation policy or SJRRP implementation how increases in New Melones storage, if any, would affect water supplies. In addition, this document is not evaluating the impact of SJRRP, it is evaluating the impact of the proposed transfers or, in this case, the No Action/No Project Alternative. The text prior to the identified statement seems to suffice and we request that the cited text be deleted.

R-1-11

If you have any questions regarding these comments, please to not hesitate to contact Steve Ottemoeller at 559-562-6930 or sottemoeller@friantwater.org.

Sincerely,

Ronald D. Jacobsma
General Manager

cc: Steve Chedester

Response to Letter R-1 ***Friant Water Authority***

R-1-1
No transfer will occur in a year in which the Exchange Contractors receive 100 percent of their allocated substitute water from flood flows off the San Joaquin River.

R-1-2
The Exchange Contractors represent the Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company who are all senior water right holders to the United States for San Joaquin River water and have settlement water service contracts (Contract for Exchange of Waters, dated 7/27/1939, as amended) with the United States whereby collectively they are entitled to receive a total of 840,000 acre- feet of CVP water each calendar year (650,000 acre-feet in critical years when inflows to Shasta Reservoir are 3,200,000 acre-feet or less in the preceding water year [October 1 through September 30]). Reclamation delivers CVP water to the Exchange Contractors from the Delta via water either released from San Luis Reservoir or directly delivered through the Delta-Mendota Canal (DMC); and the San Joaquin River if necessary. Reclamation is obligated to deliver CVP water to the Exchange Contractors from CVP facilities, pursuant to their water service contracts.

Under the Proposed Action (25-Year Water Transfer Program), water transferred to participating parties would be a portion (up to 150,000 acre-feet) of the Exchange Contractors' annual CVP water supply (840,000 acre-feet). Such CVP water would be made available for transfer by the Exchange Contractors utilizing tailwater recovered, water conserved through other measures, or water from idled croplands for internal irrigation purposes. The transferred CVP water would come from San Luis Reservoir, DMC, or the San Joaquin River.

Under the San Joaquin River Restoration Program (SJRRP), water released from Millerton Lake (Friant Dam) to meet San Joaquin River instream flow needs and, subsequently, recaptured and stored in San Luis Reservoir for later use by the CVP Friant Division water users has priority over other water supplies (i.e., specifically rescheduled CVP water, stored nonproject water, stored "215" water, refuge Incremental Level 4 water, etc.) with the exception being the current year's CVP yield and its delivery to CVP Delta Division water users, including the Exchange Contractors. Therefore, while it is possible an operational conflict could arise between the SJRRP's recaptured water in San Luis Reservoir and the Exchange Contractors' transfer of CVP supply to beneficiaries under the proposed 25-Year Water Transfer Program, a conflict is unlikely because CVP operations staff would closely coordinate project operations to achieve the objectives of both programs. Because the SJRRP and 25-Year Water Transfer Program involve annual CVP yield, the programs have equal operational priority and have precedence over non-CVP water supplies.

R-1-3
Friant Water Authority commented that Friant Division Contractors should not pay for the O&M costs associated with transferred water pursuant to the OM&R Cost Recovery

Plan negotiated between San Luis & Delta Mendota Water Authority and Friant Water Authority. The comment further states that the EIR/EIS should include an analysis of the potential reduction in costs incurred by Friant Division Contractors as a result of the proposed alternatives. The EIR/EIS includes an analysis of costs that would be borne by agricultural landowners that fallow land under the Water Transfer Program, which include fees paid to the Exchange Contractor districts for transporting/conveying the water (approximately $10/acre-feet) and transportation/conveyance costs incurred by the receiving districts (ranging between $45 to $100/acre-feet; $70/acre-feet were used in the economic analysis). Based on the maximum volume of water transferred from land fallowing under the program (50,000 AFY), the costs paid by landowners to Exchange Contractor districts is $500,000 per year and $3.5 million per year to districts receiving transferred water. Because these costs are paid by those landowners fallowing land under the program, none of the Friant Division Contractors would incur O&M costs for transferred water.

R-1-4
Page 1-4, line 36 of the Draft EIS/EIR has been modified to read as follows:

> "…District, and Patterson Water District); CVP Friant Division agriculture (~~24~~ 25 districts; and….

Other references to the 24 districts on pages 2-22 and 2-23 have been changed as well.

R-1-5
Table 1-3 was based on a water balance analysis contained in Appendix C and utilized contract amounts for agricultural water service contractors provided by Reclamation's South Central California Area Office (SCCAO). The Appendix C analysis updated the net irrigation requirement for the districts (from the 2004 analysis) based on Reclamation's 2011 Water Needs Assessment. For the source for the dry year estimate of 3,739,880 acre-feet (i.e., annual gross irrigation requirement of 3,923,817 acre-feet less contract water for agricultural use assumed at 183,938 acre-feet), see Table 17 Revised Water Needs Assessment for a Dry Calendar Year in Appendix C for how the estimate of annual gross irrigation requirement of 3,923,817 acre-feet for the Friant Division total was calculated.

R-1-6
To reflect your comment on page 1-16, lines 4-6 have been changed as follows:

> The SJRRP is a negotiated settlement effort among Reclamation, the Friant Water ~~Users~~ Authority, and the Natural Resources Defense Council Coalition~~, and the Pacific Coast Federation of Fishermen's Associations~~.

R-1-7
Page 1-16, line 22 has been revised as suggested:

> A draft Program EIS/EIR was released for public review on April 22, 2011. Both the ROD and NOD were posted on October 1, 2012.

R-1-8
The north, west, and south of Delta description was meant to be geographical and in relation to the features shown on Figure 2-1. The bullets describe the affected counties, not the water agencies. It is customary for CEQA projects to define the project location based on the affected counties.

R-1-9
In Table 2-2, the Friant Division Class 1 100 percent contract supply has been changed to 800,000 acre-feet, and the Class 2 100 percent water supply has been changed to 1,401,475 acre-feet.

R-1-10
The cited language on page 4-16, lines 10-12, has been modified as follows:

- ~~The VAMP Vernalis flow requirements ended in Spring 2011 and has not been updated or replaced. D-1641 flow objectives for Vernalis are assumed to be required, applicable to Reclamations operation of New Melones Reservoir.~~ Although VAMP expired in 2011, and a VAMP-like condition is expected to continue into the future, no explicit program to implement VAMP was included in the model. The State Water Resources Control Board (Board) has initiated a process to comprehensively review the flow objectives at Vernalis and has recently issued a *Substitute Environmental Document (SED) in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality*. In addition, stakeholders are currently in discussions to settle future flow and implementation issues on the Lower San Joaquin.

R-1-11
The cited language on page 4-25, line 39 (and continuing to line 1 on page 4-26) has been deleted as follows:

> ~~The effect of additional flows from the SJRRP within the alternative would be a reduction in releases and a gain in storage due to a lesser need to provide flows for compliance to Vernalis flow and quality objectives. Such gains in New Melones Reservoir water supply would provide an improvement in water supplies to all purposes.~~

The CEQA conclusion statement remains.

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July 2, 2012

Sent via email to jwhite@sjrecwa.net:

Ms. Joann White
Exchange Contractors
P. O. Box 2115
Los Banos, CA 93635

Sent via email to bhubbard@usbr.gov:

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, Room 410
Sacramento, CA 95825

COMMENTS OF SAN LUIS & DELTA-MENDOTA WATER AUTHORITY ON DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT FOR SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY TRANSFER PROGRAM 2014-2038 (SCH#2011061057)

Dear Ms. White and Mr. Hubbard:

The San Luis & Delta-Mendota Water Authority (Water Authority) appreciates the opportunity to provide public comments on the above Draft Environmental Impact Statement/Environmental Impact Report (DEIS-DEIR) for the proposed long-term San Joaquin River Exchange Contractors (SJREC) Transfer Program.

The Water Authority has had the privilege of cooperating with the SJREC under the existing SJREC 10-year water transfer program to obtain the regional benefits of assisting both state and federal refuges with acquisition of supplemental (Level 4) water supplies and of obtaining critical south-of-Delta transfers to our members during continuing conditions of critical shortages for Central Valley Project (CVP) south-of-Delta water contractors. We have developed an ongoing coordinated agricultural/M&I and refuge water transfer program beginning back in 2006 for transfers of up to 80,000Af/annually and look forward to continuing and expanding our mutually beneficial transfer relationships. The coordination of water supply resources between the SJREC, the Water Authority on behalf of its CVP contractors and local refuges is a key component of the Water Authority's Westside Integrated Water Management Plan. These transfers also represent an essential response to ongoing and developing mandates for increased agricultural water efficiency measures and for maximization of local water supplies. R-2-1

Given the key nature of SJREC transfers into the service area of the Water Authority, we would like a commitment from Reclamation as well as the SJREC's to a preference for transfers into the CVP south-of-Delta service area. As clearly set forth on Table 1-3, the south-of Delta CVP agricultural water contractors face a gaping hole in needed water supplies. Thus, we are concerned that the program contemplates expanding the potential transfer area outside of the CVP south-of-Delta service area to East Bay Municipal Utility

District, Contra Costa Water District, Friant Unit contractors and certain non-member State Water Project service areas.

R-2-2 Specifically, we noted that on page 2-22, the DEIS-DEIR refers to the CVP south of Delta contractors and 24 Friant contractors in the same manner, as "CVP water service contractors in the Delta export service area." Historically, Reclamation has described the Friant Unit as being outside of the "Delta export service area". Therefore, the DEIS-DEIR' reference appears to be an incorrect characterization. The DEIS-DEIR should not therefore attempt to characterize Friant unit contractors as the same as CVP south-of-Delta water service contractors served from the Delta-Mendota Canal who, along with the SJREC, are clearly in the CVP export service area.

R-2-3 Also, on page 2-25, the DEIS-DEIR states that none of the transfers or exchanges would require water right change petitions under existing terms and condition to CVP water rights permits and current State Board practices and regulations. The DEIS-DEIR does not provide an explanation of this statement. However, it does state that the water being transferred is "substitute water" delivered by Reclamation under the Exchange Contract (see, e.g., page 103). Page 1-5 states that the purposes of the proposed 25-Year Water Transfer Program are the transfer and/or exchange of CVP water from the Exchange Contractors. Insofar as this water is CVP water that is going to be delivered to areas outside the existing CVP place of use and for a period longer than 1 year, an order from the State Water Resources Control Board would be required, with additional opportunity for consideration of environmental impacts under the National Environmental Policy Act/California Environmental Quality Act. It is therefore unclear why the blanket statement as to "no permit required" is made in the Purpose and Need Section.

R-2-4 Finally, the Water Authority appreciates the detailed efforts in the DEIS-DEIR to quantify the effects of the proposed Program on water quality and water supply. While there are so many variables that the document can at best provide bookend estimates of effects, the effort to identify and mitigate any such effects is essential.

We commend the Exchange Contractors on their aggressive development of water conservation and creativity in efforts to transfer water to meet, especially, south of Delta CVP water contractor and refuge water supply deficiencies, and we look forward to continuing or expanding our transfer relationships over the term of the new Program.

Sincerely,

Daniel G. Nelson
Executive Director

Response to Letter R-2 ***San Luis & Delta Mendota Water Authority***

R-2-1
The Exchange Contractors and members are committed to working with the San Luis & Delta Mendota Water Authority in developing and maximizing the region's water supplies. We look forward to developing a water transfer program that helps achieve this goal.

R-2-2
The bullet on page 2-22 has been revised as follows:

- The transfer and exchange of up to 150,000 acre-feet of temporary water supplies to CVP water service contractors in the Delta export service area (9 westside contractors) ~~: 9 westside contractors~~ and within the Friant Division (24~~4~~5 eastside contractors) ~~within the Friant Division~~

R-2-3
To be clear, CVP water is not going to be delivered to areas outside the existing CVP place of use. Therefore, an order from the State Water Resources Control Board is not needed. Furthermore, additional legislation has further defined the CVP place of use to address the CVP as a single project operating under integrated water rights. Section 207(a) of Division B, Title II of HR 2055 (found on page 81) provides in its entirety that:

> Subject to compliance with all applicable Federal and State laws, a transfer of irrigation water among Central Valley Project contractors, from the Friant, San Felipe, West San Joaquin, and Delta divisions, and a transfer from a long-term Friant Division water service or repayment contractor to a temporary or prior temporary service contractors within the place of use in existence on the date of the transfer, as identified in the Bureau of Reclamation water rights permits for the Friant Division, shall be considered to meet the conditions described in subparagraphs (A) and (I) of section 3405(a)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4709).

R-2-4
Comment noted and considered.

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Letter R-3

Santa Clara Valley Water District's comments on
Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority,
2014-2038, Draft Environmental Impact Statement/Environmental Impact Report
(SCH # 2011061057)

1. Page 2-19: In Table 2-3, summing the maximum quantities in the individual months results in 136,900 acre-feet (af) to be developed for transfer, which is less than the 150,000-af amount shown as the total. It is understood that these quantities are estimates, but in lines 6 through 8 above this table, it states, "it is estimated that the Exchange Contractors would develop this water in accordance with the range of values listed in Table 2-3." If the intent is for 150,000 af of water to be available for transfer, but the exchange contractors need to adhere to the range of values in Table 2-3, it appears that the maximum amount available in any year is only 136,900 af. It is recommended that the range of values be adjusted accordingly (i.e., such that the total adds up to at least 150,000 af). **R-3-1**

2. Page 3-20: Lines 17 through 19 should be modified as follows (emphasis added): "In the Proposed Action, the SCVWD would deliver up to 100,000 acre-feet **per year** of CVP supplies for delivery to the groundwater bank, and SCVWD could recover up to 100,000 acre-feet **per year** of **CVP** water from the bank." **R-3-2**

3. Page 3-21: Lines 16 through 19 should be deleted. Section 5 (p. 36) of the *Finding of No Significant Impact and Final Environmental Assessment, Santa Clara Valley Water District Long-Term Groundwater Banking Project Storage and Exchange of Central Valley Project Water with Semitropic Water Storage District* states that ESA consultation was not required. **R-3-3**

4. Page 3-23: Lines 17 through 20 should be deleted and replaced with the following: "In 2010, the DWR certified an EIR for the Monterey Amendment for use of SWP water that included SCVWD (DWR 2010a): *Final Environmental Impact Report, Monterey Amendment to the State Water Projects (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus) SCH #2003011118*. The environmental analysis had four different No Project alternatives, which considered various water transfers scenarios with and without the Monterey Amendment allocations. The preferred project was considered to be the approval of permanent transfers of 130,000 acre-feet of water and retirement of 45,000 acre-feet of SWP long-term water supply contracts. The EIR found that most of the impacts would be reduced to less-than-significant levels, other than the specific impacts described in the Kern County Water Agency subsection below." **R-3-4**

Response to Letter R-3 ***Santa Clara Valley Water District***

R-3-1
The text and Table 2-3 on page 2-19 has been changed as follows:

> The tailwater/conserved water and fallowing water would continue to be developed during the months of January through December (of each Exchange Contractors' water year 2014–2038).[6] The amount of water that the Exchange Contractors would develop can vary by year~~, and its pattern would depend upon the sources of water developed~~. For the maximum transfer and/or exchange of 150,000 acre-feet, an additional 62,000 acre-feet of water over recent transfers/existing conditions of up to 88,000 acre-feet, it is estimated that the Exchange Contractors would develop ~~this~~ water in accordance with the ~~range of~~ values listed in Table 2-3. The pattern of the developed water could vary depending upon the sources of water and current-year hydrologic conditions.

Table 2-3
Estimated Quantity of Water Developed/Transferred from the Exchange Contractors, All Sources, Maximum Program

Month	Acre-Feet to be Developed for Transfer
January	~~1,278~~ ~~1,678~~ 1,000
February	~~5,961~~ ~~8,961~~ 5,100
March	~~7,863~~ ~~10,863~~ 8,700
April	~~8,358~~ ~~9,358~~ 18,900
May	~~11,566~~ ~~11,666~~ 22,300
June	~~22,967~~ ~~24,067~~ 24,400
July	~~27,746~~ ~~30,246~~ 26,500
August	~~25,222~~ ~~25,722~~ 24,800
September	~~7,261~~ 9,800
October	~~4,051~~ ~~5,451~~ 6,900
November	~~607~~ ~~1,407~~ 1,400
December	~~220~~ 200
Total	150,000

> The ~~additional~~ tailwater/conserved water and temporary crop idling water would be commingled with the Exchange Contractors surface water supply system and used to meet their own needs, thus temporarily reducing their demand for water made available under their Contract. For each acre-foot of tailwater/conserved water or fallowed land water recovered by the Exchange Contractors for their own reuse, an equal amount of water will be considered acquired and available in the CVP for delivery to the wetlands and for delivery to CVP and SWP water users for agricultural and/or M&I uses. The transfer is CVP substitute water that would have been provided by Reclamation to the Exchange Contractors.

The four action alternatives are based on the quantity of water and sources of supply. ~~Each action alternative has a range of subalternatives or scenarios based not only on the source of supply but also on potential water users and whether these users are hydraulically connected to the San Joaquin River. A range of scenarios of scenarios is~~ The action ~~A~~alternatives are evaluated and described in Appendix B, "San Joaquin River Exchange Contractors Water Authority 25-Year Water Transfer Program Water Resources Analysis."

R-3-2
Page 3-20, lines 17-19 have been modified as suggested:

In the Proposed Action, the SCVWD would deliver up to 100,000 acre-feet per year of CVP supplies for delivery to the groundwater bank, and SCVWD could recover up to 100,000 acre-feet per year of water from the bank.

R-3-3
Comment that ESA consultation was not required is noted. Therefore, on page 3-21, lines 16 through 19 have been deleted as follows:

~~Reclamation has not completed ESA consultation with the Service on this groundwater banking storage and exchange project. This needs to be completed if SCVWD is to participate in the Proposed Water Transfer Program with use of the groundwater storage facility and water exchange with Semitropic.~~

R-3-4
Comment noted. On page 3-23, lines 17 through 20 have been deleted.

~~The long-term contracts for SWP water to the SCVWD were executed prior to the enactment of CEQA in 1970; therefore, no environmental clearance document currently exists. However, CEQA compliance will be required when DWR extends the long-term contracts (Greg Meamber, pers. comm., 2011).~~

The suggested language has been added to replace the above:

In 2010, the DWR certified an EIR for the Monterey Amendment for use of SWP water that included SCVWD (DWR 2010a): *Final Environmental Impact Report, Monterey Amendment to the State Water Projects (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus) SCH #2003011118*. The environmental analysis had four different No Project alternatives, which considered various water transfers scenarios with and without the Monterey Amendment allocations. The preferred project was considered to be the approval of permanent transfers of 130,000 acre-feet of water and retirement of 45,000 acre-feet of SWP long-term water supply contracts. The EIR found that most of the impacts would be reduced to less-than-significant levels, other than the specific impacts described in the Kern County Water Agency subsection below.

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Letter R-4

SOUTH DELTA WATER AGENCY

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July 2, 2012

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Re: Comments on behalf of South Delta Water Agency and Central Delta Water Agency to Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014-2038 (SCH # 2011061057) Environmental Impact Statement/Environmental Impact Report

Dear Mr. Hubbard and Ms. White:

Please accept these comments on behalf of the South Delta Water Agency ("SDWA") and Central Delta Water Agency ("CDWA") on the Draft Environmental Impact Statement ("EIS")/Environmental Impact Report ("EIR") for the San Joaquin Exchange Contractors Water Authority ("Exchange Contractors") 2014-2038 ("Proposed Project").

The EIS/EIR is for a Proposed Project representing a 25-year extension and expansion of the current 10-year Exchange Contractors Central Valley Project (CVP) water transfer program, which expires February 28, 2014. As originally noticed for scoping the Proposed Action contained unspecified modifications in water development and use to the current program's water transfer portfolio. It was further stated that the water transfers under the Proposed Action would occur between the Exchange Contractors and unspecified CVP and Non-CVP water contractors

R-4-1

and wildlife refuges largely within California's San Joaquin Valley, but may also include water users south and east of the San Francisco Bay and east of Monterey Bay. The purpose of use also was not specific. While greater detail now appears in the EIS/EIR, the Proposed Action remains unduly vague, ambiguous, lacking in detail, and in general, so complex, redundant, and incomplete, as to render the document difficult and inadequate as an environmental document to enable informed decision-making.

R-4-2

In a vague reference to the environmental documentation (USBR2004) of the Current Program, it is stated that "only a portion of the actions affecting tailwater would affect flow in the San Joaquin River." Continuing, in conclusory fashion it is claimed: "The other components were effectively "unconnected' to San Joaquin River flow." Even with potential flow changes identified for the San Joaquin River, no significant environmental impacts were cited. However, it was identified that the water supply of the CVP may be affected by changes in San Joaquin River flows." This is not adequate for environmental review purposes, and numerous references to and reliance upon other documents created for other purposes is not sufficient. The project should have been thoroughly reviewed on its own. The EIS/EIR ignores the underlying physics of the system. Any reuse, reclamation, or conservation of upstream flow results in an additional increment of increased consumptive use of that water. Such increased consumptive use results in less flow and greater concentration of all constituents in the remaining water. Thus, all of the ExCon's efforts to conserve, reuse and reclaim water which previously escaped their boundaries results in less flow in the San Joaquin River and greater concentrations of such constituents as salt and boron. Notwithstanding this and prior analysis for the 10-year transfer program, a detailed analysis of these effects has not been done.

R-4-3

R-4-4

The project, both in terms of the water to be transferred and the use, including environmental effects of such use, remains not clearly defined. Furthermore, since the project is now more specific, it should be resubmitted for scoping to allow for comments as to the content of the EIS/EIR.

In the meantime, please accept these further comments concerning the EIS/EIR.

1. A Complete and Adequate Description of the Project Was Not Provided For The Scoping and the EIS/EIR Fails to Adequately Assess the Conservation Measures.

R-4-5

The project description originally stated that it would evaluate the annual development of 150,000 acre-feet of substitute water from "conservation measures, including tail water recovery, and temporary land fallowing." The EIS/EIR now more specifically states that the conserved water for the Proposed Project will be:

"Evaporation/seepage of tailwater: the reduction of water to the atmosphere/ground associated with runoff to the end of fields that is now not occurring because of tailwater recapture facilities and improvements in irrigation efficiencies;

Runoff spills to non-district lands: the reduction of tailwater leaving the districts' boundaries to the refuges and non-district lands;

Discharge to Mud/Salt Sloughs: reductions of surface water escapes to San Joaquin River-connected streams, developed by the tailwater recapture pumps;

Tailwater recovery upstream of Sack Dam: tailwater recaptures occurring in CCC that reduces escapes back to the reach below Mendota Dam;

Groundwater substitution: District pumping used to offset substitute supply deliveries from Reclamation; and,

Temporary Rotational Land Fallowing; land temporarily idled to reduce water demand."

In order to provide a complete and adequate ability to provide for review, the project should be resubmitted for scoping. This is particularly so since these six (6) components of the source of the water each have their own significant environmental impacts which should have been thoroughly investigated and reviewed as a part of the EIS/EIR.

2. Conserved Water Salt Concentration Reuse Evaluation.

The document makes the unsupportable statement that the project results in no additional consumptive use as compared to irrigation under full CVP contract entitlements. This one sentence damns the entire EIS/EIR analysis as false. When the ExCon's grown the same amount of crops without any transfer, the amount of water consumed is only the amount used by their crops. When they grow the same amount of crops and then provide some of their water to others, the net consumptive use is the amount their crops use AND the amount the transferees use; thus there is a larger amount consumptively used. It is irrelevant whether or not the transferee has some "entitlement" to the same amount of water. If the transferee was not going to get its "entitlement" its crops would not have consumed the same amount they do when they also get the transfer water. "Entitlement" does not mean "delivery." To suggest that a transfer does not affect total consumptive use is misdirection at the very best.

R-4-6

Further, it defies logic to assert that the re-use of the water does not ultimately increase the salt concentration of the water and that there will be impacts of that concentration where the water is used, including but not limited to the refuges and the SWP and CVP contractor areas.

R-4-7 The EIS/EIR merely provides conclusory statements without the required basis and meaningful analysis. It is impermissible under both CEQA and NEPA to treat the impacts of the use of the transferred water as beyond the purview of the analysis. The large amount of water provided to the refuges/wetlands has and will under this project result in significantly increased consumptive use (the purpose of the use of the water in the refuges/wetlands) and thus significantly increased salt concentrations in the tailwater therefrom.

3. Groundwater Pumping.

Now that groundwater pumping has been identified, not only should the project be resubmitted for scoping, but the use of groundwater as at least an indirect supply must be fully analyzed. Groundwater movement and effects in the aquifer are merely some of the aspects required to be more thoroughly and appropriately analyzed. Of course, the transfer will result in

R-4-8 a need for substitute water, and groundwater pumping will be a source. The claim in Appendix B that "The Exchange Contractors will not use groundwater substitution to develop water for transfer" is unrealistic, incredulous, can only substantiated were there to be a complete termination of groundwater pumping, and inconsistent with the quotation in 1 above. The need for the Exchange Contractors to use other water as a result of transfer, including groundwater, should have been fully analyzed.

4. Additional Developed Water Analysis.

It is indicated that additional water is to be developed. A comparison of Appendix B, Tables 3 and 20 shows substantial changes and increases in developed water components, as well

R-4-9 as the total, will occur, and serve as a vague source of transferred water. This, including the various components, has not been adequately defined, described, analyzed or mitigated. For example, it is indicated that conservation of deep percolation by micro or micro/sprinkler systems will generate 20,000 acre feet, yet there is no real analysis of the consequences of developing that water, or a showing that such is a realistic amount.

5. Full Analysis of the Impacts from Use of Conservation Measures, Including Tailwater Recovery, Has Not Been Provided.

A critical failure of the EIS/EIR is its lack of analysis of the direct and indirect impacts of

R-4-10 all conservation measures, including tailwater recovery. The impacts of tailwater recovery and concomitant reduction in San Joaquin River flows and groundwater recharge should have been reviewed for consistency with riparian rights, in-stream flow needs, groundwater recharge, river

accretions and assimilative capacity of surface and groundwater and Delta outflow. The EIS/EIR fails to investigate, discuss, analyze, and ultimately mitigate to the extent feasible, the potential impacts from tailwater recovery and the other "conservation" measures.

6. Full Analysis Has Not Been Made of the Short and Long-Term Effects of Cropland Idling.

As we previously indicated, cropland idling, or fallowing, creates a whole host of issues to be analyzed. Further analysis of idling should have been made to determine impacts of habitat modification for species benefitting from farming, including waterfowl, the loss of farm employment and adverse impacts on the local business community dependent upon actual farming, greenhouse gas effects, including carbon sink and sequestration relative to active farming, and effects of cropping changes in the area of supply and the area of usage, the impacts of having food supplies grown at other than existing locations, and the loss of availability of water supply for other beneficial local uses on the land from which the water is transferred. It is not enough to say that there will still be money coming to the landowner or farmer in substitution of the farm income. There is more to it. Growing crops mean food, farm and farm community jobs, and a whole host of other beneficial activity. R-4-11

7. Full Analysis of the Drainage Impacts from Use of Transferred Water.

With regard to the investigation and evaluation of impacts and potential impacts, the EIS/EIR should have evaluated the direct and indirect impacts of the use of transferred water in the areas in which the transferred water will be used, including the already drainage impaired San Joaquin Valley and urban areas with growth in excess of dependable water supplies. Furthermore, conserved water requires more treatment for urban use. The transfer of water requires in-depth study of the drainage in all areas of delivery which directly or indirectly drain surface and subsurface waters, and, hence, the various pollutants contained in such waters and irrigated lands, into any waterways. Such waters directly or indirectly drain into waterways, including the San Joaquin River and upslope areas which generate hydraulic pressure which thereby increase the drainage of waters from the downslope lands into groundwater and the San Joaquin River. Waterlogging of the lowlands in the CVP service areas is a substantial issue, worsened by the project. The potential for such impacts is widely recognized and well-established. R-4-12

Under CEQA Guidelines section 15003, subdivision (h): "The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect. (Citizens Assoc. For Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151)." CEQA Guidelines section 15378, subdivision (a) provides: "'Project' means the whole of an action, which has a potential for resulting in either a R-4-13

direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, ..." Further, CEQA Guidelines section 15064 provides in part, as follows:

> "(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project.
>
> (1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.
>
> (2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
>
> (3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable."

Here, at a minimum, indirect physical changes from water usage are foreseeable and in fact expected since that is the whole idea of the transfer. If the use of the transferred water cannot be meaningfully described and meaningfully analyzed, the project is not yet ripe for CEQA review or approval.

In the end as the lead agency has a duty to examine the impacts from the use of the water.

The EIS/EIR should have investigated, discussed, analyzed, and ultimately mitigated to the fullest extent feasible, the potential impacts of water use elsewhere that would not occur absent the transfer. Further, a true "no project" alternative should have been evaluated rather than a fictitious "no project" using contract amounts before recent regulatory changes in water supplies.

The CEQA Guidelines provide in section 15125, subdivision (a):

"(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the base line physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives."

Past contract amounts of paper water are irrelevant.

8. Consideration of Federal and State Anti-degradation Laws.

The transfer fails to consider the substantial risk of impairment of waters other than the San Joaquin River, where the transferred water will be utilized. This should have been thoroughly investigated and analyzed in the EIS/EIR. R-4-14

9. The San Luis Act of June 3, 1960, Public Law 86-488, 77 Stat. 156.

Public Law 86-488 specifically requires:

"Construction of the San Luis unit shall not be commenced until the Secretary has . . . received satisfactory assurance from the State of California that it will make provision for a master drainage outlet and disposal channel for the San Joaquin Valley, as generally outlined in the California water plan, Bulletin Numbered 3, of the California Department of Water Resources, which will adequately serve, by connection therewith, the drainage system for the San Luis unit, or has made provision for constructing the San Luis interceptor drain to the delta designed to meet the drainage requirements of the San Luis unit as generally outlined in the report of the Department of the Interior, entitled 'San Luis Unit Central Valley project,' dated December 17, 1956." (Emphasis added.) R-4-15

The drain for removal of salts from the valley has never been constructed, yet over a million acre feet of water per annum from the San Luis Unit was committed to use. With every acre foot of water delivered to the San Joaquin Valley through the Delta Mendota Canal and San Luis Unit, there is delivered a significant quantity of salt which is retained in the San Joaquin

Valley or returned to the Delta via the San Joaquin River. The substantial degradation of the San Joaquin River from such drainage is well-understood and recognized.

The project will likely result in further impairment of water quality, and in doing so, will merely increase the volume of salt in the groundwater and return flows in the areas of use of the transferred water. The EIS/EIR should have evaluated the project's impact, including cumulative impacts, in the area of use. The EIS/EIR should have examined and explained how the proposed project as well as existing conditions are consistent with and in compliance with PL 86-488. It is not enough to claim that it is being addressed elsewhere. Indeed, the repeated reference in the EIS/EIR to other, independent actions, documents, and determinations is not only a recipe for disaster, it undermines the environmental review and mitigation process with potential unfulfilled expectations.

10. The No Project Alternative.

R-4-16 The EIS/EIR should have evaluated and analyzed impacts in the areas of proposed transfer, including but not limited to the effects of reducing and curtailing water supply demand, the reduction and elimination of the irrigation supply to the drainage impaired lands, and the alteration of farming practices, including cropping, in the transferee area. This is not satisfied by merely stating that others could receive water elsewhere to make up for the absence of a transfer.

R-4-17 The EIS/EIR should have included, in the context of the analysis of some of the foregoing alternatives or otherwise, discussion of what could be anticipated. Further, desalination options in order to promote regional self-sufficiency and, hence, improved water reliability that would obviate the need for the project, should have been reviewed in furtherance of California Water Code section 12946. Opportunities for environmentally friendly desalination of ocean waters as well as brackish ground waters should have been thoroughly examined.

11. Failure to Make Full Analysis of Impacts In the Delta.

R-4-18 The EIS/EIR fails to address water quality impacts to the water quality standards downstream of Vernalis, specifically the objectives for agricultural beneficial uses as measured at the compliance locations of Brandt Bridge, Old River at Middle River, and Old River at the Tracy Blvd. Bridge. The documents avoids this analysis using two false assumptions. The first is that the USBR meets the Vernalis objective, and thus any impacts to water quality at Vernalis will be addressed. This of course simply ignores the three downstream objectives.

R-4-19 The second false assumption is that the USBR will continue to do nothing to meet these other three objectives. However, since the three objectives are conditions to the USBR permits (including the permits for New Melones, diversion from the Delta and San Luis Reservoir) and

the USBR is under a Cease and Desist Order to obviate threatened violations of these objectives, it is improper to simply assume the USBR will continue to operate in violation of its permits.

In addition, each time the USBR makes releases from New Melones for water quality purposes at Vernalis, it affects the amount of water it has budgeted for this purpose. Thus additional releases for this project's impacts affect future releases (by decreasing the amount budgeted for these purposes) which affect flow, quality and the ability to do additional actions to meet the three downstream objectives. The amount of River flow and the degree of concentration are functions of such things as ExCon drainage. Changes thereto may be partially addressed at Vernalis, but that does not mean there are no impacts downstream. For example, when the flow passing Vernalis is a different amount, the surface area evaporation is different, the effects of downstream drainage are different, etc. Thus even though Vernalis flow added via New Melones meets the Vernalis standard, the project effects continue downstream of Vernalis unabated.[1] R-4-20

In short, an EIS/EIR which ignores the serious, ongoing water quality violations in the interior of the southern Delta is on its face deficient. Amazingly, the documents does purport to examine the projects effects on exports (after skipping a ten mile stretch of River), thus emphasizing the manner in which it is biased against looking at all the effects.

Further, any worsening of water quality upstream of Vernalis affects numerous beneficial uses in that reach of the River, not just agricultural ones. The ExCon have a representative on the Lower San Joaquin River Committee which is charged with developing water quality standards (more correctly recommendations for such standards) for the Central Valley Regional Water Quality Control Board.

In addition to the San Joaquin River water quality issues from return flows and accretions, hydraulic pressures, and waterlogging, other impacts outside and within the Delta should have been throughly considered and evaluated. This would include effects upon Delta water use due to the periodic imposition of Term 91 conditions to protect the transferee water supply during transfers, thereby depriving Delta water users of the ability to use water during July through September. R-4-21

12. Failure to Evaluate Conditions That May Be Reasonably Anticipated to Exist in the Future.

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[1] The documents notes that there have been no water quality violations of the Vernalis standard since D-1641 but ignores the almost constant, yearly violations of the three interior southern Delta standards.

R-4-22 The EIS/EIR should have included a full and complete analysis of the present and future water needs including environmental water needs and the needs to offset overdraft of groundwater within the watersheds of origin (See Water Code section 11460) and determine the availability of surplus water. Water not needed by the transferors may be needed by others within the watersheds of origin.

R-4-23 Even more so since no drainage solution has been implemented, the EIS/EIR should have evaluated impacts of the project against the background of a variety of scenarios and outcomes, including but not limited to, the lack of a drain ever being implemented, substantially inadequate supplies in the transferor and transferee areas, implementation of the SWRCB Flow Study, the project's enablement of continued farming and cropping practices and urbanization that are not otherwise sustainable or supportable by dependable, adequate supplies of water, and land retirement.

13. CVPIA Analysis.

R-4-24 The EIS/EIR should have included an analysis of how the transfers will impact compliance with the fish doubling mandate of the Central Valley Project Improvement Act.

14. Calfed Bay Delta Authorization Act and the Delta Reform Act.

R-4-25 The EIS/EIR should have analyzed how transfers will impact CVP compliance with the California Bay Delta Authorization Act, October 25, 2004, Public Law 108-361, 118 Stat. 1681, section 103(d)(2)(D), and the Delta Reform Act.

15. Evaluation of Shorter-Term Contracts.

R-4-26 The project should have evaluated the benefits and detriments of shorter term alternatives. Annual reporting and the like is not a substitute, since a long term contract will harden expectations and demands, and provide a blueprint for long-term disaster.

16. The EIS/EIR Examines a False Base Case.

R-4-27 The EIS/EIR analyzes its impacts in relation to the ongoing 10-year transfer. This means the analysis is comparing a short/mid term transfer with a long term transfer. This results in no comparison since the base case is the same as the project, for all intents and purposes. The proper analysis would compare the project with a base case of the ExCon's getting their normal CVP allocation of water. Such analysis would show significant impacts on River flow and constituent concentrations as a significant amount of the CVP allocation would not be consumed and constitute a portion of River flow and markedly dilute this and other drainage.

17. Other.

A. The EIS/EIR repeats the unsubstantiated claims that ongoing SWRCB decisions, Biological Opinions and court orders adversely affect CVP supply. However, all the calculations pertaining to "lost exports" do not take into account the water availability of the projects, their need to mitigate their impacts to fish, and their abject failure to mitigate their impacts to southern Delta water quality. When these are taken into account, the amount of water which can be exported legally drops dramatically. The projects do not "lose exports" the projects have little water to export in many years. The authors are cited to February 2009 when there was insufficient water to meet outflow obligations, insufficient water to supply the ExCon's, insufficient water to meet later in the year cold water requirements, constant water quality violations in the summer, and increased exports of water needed/committed to for these other purposes. "Lost exports" also are based on the false assumption that getting anything less than full contractual amounts is improper given that the available supply simply cannot provide for such amounts in most years. R-4-28

B. It is improper to include transfers to such entities as EBMUD or CCWD without any sort of analysis of the method or effects of making such transfers. Although such potential transfers are to be examined under later Bureau considerations and subject to later environmental evaluations, the EIS/EIR must make some analysis; it cannot all be deferred. R-4-29

C. The EIS/EIR contains what is certainly misleading, if not false data. For example, on page 4-3, Table 4-1 indicates that average daily flows at Vernalis for the period of 1970-2010 for the month of July as 2635 cfs. Averaging high flow years with low flow years results in useless and nonsensical information. The effects of the project on high flow years is irrelevant, as the impacts on return flows and concentrations are overwhelmed by the high flows. What is important are the effects of the project on "normal" and low flow years when the changes on flow and concentrations become significant. In a typical, non-high flow year, the Vernalis flow in July approaches 500 cfs. Thus comparing the effects of the project when the "average" flow for that month is 2635 cfs is disingenuous at the very least. If indeed the minimum flow for that month is the listed 56 cfs (which is likely false due to current release, permit and senior right obligations) then the project effects would be exacerbating a catastrophic situation. In sum, using the numbers provided in Table 4-1 means that the EIS/EIR is constructed to make sure the true effects of the project are simply unexamined. R-4-30

Thank you for the opportunity to comment on the draft EIS/EIR. We look forward to the receipt of a more comprehensive EIS/EIR. R-4-31

Finally, given the present circumstances and state of the EIS/EIR we are compelled to recommend the project not be approved, that the draft EIS/EIR not be adopted, and that if any

project is to be approved that it most certainly should not exceed the amount demonstrated and verified to have been developed.

Very truly yours,

JOHN HERRICK

cc: Dante J. Nomellini, Esq.
Dante Nomellini, Jr., Esq.
Dan McDaniel, Esq.

Response to Letter R-4 ***South Delta Water Agency***

R-4-1
The comment about the description of the Proposed Action being inadequate is noted; however, we disagree that it is inadequate and no major modification of the material is required.

Reclamation's *NEPA Handbook* (February 2012) states that "the physical features and operational criteria of each reasonable alternative should be described in a concise fashion…." (p. 8-7). Furthermore, a recommended order for the presentation of alternatives includes a "logical order," which may be from simplest to most complex (page 8-7). This order is accomplished in that Chapter 2 Alternatives contains all of the required components under both CEQA and NEPA within 35 pages, including four figures/maps and two summary comparison tables.

The order of the alternatives descriptions begins with the No Action/No Project Alternative. The four action alternatives are based on how the water is developed (from crop idling/temporary land fallowing and conservation/tailwater recovery) and the quantity of water developed. Progression is logical from a small program based only on crop idling/temporary land fallowing (up to 50,000 acre-feet per year) for Alternative A with increasing amounts of tailwater recovery and new conservation water (up to 100,000 acre-feet per year for Alternative D). Alternative B is designed to be similar to the level of transfers conducted in recent years, including both critical and noncritical years.

Water acquisition scenarios are wide ranging, and they are explained based on the ultimate use of the water: wetland habitat enhancement, agricultural use, and M&I use. The description is very clear that the incremental quantities acquired would not result in exceedances of current agreements and contracts. Key existing facilities involved in accomplishing the transfers and/or exchanges are called out. The description clearly states that "The water transferred or exchanged would not result in land use changes or provide irrigation service to lands not previously cultivated. Water deliveries would not exceed quantities contained in long-term supply agreements with Reclamation (for CVP) and DWR (for SWP) nor occur outside of the CVP consolidated Place-of-Use" (page 2-22).

R-4-2
The EIS/EIR is focused on the specific direct and indirect impacts of the actions to create the water available for transfer. The environmental impacts associated with the refuges receiving water under Incremental Level 4 allocations and cooperative agreements and the water districts receiving water under their existing CVP and SWP contracts do not need to be revisited given the wealth of analysis already conducted for those contracts and for Reclamation's water shortage policy. The other environmental documents are appropriately referenced by providing summaries of their impact analyses, which also serve to explain the impacts of water use within the current EIS/EIR.

R-4-3
Regarding fallowing, only the consumptive use portion is allowed to be transferred; therefore, it is a transfer from one consumptive use to another. Regarding all other components for developing water, the transfers are occurring only to "fill in" the unmet needs (because of contractual water shortages) of others, an amount that can change year to year.

R-4-4
Resubmitting the document for another round of public scoping is not necessary. The complete Draft EIS/EIR was just submitted for public comment, so the public has just had an opportunity to review the content of the full EIS/EIR and provide comments on what is or is not included.

R-4-5
The six components cited by commenter are merely long-hand descriptors that are rolled into the briefer descriptors "conservation measures," tailwater recover," and "land fallowing." All of the more detailed-described items have been previously or currently individually analyzed, and the results identified in Appendix B and in the previous program's documentation.

R-4-6
See Response R-4-3.

R-4-7
The actual water transferred is good quality CVP supply, and conserved water is reused by the Exchange Contractors within their service area by blending with surface and groundwater supplies with a water quality that is suitable for irrigation of crops. The following documents provide NEPA and CEQA environmental coverage, as appropriate, for the disposition of water on CVPIA refuges .

- Refuge Water Supply Long-Term Water Supply Agreements, Sacramento River Basin – Final EA/IS (Reclamation 2001)
- Refuge Water Supply Long-Term Water Supply Agreements, Tulare Lake Basin – Final EA (Reclamation 2001)
- Refuge Water Supply Long-Term Water Supply Agreements, San Joaquin River Basin – Final EA/IS (1/2001) (Reclamation et al. 2001)

Concerning the use of the transferred water, it is permissible under CEQA and NEPA to reference other environmental documents, especially when the project description for that referenced document has not been changed by the proposed project/action. The RWSP is continuing to acquire water consistent with CVPIA Section 3406 (d)(2). As stated on page 1-7 of the EIS/EIR:

> "The impacts and benefits of Level 2 and Incremental Level 4 refuge water supplies are addressed in the *Refuge Water Supply Long-Term Water Supply Agreements for the San Joaquin River Basin, Final NEPA Environmental Assessment and CEQA Initial Studies* (Reclamation et al. 2001). This entire

document is incorporated by reference into this EIS/EIR, and specific sections from it are summarized and referenced in the appropriate sections of this EIS/EIR (Section 3.3.2)."

R-4-8
To clarify, the Proposed Program does not include groundwater pumping to make water available for transfer.

R-4-9
The existing program and affected environment have experienced up to 88,000 acre-feet of transfers, for which the Proposed Program is a continuation of existing conditions. Of the additional 62,000 acre-feet of potential transfers, 42,000 acre-feet would be from temporary fallowing, moving water from one consumptive use/user to another. No question exists as to the ability to fallow land, and its associated effects are analyzed in the subject document. This water was analyzed in the previous program's documentation, and has been reexamined in this document since it represents a potential effect compared to the affected environmental setting. The remaining 20,000 acre-feet of additional transfer would be from new conservation programs, and their feasibility has been addressed by the Irrigation Training and Research Center (ITRC) (at California State Polytechnic University) as cited by Appendix B. Consequences of developing that water are described in the subject document and Appendix B.

Based on the ITRC analysis, a low estimate of 0.4 acre-foot/acre is conserved when converting from furrow to micro/drip irrigation. Based upon this and if all the additional water was generated from this activity, approximately 50,000 acres would need to be converted to micro/drip irrigation systems. This amount is reasonably foreseeable based upon current cropping trends and the member agencies' water conservation loan and grant programs. In addition, this additional water can be generated from district-initiated seepage reduction projects. Each project includes an analysis of estimated seepage reduction prior to the implementation of the project and will be documented.

R-4-10
The comment is noted and considered. The Draft EIS/EIR did report the analysis of developing the transfer water in the context of a comparison to the affected environment. A full and complete analysis is included of the effects of developing water from temporary land fallowing and tailwater recovery on surface water features and groundwater recharge. Argument as to the definition and description of the affected environment is addressed in Response R-4-27.

R-4-11
Temporary land fallowing/crop idling has been evaluated for a wide range of impacts in the EIS/EIR.

- Impacts to wildlife are addressed in Section 6.2.2, in particular species of special concern. Waterfowl would benefit more from Incremental Level 4 water deliveries to the refuges than from the variety of irrigated crops in the Exchange

Contractors' service area. Incremental Level 4 water can be used to irrigate crops that are used specifically as food for ducks.

- Impacts to farm-level costs and income and to the regional agricultural economy are discussed in depth in Chapter 8 and in Appendix F, including loss of farm employment, and the impacts are not substantial. Historically, and with the future Program, a large percentage of the transfer water has been used for agricultural production. Of the water transferred to CVP water users listed in Table 1-1 from 1999 to 2010 (483,163 acre-feet), 95 percent (461,068 acre-feet) has been delivered for agricultural water use. Amounts delivered for M&I use represented only 5 percent (22,095 acre-feet). To the extent that transfer water is used by San Joaquin Valley farmers, in particular south of Delta contractors as has been the case in the last 10 years, the impacts to the local economy are reduced. Furthermore, differences in location between fallowed lands and lands receiving transfer water within the Program area are not a major transportation cost/fuel use issue.
- Greenhouse gas effects are discussed in Section 12.2, where the effects of fuel from equipment use to manage fallowed land is compared to fuel from equipment use to plant, maintain, and harvest crops; and they are not dissimilar. Carbon sequestration from land fallowing compared to existing conditions is discussed as well.

R-4-12
Concerning the use of the transferred water, see Response R-4-7 above. The *Grassland Bypass Project, 2010-2019, Final EIS/EIR* addresses the drainage issue for districts potentially receiving transfer water who are in the Grassland Drainage Area. All water delivered would be CVP substitute water, not the actual water being conserved, which would be used by the Exchange Contractors, not urban water users. As stated on page 1-3:

> "For each acre-foot of water developed by the Exchange Contractors, an in-kind amount of water is considered acquired and left within the CVP for Reclamation to deliver to CVP contractors or wildlife areas. Physically, for each acre-foot of water transferred, a reduction of 1 acre-foot diversion occurs at the Exchange Contractors' delivery points. For purposes of accounting for water delivered to the Exchange Contractors under the Exchange Contract, water counted as transferred appears as water delivered to the Exchange Contractors."

Concerning waterlogging of lowlands, the comment is noted and considered in the response above on the Grassland Bypass Project.

R-4-13
Our response is that the impacts of transfer water use by other CVP contractors and the wildlife refuges included in the RWSP are stated in Section 3.3, Water Receiving Areas Analysis, of the EIS/EIR because the transfer water is part of the total contract amounts evaluated in these documents to reach the conclusions stated in Section 3.3.

Consistent with CEQA Guidelines Section 15150 Incorporation by Reference, the relevant environmental documents, wherein use of the water by the refuges and CVP water users has been thoroughly evaluated, have been incorporated by reference in their entirety into the EIS/EIR. In this manner, the excerpted conclusions of impacts and effects are supported by the analysis contained in the appropriate documents. Because the potential transfer water under the Proposed Program would not exceed the current water supply contract amounts, i.e., would not bring new lands into agricultural production and would not allow for urban development beyond water supplies accommodated by current CVP contracts, it does not require a separate or additional analysis of its end use.

The EIS/EIR document's objective is to focus on the potential for significant effects to pertinent environmental resources from the proposed actions to develop water for transfer while avoiding "overkill," wherein an encyclopedic, far-ranging document could foster confusion with the public. A substantial amount of analysis has been completed for related actions with independent utility (i.e., have their own CEQA and/or NEPA documents) on water use, and these relevant environmental documents are referenced as appropriate. The impacts from the use of the transfer water by the various potential water users are stated in Section 3.3 and examined in depth in the referenced documents. Reproducing all of that analysis in the EIS/EIR would be encyclopedic.

The No Action/No Project Alternative is reasonable as defined in Section 2.2 which includes the following assumption on pages 2-11 to 2-12:

> "Agricultural and M&I water users would get their CVP and SWP contractual supplies subject to the limitations in their contracts. Under the No Action/No Project Alternative, the CVP and SWP water users may obtain water from other sources or they would continue to experience shortages."

Therefore, the assumption recognizes that full contract amounts are not received in every year. Table 2-2 illustrates recent allocations from 2006 to 2010 where allocations ranged from 10 percent in 2009 to 100 percent in 2006.

The existing condition is used as the baseline for the impact analysis and determinations of significance under CEQA in the EIS/EIR.

R-4-14
Section 15.3.5 considers compliance with the State Board's Anti Degradation Policy (page 15-6).

R-4-15
The San Luis Drainage Feature Re-evaluation and the Grassland Bypass Project 2010-2019 both have environmental documents that thoroughly address the issues of continued irrigation of agricultural lands with CVP water and the production of drainage. It is not necessary to repeat that analysis within the current EIS/EIR to avoid the document becoming encyclopedic.

R-4-16
The No Action/No Project Alternative is what is reasonably foreseeable in the future based on approved projects and plans, not speculation about what could occur. The commenter lists a number of alternatives that water users in the areas receiving the water could employ. Since we are not engaged in water supply planning for the potential water users, the alternatives to receiving transfer water are not evaluated. It is reasonable to assume that water users who enter the water market looking for available water would look to other districts if the Exchange Contractors do not agree to transfer water to them or do not proceed with their Proposed Program.

R-4-17
Concerning desalination options that should have been considered, see Response R-4-16 above.

R-4-18
The analysis clearly identifies the effects to San Joaquin River water quality and flow as it is affected by both the transfers and New Melones operations (see Response F-1-12). The analysis includes an assumption of Reclamation's operation for Vernalis objectives. An operation for the interior stations' objectives would be speculative at this time.

The Interior South Delta Water Quality Stations are influenced by a variety of factors, including local agricultural drainage returns, the circulation of water in the south Delta channels, the factors that influence circulation, incoming San Joaquin water quality, and SWP/CVP exports (which generally improve water quality by increasing circulation and drawing better quality water into the area).

R-4-19
Reclamation and DWR (the Projects) believe that the significant salinity degradation that occurs in the south Delta is beyond the control of, and not attributable to, water project operations. Both the CVP and SWP operators have made their positions clear to staff at the State Water Resources Control Board. The Projects continue to implement actions that may affect overall salinity conditions in the south Delta including temporary barrier operations, modifying barrier operations, installing five flow meters near Doughty Cut to determine the source of the poor water quality near Old River at Tracy Bridge Station, and continued analysis of bathymetric, sediment, and water quality data from the interior south Delta.

R-4-20
Reclamation agrees that worsening water quality upstream of Vernalis affects Reclamation's operation of New Melones Reservoir. However, Reclamation believes significant water quality degradation occurs from Vernalis to the Old River at Tracy Road Bridge station.

R-4-21
A comparison of the Proposed Program's effects against the affected environment/existing conditions has been made and reported. That affected environment includes the items described by the commenter.

R-4-22
The requested analysis of present and future water needs is partially met by Appendix C, Water Balance Analysis, which is based on Reclamation's Water Needs Assessment under its Water Shortage Policy for the potential water users. Other water needs are not part of the need for the Proposed Program and are outside the scope of this EIS/EIR.

R-4-23
See Response R-4-10 regarding the baseline for the environmental impact analysis and Section 2.2 of the EIS/EIR for the appropriate scope and level of analysis and disclosure needed for review. Unneeded is an analysis based on speculation of scenarios and outcomes.

R-4-24
Comment noted and considered.

R-4-25
Comment noted and considered.

R-4-26
The entirety of the project was evaluated in the current EIS/EIR, i.e., a complete 25-year program. It is anticipated that contracts to sell transfer water could be of any length during the 25-year Program. Annual approval is required by Reclamation under this Program, irrespective of the EIS/EIR term of consideration or the duration of a water transfer contract. Furthermore, the implementation of water transfers (annual and multiyear, if any) conducted under the "25-year Program" would be subject to Reclamation's approval, pursuant to CVPIA.

R-4-27
The existing conditions baseline is correct for the CEQA analysis as stated in comment R-4-13, which cites CEQA Guidelines Section 15125(a) defining the existing physical environment as the baseline physical conditions for determination of the significance of an impact. The physical environment has adjusted to the existing Program. This practice is common and appropriate for analysis of the continuation of a project from the past into the future.

R-4-28
Comment noted and considered.

R-4-29
Yes, it can be deferred, because no agreement would be executed with either district until the gaps in CEQA and/or NEPA compliance are filled. EBMUD or CCWD could individually cover a transfer from the Exchange Contractors when they want or need to. Mention of the potential to complete a future agreement is not a flaw of this document.

R-4-30
Table 4-1 is for context purposes of a statement of hydrology in the basin. The analysis and reporting of the potential effects of the transfers were performed for 5 representative year types ranging from wet hydrology to critical hydrology. Comparisons of effects are

shown for each year type, such as illustrated in Tables 4-11A 4-11B for flows in the San Joaquin River.

R-4-31
Final comments are noted and considered.

Letter R-5

HERUM\CRABTREE
ATTORNEYS

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July 3, 2012

VIA FACSIMILE AND ELECTRONIC MAIL

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Re: Comments on Draft EIS/EIR Water Transfer Program for San Joaquin River Exchange Contractors Water Authority 2014-2038

Dear Ms. White and Mr. Hubbard:

These comments are submitted on behalf of Stockton East Water District (SEWD) to the Draft Environmental Impact Statement/Environmental Impact Report Water Transfer Program (Draft EIS/EIR) for San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) 2014-2038.

In order to set the context for the following comments, it is important to note that SEWD's primary interest is in improving water quality on the San Joaquin River. SEWD's interest in water quality arises because of its contract with U.S. Bureau of Reclamation (Reclamation or Bureau) for water from the New Melones Reservoir on the Stanislaus River. As Reclamation is well aware, substantial releases of water for water quality and flow purposes are made from New Melones Reservoir throughout the year to meet the salinity water quality objective at Vernalis and since the expiration of Vernalis Adaptive Management Plan (VAMP) to meet the flow objectives at Vernalis. **R-5-1**

SEWD believes that the use of high quality water for dilution flows for salinity is an unreasonable use of water and in violation of state and federal law. The effect of these releases and other actions taken by the Reclamation has been to deprive SEWD of its full contractual entitlement for water from New Melones Reservoir. Depriving SEWD of its contractual water supply affects both its agricultural users and its ability to supply municipal and industrial water to its customers the City of Stockton, California Water Service Company, Lincoln Village Maintenance District and Colonial Heights Maintenance District.

R-5-2 The Draft EIS/EIR is woefully inadequate in its discussion of how implementation of the proposed project will affect San Joaquin River water quality and flows at Vernalis. These comments are founded on the principle that an EIR acts as an informational document identifying potentially significant impacts of a project, as well as alternatives and mitigation measures necessary for informed decision-making (Pub.Res.C. §21002.1), and that an EIR's findings and conclusions must be supported by substantial evidence. *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376. An adequate EIR "must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences" and "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Id*. The Draft EIR does not meet this threshold. Accordingly, the Draft EIS/EIR is not adequate for certification, and the Project cannot be approved at this time.

General Comments

R-5-3 SEWD is critically interested in the affects caused from drainage from irrigated agricultural land and wildlife refuges in the San Joaquin Valley. Over the past few years with increases in deliveries of water to the San Joaquin Valley wildlife refuges we have seen an increase in the need for water quality releases from New Melones Reservoir, a shift in the timing of releases needed from New Melones Reservoir for water quality purposes and a reduction in flows in the San Joaquin River from the water developed necessitating increases releases from New Melones Reservoir to meet the Vernalis flow objectives during the February through June time period.

Because of the increased deliveries to the wildlife refuges in the San Joaquin Valley and reduction in tailwater return flows, water quality and flows at Vernalis have been impacted. Impacts to water quality and flows at Vernalis are caused by two events (1) the process of developing the water to make it available and (2) the use of the water developed water.

R-5-4 When the 2004 EIS/EIR was completed, SEWD commented that the draft completely ignored the manner in which the water was "developed" and, in fact, assumed in the analysis for existing conditions that continued use of this "developed" water by the Exchange Contractors. This EIS/EIR assumes 130,000 acre-feet of water has been developed, even though the most water transferred to date has been 88,000 acre feet. Additionally, this Draft EIR/EIS completely ignores the environmental impacts associated with use of the water, claiming the effects of the use are addressed in other environmental documents.

There is no support in fact or in law for these two glaring omissions resulting in a failure to analyze the true environmental impacts of the proposed project and renders this Draft EIS/EIR legally inadequate and indefensible. This EIS/EIR should be revised to evaluate

the environmental impacts associated with making 150,000 acre feet of water available for transfer and what environmental impacts from application of that water for the various uses identified will have on the San Joaquin River.

Specific Comments

Section One – Purpose and Need

SEWD has repeatedly requested that the Project Description be expanded to include the delivery of water to the Bureau for the purpose of meeting the Vernalis water quality and flow objectives contained in the 1995 Bay Delta Water Quality Control Plan. The State Water Resources Control Board (State Board) in Water Right Decision 1641 (D1641) imposed the obligation on the Bureau's water rights to meet these objectives. Water purchases is one of the methods the State Board contemplated the Bureau would utilize to meet these objectives. Over the past twelve years since D1641 has been implemented, Reclamation relied solely on New Melones Reservoir for meeting the Vernalis water quality and since expiration of the VAMP will be relying solely on New Melones to meet the flow objectives at Vernalis. It is irresponsible of the Bureau to not include these potential uses of the transfer water for meeting with Vernalis objectives. **R-5-5**

Section Two – Alternatives

2.3 Action/Project Alternatives

The Exchange Contractors action alternative proposes to develop 150,000 acre feet of water from two sources: a conservation/tailwater recovery program and crop idling/temporary land fallowing. The Draft EIS/EIR must evaluate the environmental impacts of developing the full 150,000 and cannot rely on previous environmental documents. **R-5-6**

Section Three – Scope of Impact Analysis

3.3 Water Receiving Area Analysis

An adequate EIR "must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences" and "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Id*. The Draft EIS/EIR reliance on analysis contained in other environmental documents for the environmental impacts of water delivery to other users renders this EIS/EIR fatally flawed because it fails evaluate all the environmental consequences of implementation of the proposed project. **R-5-7**

Section Four – Surface Water Resources

For purposes of evaluating the environmental impacts of the proposed project this section assumes the existing 10 year program and the water developed pursuant to that program is available for transfer and fails to analyze those environmental impacts. As noted above, there has never been a comprehensive environmental review of the effects of on San Joaquin River at Vernalis of making the 130,000 acre feet available.

R-5-8 The analysis is this entire section is fundamentally flawed because of the assumptions contained in the No-Action/No Project Alternative. The environmental impacts to Vernalis water quality, Vernalis flow and New Melones Storage are grossly underestimated by this analysis for all Alternatives because it assumes that water will continue to be made available from wildlife refuges from other sources, and because it assumes that the Exchange Contractors will continue to use the "water developed" as discussed above. The resulting affect is a great underestimation of flow needed at Vernalis caused by the tail water recovery program, and a great underestimation of water quality impacts because of wildlife refuge deliveries. Because these environmental impacts are not analyzed, the significant adverse environmental impacts on New Melones storage are greatly underestimated.

We believe that entire Surface Water Resources analysis must be re-done with the appropriate assumptions included. The following general comments/questions are made on the analysis contained in the Section.

R-5-9 Page 4-16 – Future Conditions for No Action/No Project Alternative: There is a general discussion of the additional flows from the SJRRP has having a beneficial impact. However, the surface water analysis must also include the environmental impacts associated with the introduction of new salt sources caused by the seepage issues, which results in landowners installing tile drains, and introducing new legacy salt sources that have build up in the soils from the past 60 years.

R-5-10 Page 4-17 – No Action/No Project Alternative: The No Action/No Project should not include the faulty assumption of continued deliveries to wildlife areas and continue re-use by the Exchange Contractors of water developed. Moreover, where is the analysis of the environmental impacts of the "re-use" by the Exchange Contractors of the tail water? Failure to include such analysis renders the Draft EIR/EIS inadequate.

R-5-11 Page 4-21-45 Impacts Analysis: This section must contain an analysis of the environmental impacts of making 150,000 acre feet available for transfer from the Exchange Contractor service area and delivery to the proposed alternative uses. What are the environmental impacts on Vernalis water quality of making this water available and used? What are the environmental impacts on Vernalis flows? How much more water will be needed to ensure the Vernalis water quality and flow objectives will be

met? The document incorrectly assumes additional releases will be made from New Melones Reservoir. The document states that a "decrease in runoff from the Exchange Contractors is counteracted with additional release from New Melones Reservoir." Why is this assumed? If there is an impact identified for EC at Vernalis, flow at Vernalis or carryover storage at New Melones Reservoir, that impact must be mitigated with provision of an appropriate mitigation measure so the project complies with CEQA.

4.2.3 Cumulative Effects

CEQA requires an EIR to discuss the cumulative impacts of a project. Cumulative impacts consist of an impact that is created as a result of the combination of the project together with other projects causing related impacts. [See 14 Cal Regs. Section 15130 and 15355]. The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum. Without the cumulative impact analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. [*Whitman v. Board of Supervisors* (1979) 88 CA 3d 397; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA 4th 713]. The Cumulative Effects discussion is woefully inadequate. If fails to consider first and foremost the affects of the tail water recovery program previously implemented by the Exchange Contractors. It fails to evaluate the affects of the Regional Water Quality Control Boards adoption of its *Waiver for Irrigated Agricultural Lands*. It fails to evaluate the affects of the Regional Water Quality Control Board TMDLs for Salt and Boron and DO in the Stockton Ship Channel. The significant impacts from the proposed transfer program on flows and water quality into the San Joaquin River basin trigger a significant cumulative impact and must be properly mitigated. **R-5-12**

4.2.4 Impact and Mitigation Summary

The impact to surface water resources in the San Joaquin River Basin associated with the four different alternatives creates significant adverse environmental impacts to water quality at Vernalis, water flow at Vernalis, New Melones operations, and Delta CVP/SWP supply that must be mitigated in order for this project to proceed. Table 4-18 must be modified to appropriately reflect: "Water Quality Standards at Vernalis, Flow Standards at Vernalis, Change in New Melones Reservoir Storage, Releases and Water Deliveries" that potentially significant adverse impacts are identified and must be mitigated. **R-5-13**

Section Fourteen – Mitigation Monitoring and Reporting Program

All effects on water quality and flow at Vernalis and New Melones operations must be fully mitigated in order for the project to proceed. New Melones is not causing the problem, and therefore, should not be required to mitigate impacts for which it did not cause. CEQA requires the proposal of mitigation measures that are designed to minimize the project's significant impacts identified in the EIR [14 Cal Regs. 15126 et **R-5-14**

seq.]. Even a minor reduction in storage is a significant adverse impact that must be mitigated. Language should also be included that any change in flow or water quality at Vernalis is a significant adverse impact that must be mitigated without the use of water from New Melones Reservoir.

R-5-15 As lead agency, the Exchange Contractors are the agency responsible for identifying and carrying out the proposed mitigation. The suggestion that that Reclamation and the refuge entities would be responsible for the mitigation of impacts is an illegal delegation of responsibility. How can the Exchange Contractors be assured that the proposed mitigation will actually take place when they assert no authority or control over the United States? CEQA requires that mitigation measures must be fully enforceable through permit conditions, agreement or other legally binding instruments. [14 Cal Regs. Section 15126.4(a)(2). Here, no such mechanism is provided and therefore the mitigation measures are legally deficient.

R-5-16 SEWD requests to be included on the distribution list for all reports discussed in this section for water transfers, including any and all information related to the transfer approval process.

R-5-17 Section 14.3.3(5): It is insufficient to state that "mitigation measures for impacts to New Melones Reservoir…including carryover storage, will be resolved during the transfer approval process in the following year." This language is completely unacceptable and violates the requirements of CEQA to properly identify and implement mitigation measures that result in reducing the impact to less than significant. Such post-hoc mitigation is legally flawed. How will water be replaced in New Melones storage? How will reductions in storage and corresponding reductions in allocation to New Melones CVP contractors be mitigated? How will New Melones CVP contractors receive their water allocations if storage is reduced? CEQA requires mitigation measure to be identified today, not at some point in the future. These mitigation measures must be feasible, implementable and enforceable. Deferring to a future date cannot occur.

R-5-18 Section 14.3.3(6): This section states that the "Exchange Contractors and Reclamation believe, that, except for extraordinary conditions, no significant adverse impacts on carryover storage in New Melones" will occur. This is in complete contradiction to the analysis contained in Section 4. As was previously stated in this section, ANY CHANGE in New Melones storage is potentially significant.

R-5-19 Section 14.3.3(7): If Level 4 deliveries exacerbate water quality conditions in the San Joaquin River triggering a water quality release from New Melones Reservoir, the only feasible mitigation measure is through the use of a portion of the Level 4 water acquired for dilution, not increase releases from New Melones Reservoir.

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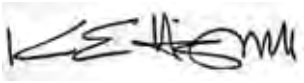
We appreciate the opportunity to comment on the Draft EIS/EIR and look forward to the incorporation of our concerns into the analysis and final document. **R-5-20**

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:lc

cc: Mr. Kevin Kauffman, Stockton East Water District

Response to Letter R-5 ***Herum/Crabtree Attorneys (Stockton East Water District)***

R-5-1
Comment noted and considered.

R-5-2
The subject document thoroughly evaluates potential flow and quality effects due to the transfers. The analysis included representative years of operation for hydrologic years ranging from wet to critical, inclusive of recognizing the relative differences in background hydrology and operations among the range of hydrology.

R-5-3
For the last 10 years (2002–2011), the average annual water deliveries to wildlife refuges located on the San Joaquin Valley's west side has been 64,000 acre-feet. The actual annual water deliveries to the refuges do vary depending on hydrologic conditions, water market pricing, water availability, and funding availability. Over this 10-year time period, refuge water deliveries to these refuges have ranged from approximately 33,000 to approximately 96,000 acre-feet.

Reclamation, in partnership with the Grassland Water District (GWD), conducts extensive water quality monitoring of refuge return flows to the San Joaquin Valley's drainage river system under its Real-Time Water Quality Monitoring Program (RTWQMP). The purpose of the RTWQMP, which began in 2009, is to assess what contribution, if any, the refuges may be having on San Joaquin River water quality. Based on water quality monitoring findings to date, the wetlands' salt load contribution to the river occurs primarily during the rainy season in normal and wet years (prior to March 1st) and, particularly, when significant rain events occur. Rainfall increases water levels in flooded wetlands, thus causing water to "spill" into Mud and Salt sloughs, which discharge flow to the lower San Joaquin River. However, this salt load is significantly diluted as a direct result of an abundance of water in the river. Water quality monitoring conducted under the RTWQMP is an ongoing activity by Reclamation GWD.

R-5-4
The comment that the 2004 document "completely ignored the manner in which the water was developed" is incorrect. The water development alternatives were clearly stated and evaluated, and represent continuation of a transfer program from an earlier program.

In proposing to continue to develop water within the Exchange Contractors' service area for transfer to other water users outside the service area, the current analysis assumes that up to 88,000 acre-feet has been developed for transfer as shown in Table 1-1 on page 1-3. The physical environment has experienced this level of water development such that it is part of the existing condition, not the full 130,000 acre-feet program that was planned but not actually implemented.

Furthermore, the effects of water use are not completely ignored. Rather, the impacts of water use in the receiving areas (other CVP/SWP contractors and the wildlife refuges included in the RWSP) are stated in Section 3.3, Water Receiving Areas Analysis, of the EIS/EIR. Because the transfer water is part of the total contract amounts evaluated in other environmental documents to reach the conclusions stated in Section 3.3, these documents are incorporated by reference. Most of the identified impacts of CVP and SWP water use in the receiving areas are minor or less than significant. Further analysis of water use is not warranted; see Response R-4-13 above.

R-5-5
This request would be inconsistent with the stated Purpose and Need/Project Objectives from pages 1-5, 1-6 restated below:

"The purposes of the proposed 25-Year Water Transfer Program are the transfer and/or exchange of CVP water from the Exchange Contractors to:

- The RWSP to meet water supply needs (Incremental Level 4) for San Joaquin River Basin wildlife refuges and the Tulare Lake Basin wildlife areas
- Other CVP contractors and SWP contractors to meet demands of agricultural and M&I uses

The continuation of a Program of temporary annual water transfers and/or exchanges is needed to maximize the use of limited water resources for agriculture, fish and wildlife resources, and M&I purposes with the following objectives:

- Develop supplemental water supplies from willing seller agencies within the Exchange Contractors' service area through water conservation measures/tailwater recovery and crop idling/fallowing activities consistent with agency policies.
- Assist in providing water supplies to meet the Incremental Level 4 requirements for the San Joaquin River Basin and Tulare Lake Basin wildlife refuges.
- Assist Friant Division CVP repayment contractors or water service contractors to obtain additional CVP water for the production of agricultural crops or livestock and/or M&I uses because of water supply shortages or when full contract deliveries cannot otherwise be made.
- Assist SWP (KCWA and SCVWD) and other CVP agricultural service and M&I contractors (San Luis Unit, SCVWD, EBMUD, CCWD, PVWMA) to obtain additional supplemental water supplies.
- Promote seasonal flexibility of deliveries to the Exchange Contractors through exchange with CVP and SWP agricultural service and M&I contractors wherein water would be delivered and then returned at a later date within the year."

When D-1641 was originally adopted by the State Board, the expectation was that the State Board would permanently assign responsibility to other diverters in the basin by 2012. Reclamation awaits the State Board's decision assigning permanent responsibility for meeting the water quality and flow objectives.

R-5-6
The EIS/EIR evaluates four action/project alternatives, up to a maximum of 150,000 acre-feet of water development in a year. The comparisons are made to existing conditions in 2011 when the NOP was distributed and to No Action where the future condition would be different from existing conditions. The request to go back into the past to some point prior to the first water transfer and conduct an analysis using that baseline is not required under CEQA or NEPA. The changes in the physical environment going forward are the real impact.

R-5-7
The discussion of impacts of water use contained in Section 3.3 and the reliance on other environmental documents is appropriate for the reasons stated in Responses R-4-2 and R-4-7.

R-5-8
See Response R-5-4 regarding the identification of the affected environment. The No Action/No Project assumptions are what is expected to occur in the absence of the Proposed Program. The Exchange Contractors have made substantial investments in conservation infrastructure, and it is reasonable to assume they would recover and reuse this tailwater and then reduce reliance on groundwater pumping to meet irrigation needs. Similarly, the RWSP would continue to pursue acquisition of Incremental Level 4 water from other water users. The analysis of effects on Vernalis water quality and New Melones storage is done pursuant to NEPA and CEQA requirements, and the type of analysis requested by the commenter is beyond the scope of an EIS/EIR.

Regarding the impacts of water quality effect of developing water for transfers, the effect is betterment of the environment as described in the analysis. Regarding the effect of refuges receiving transfers, Reclamation has covered the use of water for the San Joaquin Valley and Tulare Lake Basin wildlife areas in environmental documentation explained in Section 3.3.2. Also, see Response R-4-7.

R-5-9
See Response R-5-8 above regarding the appropriate scope and level of analysis and disclosure needed for an EIS/EIR. An analysis of the detailed unanalyzed speculative potential impacts of effects of the SJRRP drainage other than what has been included in the setting is not needed and would not enhance the analysis. The analysis of seepage effects on the San Joaquin River from the SJRRP is for the SJRRP environmental documentation to address. The reach-specific EIS/EIRs are not yet available.

R-5-10
Reclamation is directed to provide deliveries to the refuges, the Exchange Contractors being only one of the opportunities for Incremental Level 4 water supply. The effects of the Exchange Contractors' "reuse" of water is embedded in the modeling assumptions for the quality and flow of water leaving their service area. Reuse of tailwater under No Action/No Project is evaluated for effects on groundwater balance and groundwater quality on pages 5-12 and 5-13.

R-5-11
The effects of developing water for the transfers have been analyzed and disclosed within the document. Regarding the reaction of New Melones to San Joaquin River changes in flow and quality, the modeling reflects Reclamation's obligation from water flow and quality objectives at Vernalis. No significant impact has been identified; therefore, no mitigation is necessary.

R-5-12
The cumulative effects analysis contained in Sections 4.2.3 and 5.2.3 consider several specific plans and projects being implemented on the San Joaquin River. As noted on page 1-14 of the EIS/EIR, the hydrologic analysis in Chapter 4 and Appendix B incorporates recent activities and approved projects including amendments to the Basin Plan for control of salt and boron discharges into the lower San Joaquin River. The Regional Board's Total Maximum Daily Loads (TMDLs) for salt and boron at Vernalis and dissolved oxygen requirement in the Stockton Deepwater Ship Channel are also attempts to improve water quality over time by setting limits on these constituents of concern. The less-than-significant impacts from the Proposed Program do not "trigger" a cumulatively considerable impact to water quality. Reductions in poor quality agricultural return flows to the river from the Proposed Program's conservation actions are beneficial to water quality.

The cumulative impact discussion and analysis is in fact comprehensive in the EIR/EIS. A number of other programs exist and in the future differently named regulatory and guidance programs will encourage conservation of water and better management of the water applied and use upon farmland. In each segment of the EIR/EIS, the continued conservation or more efficient use of water is assumed and projected, whether induced by regulatory forces or by simple economic forces such as the production of greater quantities of crops, or induced by new technologies. The programs mentioned by the commenters, the dissolved oxygen requirements in Stockton Deepwater Ship Channel, TMDL requirements for salt and boron in the San Joaquin River, and the Irrigated Land programs of the Regional Board are examples of forces that inexorably lead farmers to attempt to better time and manage water application and use, thus inexorably reducing tailwater and seepage. The cumulative impacts of speeding up conservation or requiring that conservation of water occur because of economic forces or because of different regulatory requirements do not change the fact that conservation and reduction of tailwater will occur and the environmental impacts must be examined. This EIS/EIR examines those impacts, and the inducement or program title that may encourage or in some cases slow the rate at which conservation of water occurs does not result in cumulative impacts.

Concerning the Exchange Contractors' participation in the Westside San Joaquin River Watershed Coalition and the Regional Board's Irrigated Lands Program identified in Section 1.3.1, the Exchange Contractors have participated in the Regional Board's Irrigated Lands Program through the Westside Coalition.

R-5-13
The summary table reflects the conclusions reached in the analysis reported in the EIS/EIR, which are either no impact or a less-than-significant impact.

R-5-14
The commenter would like the thresholds of significance under CEQA to be zero such that any change, no matter how small, would be significant. The preparers of the EIS/EIR who model hydrology have indicated the changes to the environment are barely perceptible. So these barely perceptible physical changes to the environment are determined to be minimal or less than significant under CEQA.

Concerning operation of New Melones Reservoir in response to the estimated small changes in flow, and in the context of other actions in the Basin affecting flows and water quality, no impacts should occur to New Melones (either flow or water quality at Vernalis) from this project.

R-5-15
See Response R-5-14 above. The roles and responsibilities of Reclamation and the Exchange Contractors in monitoring for and mitigation of less-than-significant impacts is clearly stated in Section 14. Water operations of the CVP are a multiyear matter because of the use of storage water in California. A substantial amount of New Melones storage and yield is pledged to water quality and fishery releases. The amounts of water involved in the effects of transfers under the alternatives discussed in the EIS/EIR document are so small that a slight change in transfer amounts or prohibition of transfers by Reclamation in the following years would easily provide for receiving of water and adjustments and mitigation of the quantities of water affected by a transfer in a previous year and in fact lead to more water being physically available in New Melones storage. No requirement exists for determining if a potential impact is significant unless truly, over reasonable foreseeable hydrologic cycles and operation cycles for the CVP, no means of mitigation exist through prohibition of transfers or implementation of the No Action Alternative or reduction of the amounts of transfers in subsequent years. The restriction to the analysis and facts to a 1-year period type “accounting,” which is not the proper restriction for examining environmental conditions or impacts and would ignore the true environmental fact that the CVP has multiple storage locations and flexibility in its operations, and operations are conducted on a multiyear horizon by the CVP.

R-5-16
The Exchange Contractors or Reclamation will provide the final approval letters and a copy of the annual reports after they are approved by both Reclamation and the Exchange Contractors.

R-5-17
As stated on page 14-2 of the EIS/EIR, no significant impacts or adverse effects require mitigation. However, the mitigation monitoring and reporting program is a continuation of the program implemented with the previous Water Transfer Program. Consequently, the Exchange Contractors will continue to monitor both surface and groundwater

resources to avoid the development of substantial adverse effects should they appear likely to occur.

Monitoring of small effects to the San Joaquin River flows and surface water supplies to avoid substantial effects is proposed to continue using Reclamation's transfer approval process. Since the precise effect of the transfer cannot be determined ahead of the transfer (beyond what has been evaluated in this EIS/EIR), the deferred measures are the only practicable approach. Also, given the current procedures of allocating water to CVP uses from New Melones, a procedure that recognizes the current year's projected inflow and current year's storage, the effect the transfers may have upon water supplies to CVP uses would have no impact until the following year. Therefore, the proposed mitigation is appropriate and technically plausible.

R-5-18
Comment noted, and we disagree on the threshold of significance employed by the commenter. Analysis in Section 4.2.2 does not conclude that any discernible impacts would occur to water supplies from New Melones.

R-5-19
In addition to refuge Level 2 water supplies, for CVPIA wildlife refuges located in the San Joaquin Valley, the RWSP acquires Incremental Level 4 water supplies that are critical year-round for developing and maintaining optimum wetland habitats. Incremental Level 4 water is acquired only for this purpose pursuant to CVPIA. CVPIA does not authorize the use of acquired Incremental Level 4 water for water quality dilution purposes in the lower San Joaquin River system.

R-5-20
Comment noted and considered.

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Letter R-6

EAST BAY
MUNICIPAL UTILITY DISTRICT

RICHARD G. SYKES
DIRECTOR OF WATER AND NATURAL RESOURCES
(510) 287-1629
rsykes@ebmud.com

June 27, 2012

Ms. Joann White
Exchange Contractors
P.O. Box 2115
Los Banos, CA 93635
jwhite@sjrecwa.net

Mr. Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, Rm 410
Sacramento, CA 95825
bhubbard@usbr.gov

Subject: EBMUD Comments on Exchange Contractors' Water Transfers Program Draft EIS/EIR

Dear Ms. White and Mr. Hubbard:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) Water Transfers Program Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR). EBMUD is pursuing water transfers to meet its future dry year water supply needs and we are pleased to be listed as a potential buyer in the Exchange Contractors' 25-Year Water Transfer Program. We are submitting the following minor comments for consideration: R-6-1

- Revise the first sentence in Section 3.3.4 to clarify EBMUD's total CVP contract amount. This clarification should be made throughout the discussion of EBMUD as a potential buyer of transfer water.

  "*EBMUD's CVP contract supply is for a maximum of 165,000 acre-feet over three consecutive dry years or a maximum of 133,000 acre-feet in any single dry year.*"

- Revise the text under Section 3.2.8 starting with the second sentence to clarify EBMUD's need for transfer water. This clarification should be made throughout the discussion of EBMUD as a potential buyer of transfer water, including Sections 3.3.4 and 13.4. R-6-2

  "Any transfers to SCVWD and KCWA under SWP contracts and to ~~EBMUD and~~ CCWD under CVP contracts would be subject to limitations in those contracts and not result in exceedances of contract amounts. Transfers to EBMUD would be made in dry years only and would be diverted along with EBMUD's CVP contract water within the existing

375 ELEVENTH STREET . OAKLAND . CA 94607-4240 . FAX (510) 287-0541
P.O. BOX 24055 . OAKLAND . CA 94623-1055

R-6-2 *capacity of the Freeport Regional Water Project. EBMUD's CVP contract is uniquely structured to only provide water in drought years when EBMUD's primary supplies from the Mokelumne River are insufficient to meet customer demands. Consequently, the action alternatives do not have the potential to place additional demand on existing infrastructure other than CVP and SWP facilities and district conveyance systems. It is the potential water user's responsibility to arrange for use of existing water conveyance and storage facilities from the point of diversion to the point of delivery. Development, conveyance, and use of the water to be transferred does not introduce sufficient new jobs as to attract permanent residents to an area and indirectly affect other public services or the need for services in local communities."*

- Revise the last paragraph of Section 3.3.4 to clarify the need for additional environmental analysis for transfers to EBMUD:

R-6-3 *"Both the Freeport and WSMP documents indicate that no specific work or analysis on impacts to downstream users from taking water at Freeport under transfers has been performed (EBMUD 2009, p. 5.2.A-20). ~~With impacts unknown and not modeled, it is prudent to conclude a potentially significant impact exists until proven otherwise.~~ To enable a future transfer, the potential water user/transferee north of the Delta would need to complete ~~the~~ an analysis of potential impacts associated with the transfer. As stated in the WSMP, EBMUD would complete appropriate project-level environmental documentation prior to implementing a transfer project. ~~For the purposes of this Water Transfer Program EIS/EIR, however, the impacts from the transfers would be consistent with CVP/SWP contract supplies because the Exchange Contractors would only transfer water to CVP entities that do not exceed their CVP contract maximum. That is, the Exchange Contractors would provide substitute water for CVP supply and would not expand any CVP supply amounts or diversion rates.~~ If EBMUD does not receive the necessary permits, NEPA and/or CEQA approval, then the Exchange Contractors would not transfer water to them."*

R-6-4 We appreciate the opportunity to learn about the Exchange Contractors and efforts to make water supplies available for transfer. If you have any questions, please contact Jan Lee at (510) 287-2062.

Sincerely,

Michael Tognolini

Michael T. Tognolini
Manager of Water Supply Improvements

cc: Jan Lee
Mark Bluestein

Response to Letter R-6 ***East Bay Municipal Utility District***

R-6-1
The suggested change to Section 3.3.4 on page 3-9 will be made as indicated:

> EBMUD's CVP contract supply is for a maximum of ~~195,000~~165,000 acre-feet over ~~three~~ 3 consecutive dry years of a maximum of 133,000 acre-feet in any single dry year.

R-6-2
The text in Section 3.2.8 on page 3-3 has been revised as suggested.

> Any transfers to SCVWD and KCWA under SWP contracts and to ~~EBMUD and~~ CCWD under CVP contracts would be subject to limitations in those contracts and not result in exceedances of contract amounts. Transfers to EBMUD would be made in dry years only and would be diverted along with EBMUD's CVP contract water within the existing capacity of the Freeport Regional Water Project. EBMUD's CVP contract is uniquely structured to only provide water in drought years when EBMUD's primary supplies from the Mokelumne River are insufficient to meet customer demands.

This text has been added to Section 3.3.4 after the insertion indicated in Response R-6-1 above.

In Section 13.4 on page 13-5, the last sentence has been modified to read as follows:

> Sales to these agencies would be limited to amounts listed in Table 2-2~~.~~, and for CCWD and EBMUD to the amounts explained in Section 3.3.4. Transfers to EBMUD would be made in dry years only and would be diverted along with EBMUD's CVP contract water within the existing capacity of the Freeport Regional Water Project. EBMUD's CVP contract is uniquely structured to only provide water in drought years when EBMUD's primary supplies from the Mokelumne River are insufficient to meet customer demands.

R-6-3
The last paragraph of Section 3.3.4 on page 3-12 has been revised as follows:

> Both the Freeport and WSMP documents indicate that no specific work or analysis on impacts to downstream users from taking water at Freeport under transfers has been performed (EBMUD 2009, p. 5.2.A-20). ~~With impacts unknown and not modeled, it is prudent to conclude a potentially significant impact exists until proven otherwise.~~ To enable a future transfer, the potential water user/transferee north of the Delta would need to complete ~~the~~ an analysis of potential impacts associated with the transfer. As stated in the WSMP, EBMUD would complete appropriate project-level environmental documentation prior to implementing a transfer project. ~~For the purposes of this Water Transfer Program EIS/EIR, however, the impacts from the transfers would be consistent with~~

~~CVP/SWP contract supplies because the Exchange Contractors would only transfer water to CVP entities that do not exceed their CVP contract maximum. That is, the Exchange Contractors would provide substitute water for CVP supply and would not expand any CVP supply amounts or diversion rates.~~ If EBMUD does not receive the necessary permits, NEPA and/or CEQA approval, then the Exchange Contractors would not transfer water to them.

R-6-4
Comment noted and considered.

Organization Comments

Letter O-1

July 3, 2012

Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, Room 2905
Sacramento, CA 95825

Re: Comments on Draft DEIS/EIR for proposed new transfer program that would provide for the transfer and/or exchange of up to 150,000 acre-feet of water from the San Joaquin River Exchange Contractors Water Authority [SJEC][1] to several potential users—Westlands Water District, SWP Contractors, Kern Water Bank and other users for over 25 years—2014-2038.

Dear Mr. Brad Hubbard:

[1] The San Joaquin River Exchange Contractors Water Authority consists of Central California Irrigation District (CCID), San Luis Canal Company (SLCC), Firebaugh Canal Water District (FCWD), and Columbia Canal Company (CCC).

O-1 The undersigned groups respectfully submit the following comments on the Draft Environmental Impact Statement (DEIS/EIR) [State Clearinghouse No. 2011061057] for the proposed new transfer program. The proposed program would enable transfer of Central Valley Project Water project water, originating from Shasta Reservoir, to several potential users—including Westlands Water District, SWP Contractors, Kern Water Bank users—for a period of 25 years. The DEIS/EIR are deficient and a new Environmental Impact Statement (EIS) must be prepared to fully disclose the impacts, as required by the National Environmental Policy Act (NEPA). A commitment of such large quantities of CVP water, in a region that is suffering severe environmental and water quality impacts caused by CVP operations, raises serious questions that deserve careful accounting and analysis. Unfortunately this DEIS/EIR fails to provide such analysis and documentation and does not provide a comprehensive analysis of alternatives or impacts in the area of origin, areas of transmission, and the areas of delivery. We incorporate by reference the comments from AquAlliance, the California Sportfishing Protection Alliance, and the California Water Impact Network for the *2010/2011 Water Transfer Program.*[2]

O-2 The Bureau of Reclamation (USBR) has based its DEIS/EIR on the false premise that the previous "temporary" 10-year water transfer program of the SJEC, which involved transfer of 130,000 acre feet under the present 2005-2014 water sale and transfer program, is the environmental baseline. Such a baseline is tantamount with comparing the project to its self when in fact; the previous temporary program was never adequately evaluated.

O-3 The DEIR/EIS fails to consider "place of use" restrictions under California water rights law that may limit some or all of the potential transfers. The proposed water is provided by the CVP to "substitute" for water that was historically drawn from the San Joaquin River by the Exchange Contractors. The SJEC have a combination of riparian and appropriative water rights that are limited to "use on their lands." The DEIS/EIR is silent on how this sale of water will comply with the State Water Resources Control Board requirements for approval of change in place of use for this water. Nor is there an explanation of how these proposed water sales are consistent with public trust obligations, Fish and Game Code Section 5937, the needs of area of origin water users, or the CVPIA obligations to provide CVP project yield to meet the needs of fish and wildlife, salmon and mitigate the impacts of the CVP project upon the San Francisco Bay Delta Estuary. Further it appears the aggressive time frame for approvals of such vague, open-ended transfers is designed to circumvent existing state law and specifically the Delta Stewardship Council Delta Restoration Plan.

O-4 Absent from the DEIS/EIR are any of the required monitoring reports from the previous transfer project.[3] Without the required monitoring reports, the public is left in the dark regarding this new proposal to sell up to 150,000 acre feet annually over a 25 year period. No information is provided regarding the impacts of these water sales to downstream users, the San Joaquin River, South Delta, the refuges, water quality, endangered species and the San Francisco Bay Delta Estuary from the previous or proposed new transfers. For example, reduced flows in combination with below normal water years and transfers out of the basin are known to have significant impacts on water quality, fish, wildlife and the flows in the San Joaquin River. In 2009, the highest quantity of water was transferred by the SJEC since 2000 [see below]. This is the same year selenium levels on the San Joaquin River spiked above safe drinking water levels and consistently were in excess of safe levels for spawning salmon [see Figure 1]

[2] See https://c-win.org/webfm_send/241

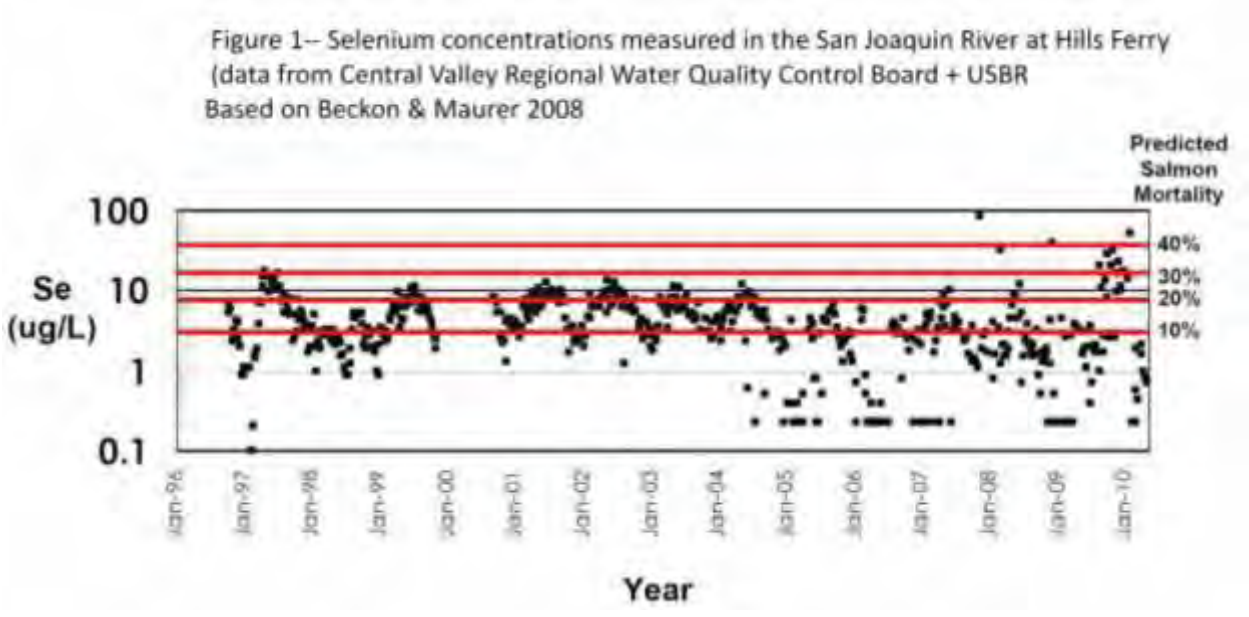
[3] See Section 13.4 Compliance Monitoring Program Final EIS/EIR Water Transfer Program for the SJREC 2005 -2014.

http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=9629 Appendix B

Table 2 Exchange Contractors Exchange Water Transfer Summary

	Within Exchange Contractors' 10-yr Transfer Program (and similar predecessor programs)			Other Transfers	Total Transfers
Year	To CVP Agricultural and M&I Users (acre-feet)	To Reclamation for Refuges (acre-feet)	Total (acre-feet)	Warren Act, Grower to Grower and VAMP (acre-feet)	(acre-feet)
1993	18,000	0	18,000	0	18,000
1994	0	0	0	0	0
1995	0	25,000	25,000	2,596	27,596
1996	0	30,348	30,348	2,100	32,448
1997	0	40,000	40,000	12,160	52,160
1998	0	0	0	0	0
1999	40,000	20,000	60,000	1,260	61,260
2000	43,000	21,500	64,500	1,360	65,860
2001	15,500	49,000	64,500	5,786	70,286
2002	2,134	63,500	65,634	6,414	72,048
2003	11,637	60,000	71,637	7,402	79,039
2004	30,000	50,210	80,210	10,900	91,110
2005	72,795	7,800	80,595	1,483	82,048
2006	30,417	49,583	80,000	0	80,000
2007	50,228	30,000	80,228	6,841	87,069
2008	61,026	24,132	85,158	15,071	100,229
2009	69,445	18,687	88,132	23,661	111,793
2010	56,981	27,714	84,695	10,798	95,493

Source: J. White, personal communication, 2011.



Since only the incremental increase transfer of 20,000 acre feet is considered in the project impacts instead of the full 150,000 AFY, the estimates for impacts to the San Joaquin River both flow and water quality are underestimated and not disclosed.[4] The disclosure of impacts to the

O-5

[4] http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=9629 Appendix B pgs 5-6 *" Even with potential flow changes identified for the San Joaquin River, no significant environmental impacts were cited. However, it was identified that the water supply of the CVP may be affected by changes in San Joaquin River*

river and fisheries is further confounded by the failure to consider the combined impacts of diversions up to 150,000 cfs to Stockton East and flows necessary to ensure salmon survival and impacts to other endangered fish and wildlife.

O-6 The proposed resale of this water represents a potential financial windfall for SJEC at the expense of taxpayers. Reports of gaming the system by reselling cheap water obtained from the CVP back to the CVP for fish and wildlife benefits at exorbitant prices, and thus fleecing the taxpayer, are well documented.[5] Without accurate accounting of the baseline conditions and amounts of water transferred or sold, the public cannot determine how much, if any of this water, truly comes from conservation and how much water would have gone to other water uses or the environment.

O-7 The proposed transfer is extremely vague about the specific transfers that would occur. There is little or no analysis provided. The proposed transfer expands the recipients of this transferred water to additional CVP and SWP contractors in Alameda, Contra Costa, Monterey, Santa Cruz, and Kern counties. No details or impacts analysis on induced growth is provided. Anywhere from zero to 150,000 acre feet per year could be sold to Santa Clara Valley Water District for some combination of agricultural, industrial and/or municipal uses. Yet, no information is provided regarding the impacts. Similarly anywhere from zero to 150,000 acre feet per year could be sold to Westlands Water District for irrigation of toxic soils that would likely create further polluted ground and surface water problems, which are harmful to endangered species and migratory birds as these toxic waters are brought to the surface due to agricultural operations or proposed treatment options.

O-8 With so little specific information, the water transfers cannot be properly evaluated. The potential far-reaching impacts on the San Joaquin River, San Francisco Bay Delta Estuary supplies, and water quality in the lower San Joaquin River and the South Delta, New Melones operations, refuge supply channels, and endangered species — among many potential impacts—remain undisclosed and unevaluated. The full range of alternatives is not considered.

O-9
1. **Impact Analysis**: The DEIS/EIR claims there would be no impact from the proposed transfer program without providing any details of the proposed transfers, analyzing the impacts of the existing "temporary" transfer program, or providing any of the monitoring data promised under the previous program. Furthermore, without analysis or details, the documents claim there are no cumulative impacts despite the large number of proposed or existing transfers from the same contractors or the assignment of CVP contractors to others. [See Figure 2 for a sample of some of the approved water sales to Westlands Water District & others from the same geographical location.]

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flows….. As stated above, it was concluded in previous analysis tail water recapture is the primary component that directly affects San Joaquin River hydrology. It is assumed that a portion of temporary land fallowing could affect San Joaquin River hydrology to a minor extent."

[5] Reports found that as one of the West Coast's largest estuaries plunged to the brink of collapse from 2000 to 2007, state water officials pumped unprecedented amounts of water out of the Delta, then delivered virtually the same water at a 150% mark-up soaking taxpayers. [See Contra Costa Times @ http://www.revivethesanjoaquin.org/content/pumping-water-and-cash-delta]

2. **Compliance with other laws:** The DEIS/EIR states the proposed action would deliver water through existing facilities to a vague list of water contractors and refuges that already receive delivered water and therefore the proposed action would have no impacts. O-10

2.1. The project impacts, including the impacts on downstream users or areas of origin, are not provided. Potential increases from New Melones Reservoir to address water quality problems caused by the project are not addressed. The Federal Circuit Court of Appeals decision, Stockton East Water District v U.S., 07-5142 and the impact of this water sale program on meeting salinity and selenium standards in the San Joaquin River is not addressed. And yet, without information either as to where the water will be sold or impacts on areas it is being sold from, the DEIS/EIR asserts the project "would have no effect on birds protected by the Migratory Bird Treaty Act (MBTA) or other federal statutes. This declaration is unsubstantiated. O-11

2.2. According to the DEIS/EIR the tail water recapture has averaged (from 2003 to 2010) 134,161 acre feet a year (AFY), yet the existing conditions analysis only considers the effects of 80,000 AFY and fails to address impacts to the surrounding endangered species, including the giant garter snake. The analysis does not address impacts on critical habitat and Grasslands wetland supply channels, or the cumulative impacts of these proposed water sales with other federal water exchanges, sales, assignments and transfers. Further impacts from the Grassland Bypass Project water quality selenium waivers for approximately another decade are not analyzed in relation to the reduced return flows and proposal to discharge the Selenium Demonstration Project waste into the same discharge canals flowing through national and state wild life refuges and preserves. The previous 10 years of water sales are justified under the assumption that no loss or degradation of listed species habitat as a result of the transfer is valid. Yet, no information or monitoring data is provided to support this conclusion in the DEIS/EIR. O-12

2.3. At a time when the CVP project has failed to meet its obligations under the CVPIA[6] to double salmon populations, and when salmon restoration measures critical to meeting the CVP's mitigation responsibilities are in process, the project's failure to consider a full range of alternatives and impacts to salmon are especially egregious. Absent from this DEIS/EIR analysis is information regarding the predicted flow reductions in the San Joaquin River at Vernalis due to these water sales. These flow reductions were estimated in 2004 to vary from 0 to 11 percent. During the late spring out-migration period for anadromous fish, flows were estimated to be reduced by 3 to 8 percent (Table 4-44 of the SJREC EIS/R USBR 2004). No information is presented, nor are the required monitoring results provided to support the conclusion that this reduction in flows will not have an impact on the San Joaquin River and other downstream beneficial uses. The DEIS/EIR fails to consider a full range of alternatives to mitigate the project's impacts to adjacent State and Federal Wildlife refuges and wetlands. The project include window dressing that some of the water "could" go to meet federal CVP yield obligations to fish and wildlife. It is difficult to see that this is little more than "green" packaging. No analysis of alternative or viable refuge water supply mitigation measures is considered. See the USFWS conveyance proposal dated January 2012 attached, which would save millions in wheeling charges, power charges and provide significant new amounts of Level 4 refuge O-13

[6] Central Valley Project Improvement Act of 1992 § 3405, Water Transfers, Improved Water Management & Conservation *"No transfer will be authorized 'if it results in a* ***significant reduction in quantity or quality of water currently used for fish and wildlife purposes*** *… alternative measures and mitigation activities will be developed and implemented as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer ((§3405(a)(1)(L)). [emphasis added]*

supplies, if the conserved portion of the water [loss due to seepage and conveyance] was allocated to the refuges.

O-14

2.4. The status-quo premise of this non-analysis, as with the DEIS/EIR's vague assurances and excuse for its lack any impact analysis, lacks any defensible substance and leaves only a comparison of actions that are essentially *exactly the same*. This premise is flat wrong. The CVPIA does not mandate water transfers. To the contrary, it expressly confers discretion on USBR to provide this flexibility after environmental impacts and weighing of fish and wildlife impacts and water needed for those beneficial uses has taken place. The alternatives for water conserved need to be broader than merely reselling water outside of the CVP service area, to municipal and industrial buyers or to further irrigate toxic soils on the west side of the San Joaquin Valley. As can be seen from the chart below for the same time period as the previous SJEC water sales, water exports from the federal and state water projects increased and fish populations plummeted.

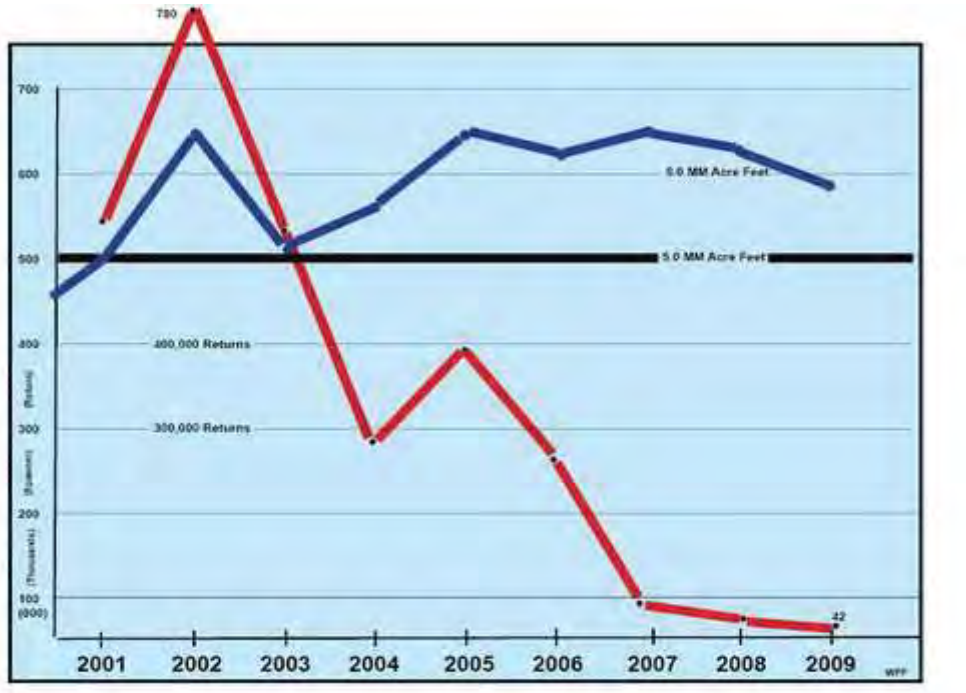


Figure 1: Annual Delta Exports and Fall Run Salmon Returns 2001-2009 source Water 4 Fish http://water4fish.org/

O-15

NEPA requires USBR to disclose the impacts from these vague set of water sales and to conduct a thorough analysis of alternatives providing this transferred water to other beneficial uses or reduced diversions from the Delta as a result of implementing water conservation measures. Most of the conservation measures have been funded by USBR or State grants. Thus, alternatives and benefits from these measures funded by the taxpayer should accrue to the public trust values and public beneficial uses rather than to a select group of industrial farming operations such as Westlands or Paramount Farms, which is the controlling interest in the Kern Water Bank. For example, under the existing DEIS/EIR readers are not told how much of this water will be delivered to Westlands Water District, which has a massive pollution problem that violates federal and state anti-degradation policies.(See Figures 2 & 3) Putting water on these toxic soils increases pollution and harms other beneficial uses. In addition, the proposed water sales program expands the areas

to contractors in Alameda, Contra Costa, Monterey, Santa Cruz, Santa Clara, San Benito and Kern Counties. No information is provided regarding the ESA Section 7 or Section 10 water deliveries to these expanded counties and specifically Kern and Santa Clara Counties. The same comparative analysis is required in place of the DEIS/EIR's non-analysis of the project's compliance with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act and the Clean Water Act. USBR's failure to undertake a substantive analysis of this project, along with the cumulative impacts of numerous other water transfer projects identified in the DEIS/EIR and their compliance with all these other environmental laws, perpetuates a pattern and practice that violates NEPA.

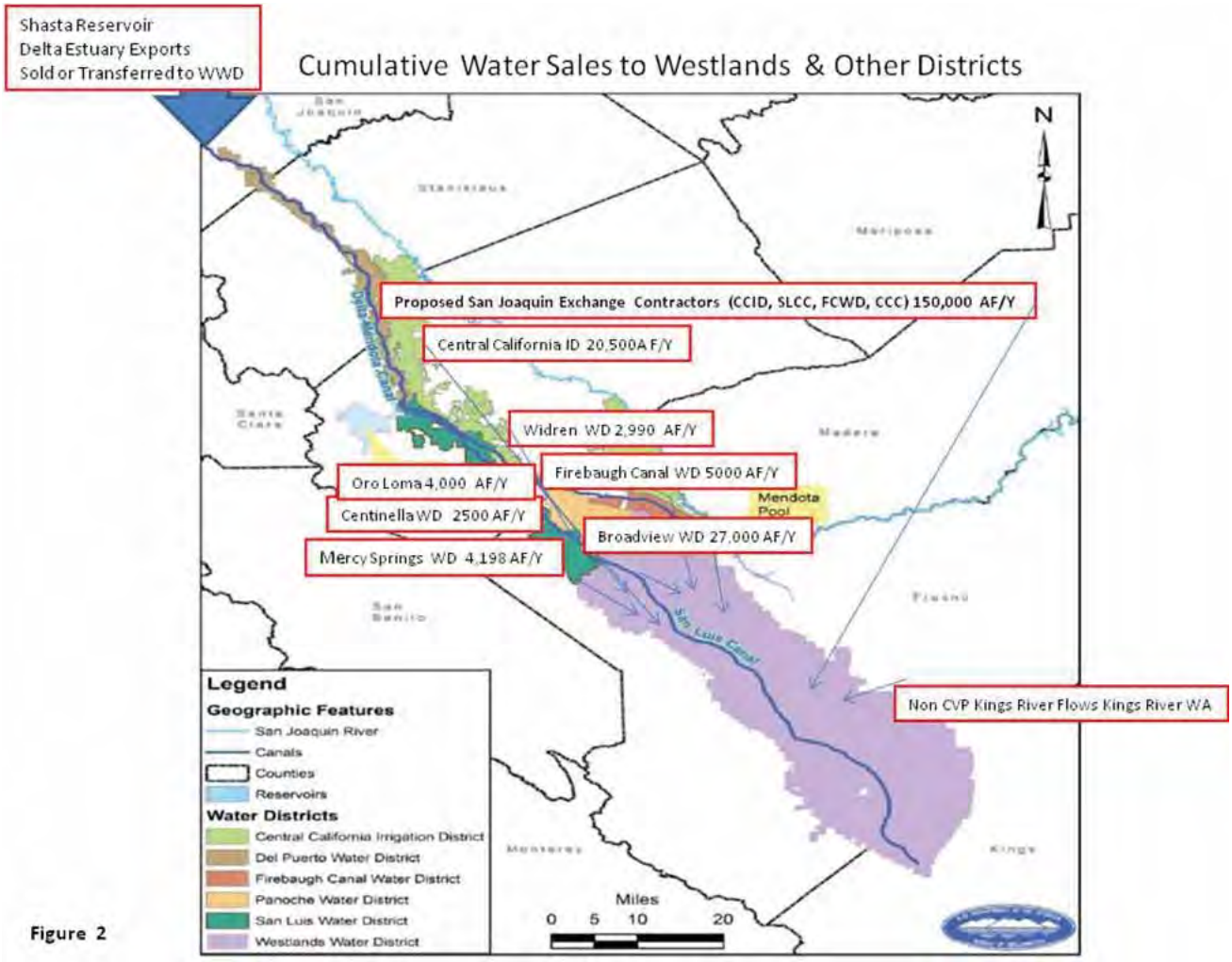
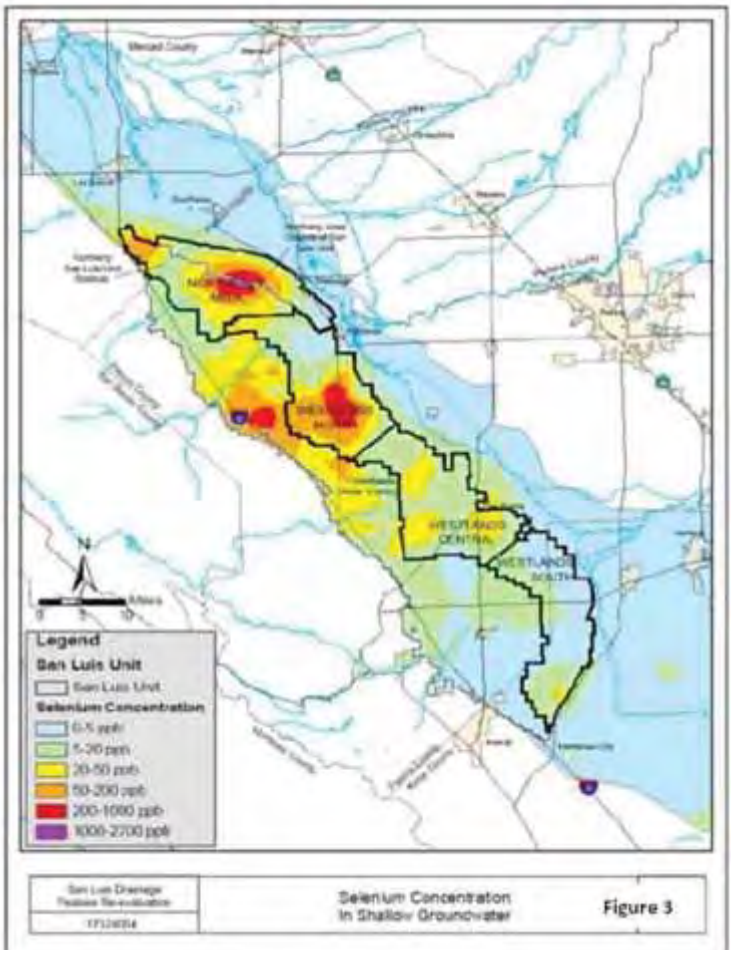


Figure 2



In short, the DEIS/EIR ignores most of the Project's impacts, limits the Study Area to the lands receiving the water deliveries, fails to update the water needs assessment for districts that are selected to receive the water, and provides limited information on impacts to areas from where the water is taken. The DEIS/EIR ignores the fact that each water delivery requires a water diversion, and that each water diversion has an environmental impact on its water sources. In this case, the water is stored in Shasta Reservoir and diverted to the SJEC. The impacts of this continued diversion, as opposed to reducing these water diversions and the impacts caused are not analyzed. The DEIS/EIR is also deficient in its explanation of the programs, amounts and locations that will be used to produce the transferable water. No information is provided or maps or descriptions of exactly where the 50,000 acres of land idling will take place. Nor have the detailed impacts from this idling been provided.

O-16

These are inexcusable deficiencies for any DEIS/EIR, but particularly for one prepared by a Federal Agency with primary responsibility for protecting the public trust and ensuring the provisions of the CVPIA are carried out prior to transfers for sale of water for 25 years.

O-17

Thank you for the opportunity to comment and your consideration of our comments.

Sincerely,

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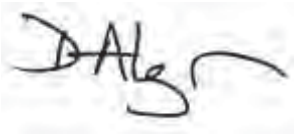

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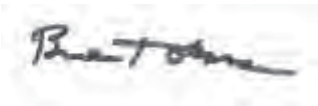

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Desal Response Group

Cc: Phil Isenberg, Delta Stewardship Council
Tom Howard, Executive Director, State Water Resources Control Board
Interested Parties

Attachment: January 2012 USFWS Grasslands Wetlands Supply Refuge Conveyance Proposal

Refuge water supplies delivered to the South Grasslands, and some of the supplies delivered to the North Grasslands Wildlife Area are conveyed through the Delta Mendota Canal (DMC) and then routed through Central California Irrigation District's (CCID) Main Canal. At approximately Milepost 92 (the Mileposts measure distance of the DMC from the Delta pumps) the DMC is within 2 miles of the south Grasslands. The DMC then continues for an additional 24.5 miles to its terminus at Milepost 116.46 in the Mendota Pool. The last 19.5 miles of the DMC to its terminus at the Mendota Pool is a dirt-lined or poorly lined canal resulting in significant water losses to the shallow groundwater aquifer.

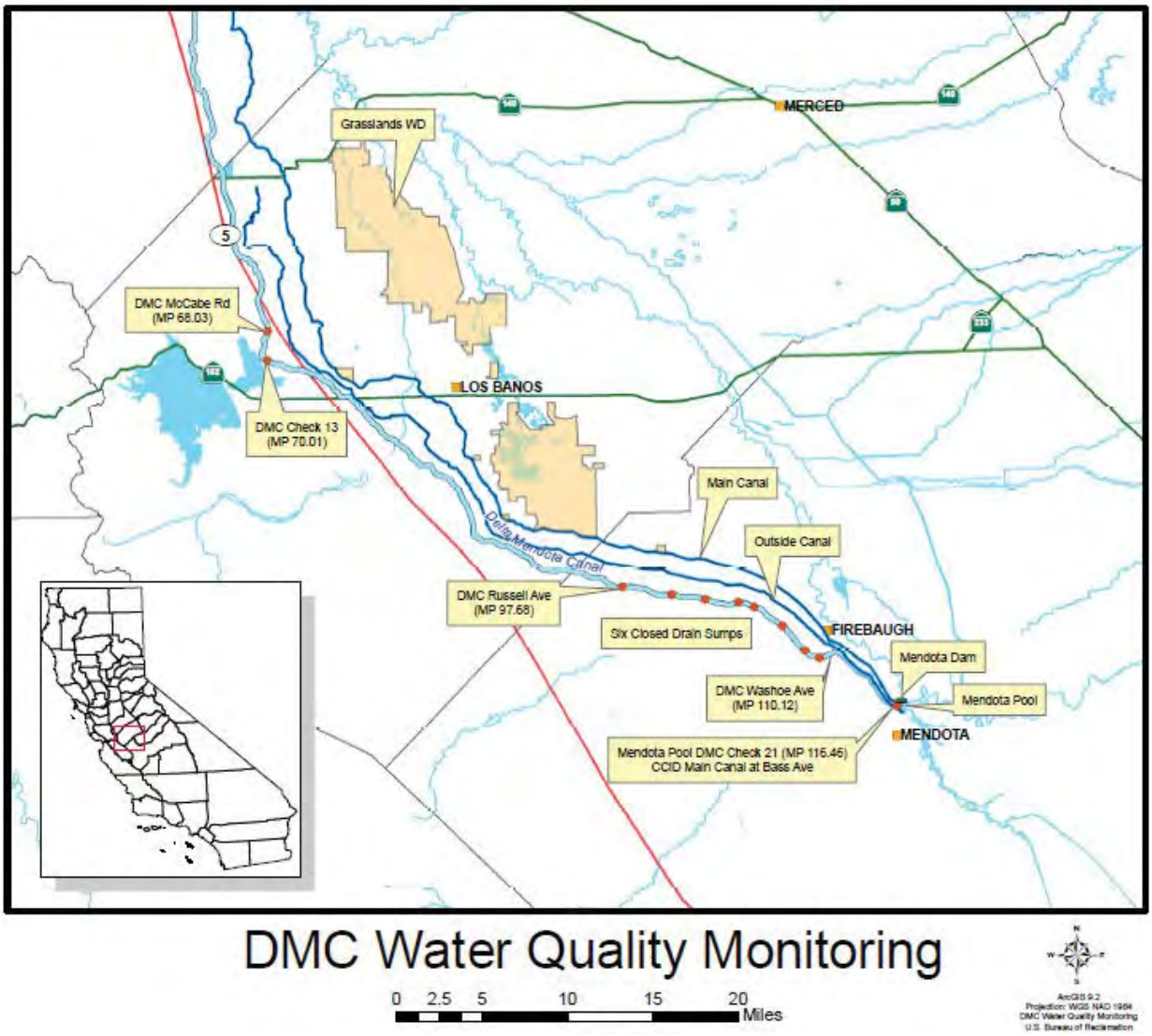
After leaving the DMC, refuge water supplies for the Grasslands wetlands then travel through a private conveyance called the Main Canal, owned by CCID. This constitutes an almost 50-mile U-turn that Grasslands refuge water needs to travel (from Milepost 92) before it is conveyed to the south Grasslands wetland supply channels (Figure 1). Refuge water supplies to the north Grasslands wetlands can continue on in the Main Canal for approximately an additional 25-mile distance. Over that distance refuge waters are degraded by inputs of salts, selenium, boron, mercury and other constituents.

This proposal would provide a separate conveyance for refuge water supplies to the Grasslands Areas. A separate conveyance would improve the quality of water delivered to these wetland areas, and ultimately, for reasons explained below, would be more cost effective than the current system used. Separate conveyance would also reduce the distance these water supplies would travel through open conveyances, and would conserve water currently lost from seepage and evaporation (estimated to be between 15% and 25%).

Water Conservation Benefit

When CVPIA was enacted in 1992, its language mandated that by 2002 all Level 4 refuge water supplies would be provided each year (subject to shortage provisions) to the 19 refuges included in the CVPIA. Summer water for wetlands in the private duck clubs of the Grasslands is provided from Incremental Level 4 refuge water supplies. Incremental Level 4 is that amount of refuge water up to and above Level 2 supply that would be needed to fully implement optimal habitat management practices on the refuge and is the supply that is used in the Grasslands for permanent and semi-permanent wetland habitat management in the spring and summer. Section 3406 (d) of the CVPIA mandated that full Level 4 refuge water supply needs would be met by 2002 http://www.usbr.gov/mp/cvpia/3406d/3406d.html#3406d). Yet, each year has become a challenge to acquire Incremental Level 4 water supplies from willing sellers on the spot market. Since 2002, Incremental Level 4 deliveries to the private duck clubs in the Grasslands have routinely fallen short of the 55,000 acre-foot (AF) quantity mandated by CVPIA to be provided. In FY 2008, roughly 33% of Incremental Level 4 supplies were acquired (~18,000 AF). In FY 2007, roughly 44% of CVPIA mandated quantities were acquired (~24,000 AF) (D. Garrison, USFWS, Region 8 Refuge Water Acquisition Specialist, pers. comm. 2009). Reclamation typically announces availability of

Figure 1. Map of Surface Water Hydrography and Canals, Grasslands Wetlands Vicinity



Incremental Level 4 supplies as late as August reducing the likelihood that summer water habitat will be made available on the private duck clubs of the Grasslands (K. Forrest, Refuge Manager, San Luis NWR Complex, pers. comm. 2007). These land management changes and reduced availability of summer water has coincided with the apparent population declines of the state and federally listed giant garter snake in the Grasslands Wetlands (Beam and Menges 1997, Hansen 1988; Hansen 1996; Paquin *et al*. 2006).

The US Fish and Wildlife Service believes that while a small amount of the currently undelivered Incremental Level 4 supply would be used for additional winter wetland maintenance flows, a vast majority of that amount would be applied on CVPIA refuges and duck clubs in the San Joaquin Valley throughout the spring and summer period. This water would be used to manage several types of habitats, including riparian zones and deeper hemi-marsh with a mix of open water and emergent vegetation, which would

provide reliable, diverse, and high-quality summer water habitat for special status species such as the threatened giant garter snake. Reclamation analyzed the delivery of full Level 4 refuge water supplies for the San Joaquin River Basin in the Final EA/IS for Refuge Water Supply, Long-term Water Supply Agreements (USBR *et al*. 2001). In that document, Reclamation identified that Level 4 deliveries to public and private wetlands in the San Joaquin River Region would result in an additional 6,240 acres of permanent ponds, 57,680 acres of seasonal marshes, and 7,700 acres of watergrass and smartweed habitats, an increase of 31,600 acres over the No Action Alternative acreage.

While this action would not guarantee additional water to the Grasslands area, it would reduce the loss of a significant amount of water through conveyance and would incrementally improve CVP reliability. We estimate that this proposal could conserve up to 31,000 acre-feet of water per year (currently lost during conveyance from evaporation and groundwater seepage) based on 25% canal loss and a delivery of level 2 refuge water amount equal to 125,000 af/year. This freed-up water could be made available to meet Incremental Level 4 refuge water needs, providing summer water habitat to listed species such as the giant garter snake.

Cost Savings benefit by Eliminating Wheeling Costs

Implementation of this proposal could provide a significant cost savings by eliminating the need to pay wheeling costs associated with delivery of refuge water supplies through CCID conveyance facilities currently estimated at $14 per acre-foot (about $1.75 million per year) of refuge water delivered through the Main Canal (a CCID canal) to the Grassland wetlands. To minimize the economic impact to CCID over this loss of Wheeling revenue, Reclamation could consider reallocation of monies currently expended to pay for wheeling of refuge water to the Grasslands into a program similar to the former CVPIA program 3406 (b) (22) which sunsetted in 2002. The (b)(22) program provided financial incentives to encourage farmers to keep fields flooded during appropriate time periods for the purposes of waterfowl habitat creation and maintenance and for Central Valley Project yield enhancement. Such a financial incentive program to encourage rice production in the vicinity of the Grasslands is one of the recovery strategies mentioned in the draft recovery plan for the giant garter snake.

Water Quality Improvement Benefit

Although water quality in the Grassland Area wetland supply channels has improved since the onset of programs that remove subsurface drainwater contamination from these channels in the mid-1990s, water quality in these channels is still degraded below established water quality objectives to protect designated beneficial uses including fish and wildlife. The State Water Resources Control Board (SWRCB) included the Grassland Marshes (Grasslands Area Wetland Supply Channels) on the 2006 303(d) list of impaired water bodies for California as a result of non-compliance with selenium water quality objectives and an existing TMDL for those channels (SWRCB 2007). In addition, the SWRCB included the Grassland Marshes on the 303(d) list of impaired water bodies for and Electrical Conductivity (SWRCB 2007). The SWRCB also listed Salt Slough (a Grassland Wetland Supply Channel) on the 2006 303(d) list of impaired

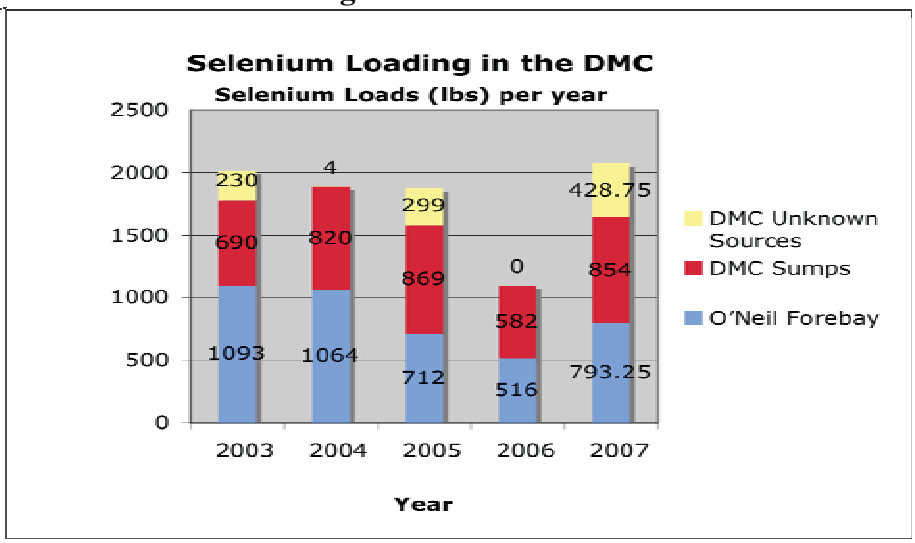
water bodies for Boron, Chlorpyrifos, Diazinon, Electrical Conductivity, Selenium and Unknown Toxicity (SWRCB 2007).

A source of selenium in the Grasslands wetland supply channels has been identified to be supply water in the DMC (Eppinger and Chilcott, 2002). In the 1950s, Reclamation installed check drains and six shallow groundwater sumps (DMC sumps) between Mileposts 99 and 110, parallel to the DMC, to collect small quantities of seepage water or surface runoff to prevent accumulation and possible damage to the canal bank or adjacent lands. Water collected in the subsurface drains is discharged into the DMC by the sumps through six drainage inlet structures. Although flow from Reclamation's DMC sumps is relatively small (the cumulative volume of drainage from the six DMC sumps averages 3.3 acre-feet per day and 110 acre-feet per month from USBR 2008), selenium concentrations in discharged water have ranged from 57 - 2,100 µg/L between 1985 and 2000 (USBR April 2002). Reclamation monitoring data up to 1994 revealed water discharged from sump "K" exceeded California's hazardous waste threshold for selenium in water (1,000 µg/L) in one or more months sampled annually. Since 2003, selenium in water from DMC sump "K" was at or exceeded this State Hazardous Waste threshold for selenium on two separate dates (May 20, 2003 and April 26, 2006: source USBR 2008).

Central Valley Regional Water Quality Control Board staff indicated a close correlation between selenium in DMC and CCID's Main Canal source water and selenium in wetland supply channels, during the non-flood water years of 1999 and 2000 (Eppinger and Chilcott 2002). This staff report noted that when the source water had elevated selenium concentrations (above 2 µg/L) a corresponding increase in selenium concentration was noted in the wetland water supply channels.

Since 2002, Reclamation has monitored the DMC sumps for selenium on a weekly basis. Reclamation water quality monitoring data from various points along the DMC from 2003 to 2007 indicate that between O'Neil Forebay and the Mendota Pool, from 582 to 1,283 pounds of selenium have been added to the DMC supply water annually (see Figure 2 below). Depending on the year, from 67 to 100 percent of that added load downstream of O'Neil Forebay is from the DMC sumps and the remainder of the added load is from unaccounted sources (e.g., DMC check drains) (USBR 2008).

Figure 2.



1. Selenium loads from Unknown Sources were calculated by subtracting the selenium loads from the DMC sumps and at O'Neil Forebay from the selenium loads at the DMC Terminus (MP-116.48 at Bass Ave). In the case of 2006, the input from Unknown Sources was a negative number, and therefore assumed to be zero.

2. For the month of September 2007 a monthly selenium load was not available for O'Neil Forebay. For the purposes of this analysis, a monthly load was calculated as the average of the monthly selenium loads at this location from September for the years 2003-2006.

Water quality sampling of the DMC sumps from 2002 through 2007 by Reclamation has documented elevated concentrations of total mercury in the sump water currently being pumped into the DMC. Total mercury in water from the DMC sumps has ranged from 200 ng/L to 3,000 ng/L and is currently being pumped into the DMC upstream of Mendota Pool (USBR 2008).

Implementation of this proposal would eliminate 50-miles of the DMC and CCID's Main Canal currently used to convey refuge water to the Grasslands. Water conveyed through these reaches of the DMC and Main Canal receives inputs of salts and drainwater contaminants that degrade the quality of water delivered to the Grasslands wetlands (e.g., inputs include DMC sumps and groundwater pump-ins and exchanges of the San Joaquin Exchange Contractors and Mendota Pool pumpers).

<u>Significant Cost Savings benefit by eliminating the need for a DMC Drain</u>

As part of the San Luis Drainage Feature Re-evaluation planning effort, Reclamation proposed the building of a DMC Drain to intercept groundwater at the DMC sumps and convey it to the Grassland Bypass Project's drainage reuse area for reuse, treatment and disposal of approximately 1,100 AF/year of contaminated subsurface agricultural drainage water. The DMC Drain was envisioned to consist of two pipelines. The upstream pipeline would convey drainwater 300 feet from Sump A over the DMC and into the adjoining reuse area. The other 39,700 feet of buried pipeline would collect drainwater from the other five sumps and convey it along the southwestern side of the canal to the southeastern corner of the reuse area (USBR 2006). The cost of building the DMC Drain was estimated to be nearly $10 million based on cost estimates (2006 dollar costs) from the San Luis Drainage Feature Re-evaluation Feasibility Report for the cost of building the DMC Drain (pipeline) and the replacement of existing pumps along the

DMC to collect and convey the DMC sump drainage (S. Irvine, USBR *in litt*. 11.11.2010) and provided in Attachment A.

Implementation of this proposal would eliminate the need to build a DMC Drain/pipeline to route drainwater from the DMC sumps over to the Grassland Bypass Project's drainage reuse area. The Grassland Drainers requested that Reclamation pay for the construction of a drainage treatment plant at a cost of $50 million in exchange for handling the added load of drainage contaminants from the DMC sumps and DMC Drain and share in the cost of operation of the treatment plant for handling the added drainage load from DMC sumps in the drainage reuse area (J. McGahan, *in litt*. 3.22.2010) and provided in Attachment B.

Summary of Benefits of this proposal to build separate refuge water conveyance for the Grasslands would include:

1. Reduction in conveyance losses (from evaporation and groundwater seepage) thereby conserving up to 31,000 acre-feet of water (based on 25% canal loss and a delivery of level 2 refuge water amount equal to 125,000 af). Some of this freed up water could be allocated to meet level 4 refuge water need.
2. Cost savings by eliminating the need to pay wheeling costs associated with delivery of refuge water supplies through CCID conveyance facilities currently estimated at $14 per acre-foot (estimated about $1.75 million per year) of refuge water delivered through the Main Canal (a CCID canal) to the Grassland Area wetlands.
3. Improvement in water quality by removing a section of the DMC and CCID's Main Canal currently used to convey refuge water to the Grasslands that receives inputs of salts and drainwater contaminants (e.g., DMC sumps and San Joaquin Exchange Contractor groundwater pump-ins and exchanges).
4. Elimination of the need to build a DMC Drain/pipeline to route drainwater over to the Grassland Bypass Project's drainage reuse area, at a cost savings of $10 million (2006 dollar costs).
5. Elimination of the need to pay the Grassland Drainers $50 million for handling the added drainage load from DMC sumps in the Grassland Bypass Project's drainage reuse area.

References

Beam, J. A., & Menges, T. M. (1997). *Evaluation of Management Practices on State-owned Wildlife Areas and Private Duck Clubs in the Grassland Basin of the San Joaquin Valley Relative to the iant arter Snake (Thamnophis gigas).* Unpublished Report, California Department of Fish and ame, Los Banos, CA.

Eppinger and Chilcott. (2002). *Review of Selenium Concentrations in Wetlands Water Supply Channels in the Grassland Watershed (Water Years 1999 and 2000)*. Staff Report of the California Environmental Protection Agency, Regional Water Quality Control Board, Central Valley Region, Sacramento, CA, 31 pp. Available at: http://www.swrcb.ca.gov/rwqcb5/water_issues/water_quality_studies/SJR9900.pdf

Hansen, . E. (1988). *Review of the status of the giant garter snake (Thamnophis couchi gigas) and its supporting habitat during 1986-1987*. Final report for California Department of Fish & a me Contract C-2060. Unpublished Report. 31 pp.

Hansen, . E. (1996). *Status of the giant garter snake (Thamnophis gigas) in the San Joaquin Valley in 1995.* inal report for the Califor nia Department of Fish and a me, Standard Agreement No. 4052IF. Unpublished Report, 31 pp.

Paquin, M.M., . D. Wylie, and E.J. Routman. (2006). *Population Structure of the Giant arter Snake, Thamnophis gigas*. Conservation e netics, 7(1): 25-36.

[SWRCB] California State Water Resources Control Board. (2007). *EPA Approved 2006 Revision of the Clean Water Act Section 303(d) List of Water Quality Limited Segments.* SWRCB Division of Water Quality, Sacramento, CA. Available at: http://www.waterboards.ca.gov/water_issues/programs/tmdl/303d_lists2006_epa.shtml

[USBR] U.S. Bureau of Reclamation. ebruary 15, (2008). *Delta-Mendota Canal Water Quality Monitoring Program Monthly Report of Flows, Concentrations, and Loads, December 2007*. Reports distributed monthly via e-mail by Chris Eacock, USBR, Mid-Pacific Region, South Central California Office, r esno, CA, 22 pp.

[USBR *et al*.] U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, California Department of Fish and Game, and Grassland Water District. (2001). Refuge Water Supply, San Joaquin River Basin Long-Term Water Supply Agreements. inal NEPA E nvironmental Assessment and CEQA Initial Studies. USBR, Mid-Pacific Region, Sacramento, CA, 6 sections and 3 appendices.

In Litteris

McGahan, J. Letter from the Drainage Coordinator Grassland Basin Drainers, San Luis & Delta Mendota Water Authority to Michael Paul Jackson, Area Manager, U.S. Bureau of Reclamation South Central California Area Office, regarding License Agreement to discharge DMC Sumps into the Grassland Bypass Project. 3.22.2010

Irvine, S. Electronic mail from Engineer, USBR, Denver to J. Winckel, Fish and Wildlife Biologist, Endangered Species Division, Sacramento Fish and Widlife Office, Sacramento. 11.11.2010

Personal Communications

Garrison, D. 2009. USFWS, Region 8 Refuge Water Acquisition Specialist.

Forrest, F. 2007. USFWS, Refuge Manager, San Luis NWR Complex.

Attachment A.

CONSTRUCTION COST ESTIMATE

PROJECT: Central Valley Project	PREPARED BY: Regional Office, Sacramento, CA
DIVISION: West San Joaquin Division	ESTIMATE DATE: July 2007 (Rvised after DEC)
UNIT: San Luis Unit – Drainage System – Northerly Area	ESTIMATE TYPE: Feasibility
FEATURE: Drainage Feature Re-Evaluation Feasibility Study	PRICE LEVEL: April 2006

PROPERTY CLASS	IDENTIFIED PROPERTY	PLANT ACCOUNT	ITEM	DESCRIPTION	QUANTITY	UNIT	PRICE	AMOUNT	FIELD COST	TOTAL FIELD COST	NONCONTRACT COST	CONSTRUCTION COST
07	03			DELTA - MENDOTA CANAL DRAINAGE PIPELINE						7,175,000	1,925,000	9,100,000
				Overall pipe length 10.80 miles, diameter range 10" to 18", HDPE pipe.								
		100		Land and Rights - This pipe system is constructed on the ROW of the					0			
				Delta Mendota Canal (an existing federal facility) and the Northerly								
				Reuse Area. ROW costs are included with other features.								
		152		Waterways					7,000,000			
			1	Excavation	200,000	cy	4.50	900,000				
			2	Backfill	200,000	cy	3.00	600,000				
			3	Compacting backfill	1,300	cy	8.50	11,050				
			4	Select fill (bedding)	130	cy	55.00	7,150				
			5	Excavation - Trench box	10,000	cy	15.00	150,000				
			6	Backfill - Trench box	9,600	cy	7.00	67,200				
			7	Compacting backfill - Trench box	24,700	cy	20.00	494,000				
			8	Select fill (bedding) - Trench box	2,500	cy	60.00	150,000				
			9	Unwatering	1	ls	500,000.00	500,000				
				Furnish and Lay the following HDPE Pipe								
			10	10 inch DR32.5	5,800	lf	19.00	110,200				
			11	12 inch DR32.5	28,000	lf	29.00	812,000				
			12	14 inch DR32.5	9,700	lf	33.00	287,100				
			13	18 inch DR32.5	14,500	lf	50.00	725,000				
			14	Mobilization (+/- 5%)				240,685				
			15	Unlisted Items (+/- 15%)				745,615				
				Subtotal				5,800,000				
				Contingencies (+/- 20%)				1,200,000				
				Field Cost - Waterways				7,000,000				

CONSTRUCTION COST ESTIMATE

PROJECT: Central Valley Project	PREPARED BY: Regional Office, Sacramento, CA
DIVISION: West San Joaquin Division	ESTIMATE DATE: July 2007 (Rvised after DEC)
UNIT: San Luis Unit -- Drainage System -- Northerly Area	ESTIMATE TYPE: Feasibility
FEATURE: Drainage Feature Re-Evaluation Feasibility Study	PRICE LEVEL: April 2006

PROPERTY CLASS	IDENTIFIED PROPERTY	PLANT ACCOUNT	ITEM	DESCRIPTION	QUANTITY	UNIT	PRICE	AMOUNT	FIELD COST	TOTAL FIELD COST	NONCONTRACT COST	CONSTRUCTION COST
07	03			DELTA - MENDOTA CANAL DRAINAGE PIPELINE (continued)								
		153		Waterway Structures					175,000			
			1	Pipe Crossings, Roads: Pipe Dia 24" and less	2	ls	60,000.00	120,000				
			2	Mobilization (+/- 5%)				6,000				
			3	Unlisted Items (+/- 15%)				19,000				
				Subtotal				145,000				
				Contingencies (+/- 20%)				30,000				
				Field Cost - Waterway Structures				175,000				
				FACILITATING SERVICES (2%)								
				INVESTIGATIONS (3%)								
				DESIGNS & SPECIFICATIONS (10%)								
				CONSTRUCTION SUPERVISION (12%)								
				OTHER COSTS (+/- 27%)							1,925,000	

Attachment B.

March 22, 2010

Michael Paul Jackson, P.E.
Area Manager
South Central California Area Office
1243 N Street
Fresno, CA 93721

Subject: License Agreement to discharge DMC Sumps into the Grassland Bypass Project

Dear Michael:

You have requested that the Grassland Basin Drainers provide you the details of a proposed license agreement to discharge the DMC sumps into the Grassland Bypass Project. This letter describes the benefits and proposed basis for Reclamation to enter into such a license agreement.

First, the DMC sump discharge has been identified as causing water supplies that are delivered to wetlands to exceed water quality objectives (2 ppb monthly mean) or to "use" all the available dilution capacity that is available in the fresh water supplies from the DMC or other sources in Mendota Pool. Supply water upstream of the sumps in the DMC is generally very low, not approaching the 2 ppb objective. A 2 ppb concentration is very easily exceeded with any selenium discharge into the system or available from natural sources. If the water delivered into wetland channels is approaching 2 ppb then any additional natural loading will cause the concentration to exceed 2 ppb and violate standards. Replumbing the sumps so they no longer discharge into the DMC will therefore assist USBR in meeting its obligation to deliver water supplies of acceptable quality to wetlands without contributing to selenium exceedances from DMC operations.

Second, USBR programs, such as the San Luis Drain Feature Reevaluation FEIS identifies replumbing the sumps, so entering into a license agreement will assist in implementation of that program. Further, the SLDFRE identifies implementation of the Westside Regional Drainage Plan as providing long-term drainage service to the area within and outside the San Luis Unit that is within the Grassland Basin Drainage Service Area. The Grassland Bypass Project is a key provision of the initial stages of that Plan, and the San Joaquin River Improvement Project is a critical component on an ongoing basis.

Third, Reclamation will realize the benefits of participating in an established, ongoing drainage management project that has a proven track record, existing infrastructure, and permits in place in order to address the issue of the DMC sumps. The Grassland Bypass is a long standing project, with initial components developed in the early 1990's and formalized in 1996. Infrastructure has been developed and permitting has been obtained

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to allow for management of drainwater, while at the same time allowing some of the water to be discharged to the San Joaquin River

While Reclamation has been party to the Use Agreement and has assisted with substantial financial support in the form of monitoring costs assumed and more recently, with assistance agreements to support infrastructure improvements, the Grassland Area Farmers have already provided both the lead role and enormous investments in developing, managing and operating the Project since 1996. Some of these investments include funding the Grassland Bypass Channel, operation and maintenance of the portion of the San Luis Drain in the Use Agreement, development, operation and maintenance of the San Joaquin River Improvement Project and with irrigation efficiency and infrastructure improvements in the farming area. With this in mind, the USBR needs not only to pay for an ongoing share of the additional load that will be managed by the project once the sumps are re-directed, but also a license fee to "buy in" to the project that has already been developed.

Costs for various components of the Grassland Bypass Project have been estimated using the best available data. Many of these components have not been fully developed and therefore cost data is not available. With that qualification, we include an estimate of the ongoing costs in the attached table. We also include an initial estimate of what costs would be the obligation of the USBR and what costs would be proportioned to all participants. Costs are also dependant on things like what loads are discharged out the San Luis Drain into Mud Slough. These discharges, if they exceed allowable selenium loads, can trigger incentive fees and in years 6-10 of the new Use Agreement supplemental mitigation fees. Of course, the actual fees are unknown until actual discharges are known. These discharges also depend on water year types which are unknown. With that said, we include a best estimate of discharges.

The last major step in completion of the Westside Regional Drainage Plan is treatment to eliminate irrigation-induced drainage to Mud Slough and the San Joaquin River. Full funding has yet to be developed for this project. We assume that funding will come from local, state and federal sources, and that the USBR would continue to act as a partner in developing the funding for this final stage.

Attached is a longer description of the issues related to taking the DMC sumps into the Grassland Bypass Project.

Very truly yours,

Joseph C. McGahan
Drainage Coordinator
Grassland Basin Drainers

		Estimated Cost				USBR Share				GBD Share			
						One time	Annual			One time	Annual		
	Shared Costs:						10.2%		11.7%		89.8%	to	88.3%
1	Improvements to China Island/Blue Goose	$ 200,000	one time			$ 23,364				$ 176,636			
2	SJRIP Operations	$ 800,000	annual				$ 81,651	to	$ 93,457		$ 718,349	to	$ 706,543
3	GBD Budget	$ 1,500,000	annual				$ 153,095	to	$ 175,231		$ 1,346,905	to	$ 1,324,769
4	Incentive Fees	$ 541,125	to	$ 1,200,000	Years 6-10		$ 55,229	to	$ 140,185		$ 485,896	to	$ 1,059,815
5	Incentive fees for salt	Assume $0											
6	Supplemental Mitigation Fees (Se)	$ 112,500	to	$ 187,500	Years 6-10		$ 11,482	to	$ 21,904		$ 101,018	to	$ 165,596
	Subtotal					$ 23,364	$ 301,458	to	$ 430,777	$ 176,636	$ 2,652,167	to	$ 3,256,723
	USBR Buy-in Costs:												
7	Plumb sumps into the SJRIP	$ 500,000	one time			$ 500,000							
8	Develop additional 700 acres reuse area	$ 4,340,000	one time			$ 4,340,000							
9	Mitigation Water	$ 480,000	annual				$ 480,000	to	$ 480,000				
10	Kit Fox Compensation Habitat	$ 500,000	annual				$ 500,000	to	$ 500,000				
	Subtotal					$ 4,840,000	$ 980,000	to	$ 980,000				
	Total					$ 4,863,364	$ 1,281,458	to	$ 1,410,777	$ 176,636	$ 2,652,167	to	$ 3,256,723
	Funding to be developed:												
11	Treatment	$ 50,000,000	one time			$ 50,000,000							

Proposed License Agreement Between Panoche Drainage District or_____ and the USBR to incorporate the DMC Sumps into the Grassland Bypass Project

BACKGROUND

The Delta Mendota Canal (DMC) sumps are located in a reach of the DMC between Milepost 100.86 and 109.5 (from approximately Brannon Ave. to Washoe Ave). These sumps were installed under a long-term commitment by Reclamation to mitigate for drainage impacts in the unlined portion of the Delta-Mendota Canal resulting from its construction and operation. These sumps have been identified as discharging selenium, salt, boron and other constituents to the DMC which in turn delivers water to the Grassland wetland areas. The USBR has identified average discharges of 1,300 acre-feet, 732 pounds selenium and 8,268 tons of salt per year for the period July 2002 through June 2009 (USBR, June 2009 DMC Water Quality Monitoring Report, Tables 8a and 8b). These DMC sumps are not part of the Grassland Bypass Project, a local project to manage drainage discharges from the Grassland Drainage Area, but are discharged into the water supply for the area. The Grassland Bypass Project is under regulation (through Waste Discharge Requirements from the Central Valley Regional Water Quality Control Board WDR 5-01-234 and under the terms of the 2010-2019 Use Agreement No. 10-WC-20-3975 for discharges of selenium with monthly and annual selenium and salt limits. Selenium load limits for 2010 vary depending on year type of from 1,658 pounds in a critical year to 4,480 pounds in a wet year. DMC sumps could amount to 44% of the allowable load in a critical year.

The Grassland Bypass Project incorporates projects to reduce discharges to the San Joaquin River and comply with the regulations. One main component is the San Joaquin River Improvement Project or SJRIP. The time schedule for full implementation of the project was recently extended for a period of 2010 to 2019. The reason for the extension is to allow time for funding and technology to implement the final components of the project to eliminate agricultural discharges to Mud Slough (North) and the San Joaquin River.

It is the desire of the USBR and the USF&WS to incorporate these sumps into the SJRIP so that their discharge is no longer part of freshwater deliveries to wetland areas. This desire is characterized in several governing documents for the 2010-2019 Use Agreement as follows:

The Grassland Bypass Project, 2010-2019 EIS/EIR states:
"The GBD have requested that Reclamation enter into a process to identify and negotiate terms to include Reclamation's Delta-Mendota Canal (DMC) sumps into the GBP and SJRIP facility reuse area and to remove DMC sump discharges from the Delta-Mendota Canal. These sumps were installed under a long-term commitment by Reclamation to mitigate for drainage impacts in the unlined portion of the Delta-Mendota Canal resulting from its construction and operation. The DMC sumps provide a benefit to Central Valley Project operations generally and are separate from the Grassland Bypass

Project. Therefore, any agreement to reroute the sumps for disposal through the Grassland Bypass Project must address Reclamation's responsibility for treatment and disposal of this additional subsurface drainage water and how this reduction fits into the respective obligations under the Regional Board's salt, boron and selenium TMDLs."

The December 21, 2009, Record of Decision regarding execution of a new Use Agreement for the continued use of the San Luis Drain, 2010-2019, states on page 7: "In addition to the MMRP, Reclamation and the Authority will comply will all the terms and conditions found in the incidental take statement appended to the 2009 Biological Opinion.

With regard to the DMC sumps, the Final BO, 2010-2019 Use Agreement or the Grassland Bypass Project, December 2009, File NO. 81420-2009-F-1-36 includes under the Terms and Conditions for Giant Garter Snake that:
"3. Reclamation will include a commitment in the GBP Extension ROD that by October 1, 2012, subject to any necessary negotiations with the Authority and any required regulatory agencies, as appropriate, Reclamation and/or the Authority will complete the necessary infrastructure to route the drainage from the DMC sumps (described in the Environmental Baseline of this opinion) to the SJRIP drainage reuse area. Reclamation will negotiate with the Water Authority the necessary terms to include Reclamation's DMC sumps into the GBP and SJRIP facility reuse area."

The USBR has appropriated funds to begin this process as follows:

2009 SJR Salinity Management Grant (USBR Appropriations to Panoche DD) has $500,000 appropriated to:
2.6 <u>Modification of Existing Delta-Mendota Canal Interceptor Sump Discharge</u>
The recipient will develop and construct the Modification of Existing Delta-Mendota Canal Interceptor Sump Discharge to construct new discharge pipelines for each sump and reroute the discharge into the regional drainage system where it will be managed with the Grassland Drainage Area drain water through recirculation and reuse. The project will include the installation of up to 6 new electric pumps and corresponding electrical controls, construction of new discharge pipelines to the new discharge location, construction of pipe crossings of the Delta-Mendota Canal where required and in accordance with Reclamation standards, and discharge facilities, including energy dissipaters, metering, and valves, as required.
2.6.1 Environmental Compliance for the project, including, but not limited to, a CEQA Categorical Exemption.
2.6.2 Project Design as needed to construct the project.
2.6.3 Project Construction as needed to construct the project.

It is the intent of Panoche Drainage District and Firebaugh Canal Water District as the owners of the San Joaquin River Improvement Project and Panoche Drainage District as the primary operator of the Grassland Bypass Project and the USBR to enter into a license agreement to permit the discharge of water from the DMC sumps into the SJRIP and for ongoing operation costs. A tentative physical plan has been developed in a

January 22, 2009 memo by Summers Engineering, incorporated by reference, to do the actual plumbing. This is a tentative plan and will need further development. Provisions to address several issues are required to be incorporated into the license agreement, including but not limited to:

- Cost of plumbing the sumps into the SJRIP.
- Additional selenium and salt load and applicable fees per the Use Agreement.
- Mitigation costs for the Grassland Bypass Project.
- Additional annual operation and maintenance costs.

There are obligations incorporated into the 2010-2019 Use Agreement and Biological Opinion. These include the requirement to provide water on mitigation ground for the continued use of Mud Slough within federal and state refuges during the term of the 2010-2019 Use Agreement. There is also a requirement in the Biological Opinion to provide compensation habitat for kit fox impacts within the SJRIP, as well as to proceed with infrastructure improvements to protect giant garter snake and avian species.

CONCEPTUAL PRELIMINARY PROJECT COSTS

Estimated and placeholder costs for items related to the 2010-2019 Use Agreement are as follows:

1. Cost to plumb the sumps into the SJRIP. $500,000. USBR 100% license cost.

2. Improvements to China Island (DF&G) and Blues Goose (USF&WS) to provide mitigation for continued use of Mud Slough = $200,000. Shared cost.

3. Water for mitigation ground: 1,600 acre-feet per year at $300 per acre foot = $480,000 per year. USBR 100% license cost.

4. Annual SJRIP operation costs (needs to include future treatment) related to the additional load from the DMC sumps: $800,000 per year not including treatment. Shared cost.

5. Kit fox compensation habitat: Up to 1,000 acres at $5,000 per acre. Assume $500,000 per year for 10 years. USBR 100% license cost.

6. Purchase and develop additional 700 acres in addition to the existing 6,200 acres to bring total SJRIP area to 6,900 acres. 700 acres * $5,000 per acre purchase and $1,200 per acre develop = $4,340,000 one time cost. USBR 100% license cost.

7. Incentive Fees - $/lb of selenium depending on water year type and/or monthly or annual exceedances and how these relate to the additional 732 lbs/year of selenium taken into the project from the DMC sumps. Shared cost.

8. Supplemental mitigation starting in 2015 for every pound of selenium discharged and how these relate to the additional 732 lbs/year of selenium taken into the project from the DMC sums. Shared cost.

9. GBD Budget: $1,500,000 per year related to additional load from DMC sumps. Shared cost.

10. Treatment. The current cost of treatment is unknown and pilot plants are in planning to determine this cost. The estimate in the Westside Regional Drainage Plan of $50,000,000 was used here. These costs would be 100% USBR license cost.

Shared cost would be based on the discharge from the DMC sumps, estimated to be 732 lbs of selenium per year compared to the selenium load generated within the Grassland Drainage Area, estimated to be 6,440 lbs selenium in a wet year type (2005 basis) and 5,534 lbs of selenium in a critical year.

Response to Letter O-1 ***California Water Impact Network, Sierra Club California, Southern California Watershed Alliance, California Sportfishing Protection Alliance, Center for Biological Diversity, Food and Water Watch, Salmon Water Now, AquaAlliance, Pacific Coast Federation of Fisherman's Association, Crab Boat Owners Association***

O-1-1
Introductory comments are noted and considered, and those dealing with the content of the EIS/EIR are addressed in subsequent responses below. In short, CVP water supply commitments have been made in previous contracts with all of the potential water users and analyzed in environmental documents with effects summarized in Section 3 of the EIS/EIR. Like other water transfers within the CVP and with effects within the SWP, the Proposed Program seeks to make efficient and beneficial use of these water supplies.

The commenter attempts to incorporate by reference comments made on the *2010-2011 Water Transfer Program, Draft Environmental Assessment* (Reclamation 2010b). Under NEPA, the comments were answered in 2010 and placed on Reclamation's website in the Final EA/IS Appendix D (Reclamation 2010): http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=4699 .

A lead agency under CEQA is not obligated under CEQA to provide responses to the comments incorporated by reference, especially considering the document referred to predates the draft EIR. The lead agency did not receive the referenced comments from AquaAlliance, California Sportfishing Protection Alliance, and the California Water Impact Network. Thus, no responses to those untimely comments are provided. (Cal. Code regs, Tit. 14, §1508, subd. (a)) to the extent the comments are discussed as a courtesy, the adequacy of responses to late comments may not be a basis for challenge of legal adequacy. Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1111 and no waiver of that defense will occur by attempting to respond. The referenced comments pertain to a separate and distinct short-term project. The lead agency cannot and does not assume that the comments from 2010 pertain to the project analyzed in the current 2012 Draft EIS/EIR. Furthermore, comments made before the completion of the Draft EIS/EIR do not support a claim of CEQA noncompliance. (Publ Res. Code § 21177, subd. (a); Sierra Club v. City of Orange (2008) 163 Cal.App.4th 523, 536-537).

O-1-2
The existing condition baseline is correct under CEQA. Where the No Action/No Project condition is different from the existing condition, which is the case primarily for the surface water and socioeconomic impact analyses, then the comparison to a "without the project" but with reasonably foreseeable future projects and programs is made. The existing conditions baseline is correct for the CEQA analysis as stated in comment R-4-13, which cites CEQA Guidelines Section 15125(a) defining the existing physical

environment as the baseline physical conditions for determination of the significance of an impact. The physical environment has adjusted to the existing Program. This practice is common and appropriate for analysis of the continuation of a project from the past into the future.

O-1-3
The CVP place of use will not be exceeded. Since transferred water will be CVP water, the comment that a place of use would be exceeded is incorrect. The Exchange Contractors, to the extent they receive water deliveries from the San Joaquin River, are entitled to that water under their pre-1914 and riparian water rights. If any of that water is used to transfer water to the waterfowl habitat (wildlife refuges) in the Exchange Contractors' service area, Water Code Section 1706 provides authority for that use outside the Exchange Contractors' service area; since customarily some CVP water and some San Joaquin River water are always commingled in the Exchange Contractors' deliveries, the commingling could trace the water from either source to the waterfowl habitat recipients of transfer water supplies.

The transfer actions addressed in the EIS/EIR do not require any State Board approvals. Instead, to the extent of CVP water sources, approval of Reclamation to use water in other areas of the CVP is required. Further, Section 1706 provides authority to use the San Joaquin River source water for local transfers in the same watershed. These comments regarding claimed legal restrictions are not comments upon environmental conditions but instead claimed legal interpretations. This document is an EIR/EIS to examine environmental impacts. Although legal restrictions do make up the background to the Proposed Program, the restrictions do not amount to environmental impacts and in this case do not generate or cause significant environmental impacts.

CVP water is not going to be delivered to areas outside the existing CVP place of use. Therefore, an order from the State Board is not needed. Furthermore, additional legislation has further defined the CVP place of use to address the CVP as a single project operating under integrated water rights. Section 207(a) of Division B, Title II of HR 2055 (found on page 81) provides in its entirety that:

> Subject to compliance with all applicable Federal and State laws, a transfer of irrigation water among Central Valley Project contractors, from the Friant, San Felipe, West San Joaquin, and Delta divisions, and a transfer from a long-term Friant Division water service or repayment contractor to a temporary or prior temporary service contractors within the place of use in existence on the date of the transfer, as identified in the Bureau of Reclamation water rights permits for the Friant Division, shall be considered to meet the conditions described in subparagraphs (A) and (I) of section 3405(a)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4709).

Concerning the Delta Stewardship Council, the commenter may want to review the Delta Protection Commission's comment letter (S-3) and our responses.

O-1-4

The transfer approval letters and supporting annual reports do not need to be included in the EIS/EIR document. Also see Responses R-5-15 and R-5-16. Section 4.2 is focused on the impacts of water development from conservation and temporary land fallowing measures including the potential for reductions in return flows to the San Joaquin River. These reductions in return flows of 0 to 2 cfs are barely discernible; see Responses F-1-8 and F-1-13. Water sales/transfers are conducted consistent with CVP and CVPIA requirements. The CVPIA was signed into law in 1992 to mandate changes in management of the CVP. In addition to protecting, restoring, and enhancing fish and wildlife, one of the CVPIA's other purposes is to increase water-related benefits provided by the CVP to the State of California through expanded use of voluntary water transfers and improved water conservation. To assist California urban areas, agricultural water users, and others in meeting their future water needs, CVPIA Section 3405(a) authorizes all individuals or districts who receive CVP water under water service or repayment contracts, water rights settlement contracts or exchange contracts to transfer, subject to certain terms and conditions, all or a portion of the water subject to such contract to any other California water users or water agency, state or Federal agency, Indian Tribe, or private nonprofit organization for project purposes or any purpose recognized as beneficial under applicable state law.

Regional Board data confirm that the Grassland Bypass Project has consistently achieved its goals specified in the 2001 Waste Discharge Requirements to reduce selenium levels in the San Joaquin River and adjacent wetlands (see Grassland Bypass Project monitoring reports at http://www.sfei.org/gbp). The 1995, 2001, and 2009 Use Agreements impose significant fees for exceedances of monthly and annual selenium load values. Exceedances of monthly load values have occurred in 19 of 183 months, usually during winter months following heavy rainstorms across the Grassland Drainage Area. Incentive fees were paid for applicable exceedances in these months. No exceedances of monthly load values have occurred since February 2006 (see Figure 1 below).

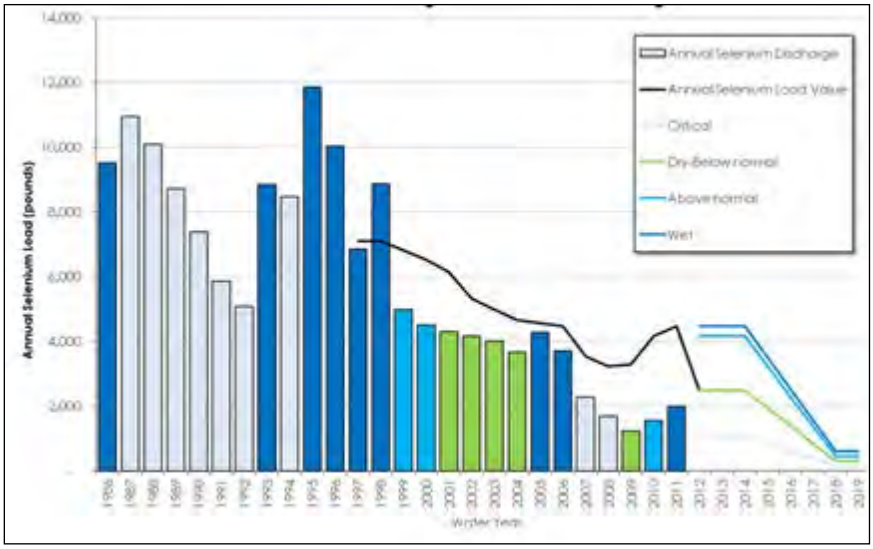

Figure 1. Grassland Bypass Project Annual Loads of Selenium Discharged from the Grassland Drainage Area

Reductions of loads subsequent to 2004 were accomplished through implementation of conservation projects within the Grassland Drainage Area, largely funded through transfer proceeds from the Exchange Contractors' previous 10-year water transfer program (2005–2014).

O-1-5
An increment of 42,000 acre-feet of land fallowing and 20,000 acre-feet of additional conservation has been analyzed in comparison to the affected environment. Concerning hydrology affected by diversions to Stockton East Water District (SEWD), the affected environment incorporated New Melones diversions of up to 135,000 acre-feet within a modeled viable operation of New Melones inclusive of goals to meet current objectives including the June 2009 Biological Opinion.

O-1-6
Comment noted and considered; see Response F-1-7 for how revenues from transfer water sales are used. The baseline condition and hydrologic analysis are clearly articulated in Appendix B.

O-1-7
The EIS/EIR is clear about the potential recipients of the transfer water, both the RWSP and specific CVP and SWP water users. It remains for water transfer agreements to be written, and given that the Proposed Program is for 25 years, these agreements may be established early or late in the period. No induced growth would occur for the reasons specified in Section 13.4, because all of the transfers would not exceed CVP and SWP contractual supplies. Concerning the comment regarding Westlands Water District and drainage, please see Section 1.3.5 on the Grassland Bypass Project, 2010-2019, and Section 3.3.7, Related Biological Opinions and ESA Consultations. As stated in Response F-1-17, the drainage-impaired lands/districts have approved and are implementing projects and procedures to improve water quality by reducing selenium and salt loads in discharges to the San Joaquin River (Grassland Bypass Project, 2010–2019), through implementation of the Westside Regional Drainage Plan (a cooperative effort to solve drainage issues among both transferors and transfer recipients).

O-1-8
The Proposed Program has been properly evaluated; see Response F-1-2. A full range of alternatives that meet the purpose and need/project objectives has been evaluated. See Section 2.5 and Table 2-5). Also see Responses F-1-17 and R-4-1.

O-1-9
Concerning transfer details, see Response O-1-7 above. Concerning the analysis of the current Transfer Program, see Responses R-4-9, R-4-10, R-4-13, and R-4-27. Concerning the cumulative analysis comment, see Response R-5-12.

O-1-10
Comment noted and considered. See Response O-1-7 above.

O-1-11
The comments on impacts are addressed primarily in Responses R-4-2, R-4-7, R-4-11, R-4-12, R-4-13, and R-5-11.

O-1-12
Total historical pumping has amounted to the averaged value cited. However, of that amount approximately 80,000 acre-feet is considered in the Proposed Program for transfer purposes. The remaining amount of tailwater pumping has occurred and will continue to occur as part of the Exchange Contractors' water supply. The affected environment has experienced and is depicted to include the 134,000 acre-feet pumping level. The impacts, associated with the full amount of tailwater recapture, if any, have already occurred and are part of the environmental baseline. See Responses R-4-27 and R-5-6 regarding the identification of the affected environment.

Concerning the request for monitoring data, see Response R-5-16.

O-1-13
Comment noted and considered. See Responses R-5-4 and R-5-8 regarding the appropriate scope and level of analysis and disclosure needed for review. The subject document fully discloses the relative changes in flow at Vernalis associated with the Proposed Program in Section 4.2.2 and Appendix B. See Response R-4-27 regarding the identification of the affected environment. See Section 6.2 for discussion of why the Proposed Program does not impact species in the adjacent refuges and also Response F-1-13. Historical transfers to Reclamation for the wildlife refuges are shown on Table 1-1, up to 63,500 acre-feet in 2002 and a total of 422,126 over the period 1999–2010. For the importance of this transfer water to the refuges, see the hearing transcript comments provided by John Beam for Grassland Water District. Concerning the attached separate refuge conveyance grant proposal, it is not part of the cumulative impacts analysis, because it is not currently considered a reasonably foreseeable future action. This conceptual proposal has not undertaken any formal feasibility or planning study.

O-1-14
Comments are addressed in the responses above on the identification of the affected environment and the appropriate scope and level of analysis and disclosure needed for review.

The CVPIA amended previous authorizations of the CVP to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic water supply uses, and fish and wildlife enhancement as having an equal priority with power generation. Among the changes mandated by the CVPIA are:

- Dedicating 800,000 acre-feet annually to fish, wildlife, and habitat restoration
- Authorizing water transfers outside the CVP service area
- Implementing an anadromous fish restoration program
- Creating a restoration fund financed by water and power users

- Providing for the Shasta Temperature Control Device
- Implementing fish passage measures at Red Bluff Diversion Dam to increase the CVP yield
- Mandating firm water supplies for Central Valley wildlife refuges
- Meeting federal trust responsibility to protect fishery resources (Trinity River)

Reclamation has been implementing the CVPIA on a broad front. Operations of the CVP reflect provisions of the CVPIA, particularly Sections 3406(b)(1), (b)(2), and (b)(3). The Department of the Interior's Decision on Implementation of CVPIA Section 3406(b)(2) (October 5, 1999) provides the basis for implementing upstream and Delta actions affecting CVP delivery capability.

The Proposed Program is clear about making water available under the RWSP to meet Incremental Level 4 requirements of the wildlife refuges. See Responses R-4-7 and R-4-11.

The comment on the figure showing Delta exports and fall salmon returns 2001–2009 as the basis for reduced pumping from the Delta does not consider that the potential transfers would be within the CVP place of use.

O-1-15
Comment noted and considered and addressed substantially in the responses above. The conservation measures developed and implemented by the Exchange Contractors have not been "funded by Reclamation or state grants" as stated in the comment. Rather, the revenues from water transfer sales are used to fund conservation and drainage management projects within the Exchange Contractors' service area. See Responses F-1-7 and R-4-9 on this issue. See Section 3.3.7, Related Biological Opinions and ESA Consultations, for water use by the potential transfer water buyers consistent with their contractual supplies. Where 1- or 2-year water transfers have been considered in separate environmental documents, the Proposed Program is comprehensive and would involve new agreements with the affected districts; these water transfer sales should not be double-counted. The reassignment of CVP water from one district to another is evaluated in documents that have been included in the evaluations in Section 3 and sufficiently address the change in water supplies, including Westlands Water District.

Concerning previous water reassignments, the comment is noted and considered.

O-1-16
The comments are noted and considered and substantially addressed in the responses above including the references to other responses contained in this Appendix G. The broader question of objections to the Exchange Contract and provision of CVP substitute water from Shasta Reservoir are noted. Water resources north of the Delta including the Trinity, Sacramento, and American rivers are not analyzed in this EIS/EIR as the diversion of water is an ongoing action and the current conditions of that diversion were analyzed in the Programmatic Environmental Impact Statement (PEIS) for the implementation of the CVPIA. Several environmental documents and associated programs, address north of Delta water resources including:

- The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No Action Alternative were evaluated in the PEIS. The alternatives considered in the PEIS were developed to evaluate a range of actions, or programs, to meet the objectives of CVPIA and implement provisions of CVPIA.
- The Bay Delta Conservation Plan (BDCP) that is being developed to provide the basis for the issuance of endangered species permits for the operation of the CVP and SWP. The BDCP is a long-term conservation strategy that addresses species, habitat and water resources that drain to the Delta.
- The Trinity River Restoration Program was developed to restore the Trinity River as a viable fishery. The 2001 ROD issued for the program specifies five modes of restoration, including flow management through releases from Lewiston Dam, construction of channel rehabilitation sites, augmentation of spawning gravels, control of fine sediments, and infrastructure improvements to accommodate high flow releases.
- The CVP Conservation Program was formally established to address Reclamation's requirements under the ESA. Over 80 projects have been funded by the CVP Conservation Program since its beginning and more recent budgets are allowing for funding of 7 to 14 projects annually.
- The Habitat Restoration Program was established under CVPIA Title 34 to protect, restore, and mitigate for past fish and wildlife impacts of the CVP not already addressed by the CVPIA.

The point of diversion for the transferred water would not change, as the point of diversion in the Delta (Jones Pumping Plant) would be the same. Further, diversions from the Delta would not increase as a result of these transfers. In the absence of the transfers, Reclamation would continue to deliver CVP water to the Exchange Contractors, which would be delivered by the member districts to individual landowners. The water is, therefore, already part of the baseline conditions for diversion from the Delta.

The maximum potential land fallowing is 20,000 acres. The Program does not include fallowing of 50,000 acres. Concerning where the fallowed lands would be located, it is at the sole discretion of the landowner. The Exchange Contractors do not encourage fallowing in any particular area, and the same lands would not be fallowed for more than 3 consecutive years.

O-1-17
Comment noted and considered.

SARA
SAVE THE AMERICAN

Save the American River Association

4441 Auburn Blvd., Suite H • Sacramento, CA 95841-4139
916-482-2551 • E-mail: info@SARAriverwatch.org • www.SARAriverwatch.org

Letter O-2

July 4, 2012

Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, Room 2905
Sacramento, CA 95825

Re: Comments on the Draft EIS/EIR for a proposed new transfer program that would provide for the transfer and/or exchange of up to 150,000 acre-feet of water from the San Joaquin River Exchange Contractors Water Authority [SJEC]1 to several potential users—Westlands Water District, SWP Contractors, Kern Water Bank and other users for over the years 2014-2038.

Dear Mr. Hubbard:

On July 3, 2012, you were sent extensive comments on the Draft EIS/EIR signed by representatives of a number of stakeholder organizations including California Water Impact Network. O-2-1

Members of the Governing Board of Save the American River Association have reviewed those comments. We find them to be valid and worthy of consideration by the Bureau of Reclamation staff.

We concur with conclusions that the Draft EIS/EIR:

- **Ignores most of the project's impacts.**
- **limits the study area to the lands receiving the water deliveries.**
- **Fails to update the water needs assessment for districts that are selected to receive the water.** O-2-2

O-2-2

- **Provides limited information on impacts to areas from where the water is taken.**

O-2-3

- **The DEIS/EIR ignores the fact that each water delivery requires a water diversion, and that each water diversion has an environmental impact on its water sources.**

O-2-4

- **The DEIS/EIR also is deficient in its explanation of the programs, and the amounts and locations that will be used to produce the transferable water. No information is provided, nor are there maps or descriptions of exactly where the 50,000 acres of land idling will take place. In addition, the detailed impacts from this idling have not been provided.**

O-2-5 **We believe those deficiencies and others detailed in the July 3 correspondence must be addressed in the Final EIS/EIR.**

Thank you for your consideration.

Sincerely

Stephen Green
Vice President

cc: Interested Parties

Response to Letter O-2 ***Save the American River Association***

O-2-1
Comment noted and considered.

O-2-2
See all of the responses to comments provided by the California Water Impact Network et al. letter (O-1).

O-2-3
See Response O-1-16.

O-2-4
See Response O-1-16. The impacts of land fallowing have been described in each resource section of the EIS/EIR, particularly in the analyses of Alternative A.

O-2-5
This Appendix G becomes in integral part of the Final EIS/EIR.

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Public Hearing Transcript

Transcript

RE: NOTICE OF AVAILABILITY OF DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT FOR SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY WATER TRANSFER PROGRAM 2014-2038 (SCH# 2011061057)

Los Banos, California

Wednesday, June 13, 2012, at 5:09 p.m.

ORIGINAL

PUBLIC HEARING

--oOo--

Reported by: Theresa Nadeau, CSR No. 10526

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Public present at hearing:

John Beam

Palmer McCoy

Mike Searns

Erma Leal

Steve Ottemoeller

Ken Swanson

Rick Iger

Patricia Schifferle (via telephone)

Tom Stokley (via telephone)

Bruce Tokars (via telephone)

Randy Houk

This public hearing was held in the above-entitled matter on June 13, 2012, at 5:09 p.m., at the offices of San Joaquin River Exchange Contractors Water Authority, 541 H Street, Los Banos, California, before Theresa Nadeau, Certified Shorthand Reporter, in and for the State of California, having offices located at Merced, California.

--o0o--

(Whereupon a presentation was given.)

THE HEARING OFFICER: Thank you very much. Welcome to the public hearing tonight for the proposed 25-year extension of the San Joaquin River Exchange Contractor Water Transfer Program Draft Environmental Impact Statement/Environmental Impact Report, Draft EIS/EIR.

This hearing is being held in accordance with requirements of the National Environmental Policy Act and the California Environmental Quality Act. Again, my name is Louis Moore. I'm with the public affairs office with the Bureau of Reclamation in the Mid Pacific region. I will be serving as the hearing officer and a court reporter from the Associated Reporters of Merced

will be recording the proceedings, and at the table tonight is Mr. Brad Hubbard. He's the project manager for Bureau of Reclamation and Mr. Steve Chedester and Susan Hootkins, the San Joaquin River Exchange Contractors representatives.

Today we are accepting verbal and written comments on the draft EIS/EIR. To provide verbal comments you should have completed a speaker card. Right now I have one speaker. If others would like to speak, please fill out a speaker card and bring that forward and we will make sure that you are put in the line to speak. If you have not completed a speaker card, please go to the registration table. There are speaker cards and comment cards on the table behind us as well as other copies of the presentation. If you've completed a speaker card but didn't turn it in, please give that to me now.

You may also provide written comments today. If you don't feel like speaking here at the hearing, please go ahead and provide those comments in writing. You could use the speaker card for contact information, but also you can provide written documentation of your own to us.

Written comments can be submitted at the hearing today by -- or to the address on the comment card or by fax, and you could e-mail them as well to the contacts on the presentation. You need to submit your comments by close of business Tuesday, July 3rd, 2012 by 5:00 p.m. Please understand that written comments as well as verbal comments will receive equal consideration.

I want to take a moment to explain what happens next with this process. All the comments will be reviewed and responses to the comments will be prepared. Assuming all major issues can be addressed, the final EIS will be prepared which will include the responses to the comments. The final EIS will be circulated for a 30-day review, after which Reclamation will make a decision on the project. A record of decision will then be prepared to document that decision.

Today we will proceed in this manner: Are there any elected officials present? If there are no elected officials present, you will be -- we will actually proceed through the first speaker tonight and you have all the time you need.

MR. CHEDESTER: Before you say that, who is it? No.

THE HEARING OFFICER: Actually, let me check on the phone. On the phone would anyone like to speak tonight?

MS. HOUKINS: Patricia, I think she had that comment.

THE HEARING OFFICER: If anyone on the phone would like to speak tonight, please speak clearly and loudly enough that we could record that information, and what will happen is once those comments are collected, they will be included as part of the record. At present Mr. John Beam with GWB --

MR. BEAM: Grassland Water District.

THE HEARING OFFICER: GWD consultant. So, sir, if you will please, you have three minutes.

MR. BEAM: I can just do it from right here? Representing Grassland Water District I just want to reaffirm the value of this transfer program to the Grassland wetlands, primarily the state wildlife areas and the private lands within Grasslands.

JB-1

Over the past ten years water development through this program has served as the only south of delta reliable source of incremental level four. There have been other acquisitions by

JB-2

Reclamation, but this is the only water supply. It's the largest component and the most timely and most reliable to meet water supply needs for Grassland wetlands.

The significance of that is that those -- that block of incremental level four is key to optimizing the wetland productivity in this area. It also supplies the habitat critical to giant garter snakes within the Grasslands area as well as the migratory wintering waterfowl that winter in the Central Valley. So I can't overstate how important that this block of water is as incremental level four to help meet Reclamation's obligation to the water supplies identified in CVPIA. JB-3

THE HEARING OFFICER: Thank you, Mr. Beam. Anyone else want to speak at this time? On the phone would anyone like to speak at this time? If we've collected all comments at this point, we will go ahead and actually close this formal session unless there are other speakers and if you would like to speak. Hello?

MS. SCHIFFERLE: This is Patricia Schifferle. As I mentioned, I had a question regarding the monitoring to insure that the PS-1

proposed project would not have impact either on the receiving -- the waters that were going to be transferred or upon San Joaquin and wetlands --

THE HEARING OFFICER: Patricia, if I could ask you to speak a little louder, please.

MS. SCHIFFERLE: Again, I asked my question earlier and I was wondering what monitoring is going to take place to determine what are the impacts of this project from removing water from the receiving waters, both the wetland channels and also the San Joaquin River. Further, I was wondering what if any monitoring was going to take place with regard to the transfers and quality of that water, where that water is going to be discharged to.

THE HEARING OFFICER: Any other comments?

MR. STOKLEY: Yes. This is Tom Stokley from the California Water Impact Network, and you had mentioned that the -- while there was a reduction in return flows to the San Joaquin River, that there was also an improvement in water quality. And I was wondering if the document, and I think that it should contain this, an analysis of the water quality improvements from fallowing, for fallowing of the ground that will go out of

TS-1

production. There was a similar analysis done in reclamation's environmental assessment for the contract assignment for the Broadview Water District, and I think if you're going to make a finding of that there's no negative impact, that it needs to be documented and you need to come up with figures on what kind of savings there would be in selenium, salt, boron and any other potential pollutants that are found in ag return flows. Nutrients, nitrogen obviously. And so I think that should be in there in order to justify that there is no significant impact on the reduction in the return flows.

TS-1

THE HEARING OFFICER: Thank you, Tom. Any other -- go ahead.

MS. SCHIFFERLE: This is Patricia Schifferle again. I'm sorry, it's very difficult being on the phone not knowing how to proceed, but the other issue that was not raised it subsidence. The impact from removing this amount -- you're saying this project is longer going to take ground water but will the project participants shift to ground water use while they're transferring their surface water, and would that event in turn have a significant subsidence impact to the area from

PS-2

where the water is being transferred?

THE HEARING OFFICER: Thank you. Any other comments? Anyone else in the room? Anyone else on the phone?

MR. STOKLEY: Yes, this is Tom Stokley regarding subsidence. Tom Stokley, California Water Impact Network. Regarding subsidence, it was mentioned that there would be a reduction in ground water recharge, and so the question is is there an analysis on the effects of that on subsidence? Will that reduced ground water recharge cause additional subsidence and how significant is that? Thank you.

TS-2

THE HEARING OFFICER: One more go around. Any other comments? If there -- if you have additional comments that you would like to make between now and July 3rd, please feel free to provide them in writing or by e-mail and they'll be considered as part of the document or part of the record. This will conclude the formal part of the meeting. So on behalf of the Bureau of Reclamation I'd like to thank you for taking the time to attend this hearing and provide your comments. Please remember that if you still plan to provide written comments, they must be received

by close of business Tuesday, July 3rd, 2012 at 5:00 p.m. This closes the hearing on the proposed 25-year extension of the San Joaquin River Exchange Contractors Water Transfer Program Draft EIS/EIR. Thank you.

(The proceedings concluded at 5:45 p.m.)

--o0o--

STATE OF CALIFORNIA,)
: ss.
COUNTY OF MERCED)

I hereby certify that the foregoing transcript contains a full, true and correct transcript of my shorthand notes and a full, true and correct transcript of the proceedings had in the preceding matter on Wednesday, June 13, 2012.

Theresa Nadeau

Theresa Nadeau, CSR #10526

Public Hearing Speakers ***John Beam (JB), Patricia Schifferle (PS), Tom Stokley (TS)***

JB-1 (John Beam)
Comment noted and considered.

JB-2 (John Beam)
Comment noted and considered.

JB-3 (John Beam)
Comment noted and considered.

PS-1 (Patricia Schifferle)
Chapter 14, pages 14.2-14.6 articulate the monitoring program. In addition, Appendix B analysis of the surface water resources for the project, specifically addresses impacts to the San Joaquin River from water development actions. Concerning the impacts on the refuges, see Responses F-1-8 and F-1-13.

PS-2 (Patricia Schifferle)
The Proposed Program does not include groundwater pumping to make water available for transfer, so no impact to subsidence would occur from groundwater pumping. Nor is a shift to groundwater use or any change to historical groundwater pumping needed to accomplish the Proposed Transfer Program. Reductions in groundwater recharge of up to 28,400 AFY from temporary land fallowing would not substantially affect subsidence because the effect is on the shallow aquifer system above the Corcoran Clay.

TS-1 (Tom Stokley)
Albeit a very minor change in flow, the subject document includes an analysis of the effects of land fallowing upon the watercourses including water quality. See Chapter 4 and Appendix B.

TS-2 (Tom Stokley)
A reduction in recharge to the shallow aquifer system will not have any effect on subsidence. See Response PS-2 above.

G.3 Revisions to EIS/EIR Text

The Final EIS/EIR contains the following revisions to the Draft EIS/EIR text:

Executive Summary	
Page ES-5, line 3-5	~~A~~The ~~p~~Preferred ~~a~~Alternative has ~~not~~ been selected ~~pending completion of the public review process for the Draft Final EIS/EIR. A preferred alternative will be selected during the development of the Final EIS/EIR.~~: Alternative D, up to 150,000 acre-feet of water developed for transfer.
Page ES-8, line 27	Alternative D represents the maximum water transfer by adding an additional increment of conservation water above existing capabilities. It is the Preferred Alternative.
Chapter 1.0 Purpose and Need	
Page 1-4, line 36	"…District, and Patterson Water District); CVP Friant Division agriculture (~~24~~ 25 districts; and…. Other references to the 24 districts on pages 2-23 and 2-24 have been changed as well.
Page 1-16, lines 4–6:	The SJRRP is a negotiated settlement effort among Reclamation, the Friant Water ~~Users~~ Authority, and the Natural Resources Defense Council Coalition~~, and the Pacific Coast Federation of Fishermen's Associations~~.
Page 1-16, line 22:	A draft Program EIS/EIR was released for public review on April 22, 2011. Both the ROD and NOD were posted on October 1, 2012.
Chapter 2.0 Alternatives	
Page 2-16, Table 2-1	Friant Division (Class 1) 100% Contract Water Supply is 800,000 acre-feet.
Page 2-19, line 4 and lines 8-10:	The tailwater/conserved water and fallowing water would continue to be developed during the months of January through December (of each Exchange Contractors' water year 2014–2038).[6] The amount of water that the Exchange Contractors would develop can vary by year~~, and its pattern would depend upon the sources of water developed~~. For the maximum transfer and/or exchange of 150,000 acre-feet, an additional 62,000 acre feet water over recent transfers/existing conditions of up to 88,000 acre-feet, it is estimated that the Exchange

Contractors would develop ~~this~~ water in accordance with the ~~range of~~ values listed in Table 2-3. The pattern of the developed water could vary depending upon the sources of water and current-year hydrologic conditions.

Table 2-3
Estimated Quantity of Water Developed/Transferred from the Exchange Contractors, All Sources, Maximum Program

Month	Acre-Feet to be Developed for Transfer
January	~~1,278 1,678~~ 1,000
February	~~5,961 8,961~~ 5,100
March	~~7,863 10,863~~ 8,700
April	~~8,358 9,358~~ 18,900
May	~~11,566 11,666~~ 22,300
June	~~22,967 24,067~~ 24,400
July	~~27,746 30,246~~ 26,500
August	~~25,222 25,722~~ 24,800
September	~~7,261~~ 9,800
October	~~4,051 5,451~~ 6,900
November	~~607 1,407~~ 1,400
December	~~220~~ 200
Total	150,000

Page 2-19, line 11:

The ~~additional~~ tailwater/conserved water and temporary crop idling water would be commingled with the Exchange Contractors surface water supply system and used to meet their own needs, thus temporarily reducing their demand for water made available under their Contract. For each acre-foot of tailwater/conserved water or fallowed land water recovered by the Exchange Contractors for their own reuse, an equal amount of water will be considered acquired and available in the CVP for delivery to the wetlands and for delivery to CVP and SWP water users for agricultural and/or M&I uses. The transfer is CVP substitute water that would have been provided by Reclamation to the Exchange Contractors.

Page 2-19, line 21 and Page 2-20, lines 1-3:

The four action alternatives are based on the quantity of water and sources of supply. ~~Each action alternative has a range of subalternatives or scenarios based not only on the source of supply but also on potential water users and whether these users are hydraulically connected to the San Joaquin River. A range of scenarios of scenarios is~~ The action ~~A~~alternatives are evaluated and described in Appendix B, "San Joaquin River Exchange Contractors Water Authority 25-Year Water Transfer Program Water Resources Analysis."

Page 2-22, lines 11-12:

- The transfer and exchange of up to 150,000 acre-feet of temporary water supplies to CVP water service contractors in the Delta export service area (9 westside contractors) ~~÷ 9 westside contractors~~ and within the Friant Division (24~~5~~ eastside contractors) ~~within the Friant Division~~

Pages 2-24, line 4: Under this scenario, potentially all of the available water in any noncritical Exchange contract year, up to 150,000 acre-feet, would be available to westside (nine districts) and eastside (Friant Division) CVP water service contractors (~~24~~25 districts), other CVP contractors west and south of the Delta (specifically PVWMA) and/or a SWP contractor south of the Delta (specifically KCWA) that need additional irrigation water.

Page 2-24, line 17 The eastside Friant Division contractors' agricultural service area comprises ~~24~~ 25 districts, as shown on Figure 2-4.

Page 2-27, lines 24-25 The ~~p~~Preferred ~~a~~Alternative ~~will be identified following review of public comments on the Draft EIS/EIR, during preparation of the Final EIS/EIR~~ is Alternative D, up to 150,000 acre-feet of water developed for transfer from conservation and crop idling.

Chapter 3.0 Scope of Impact Analysis

Page 3-3, lines 16-20: Any transfers to SCVWD and KCWA under SWP contracts and to ~~EBMUD and~~ CCWD under CVP contracts would be subject to limitations in those contracts and not result in exceedances of contract amounts. Transfers to EBMUD would be made in dry years only and would be diverted along with EBMUD's CVP contract water within the existing capacity of the Freeport Regional Water Project. EBMUD's CVP contract is uniquely structured to only provide water in drought years when EBMUD's primary supplies from the Mokelumne River are insufficient to meet customer demands.

Page 3-8, line 14: The renewal for 195,000 acre-feet per year was for a 40-year term through February 2045.

Page 3-9: EBMUD's CVP contract supply is for a maximum of ~~195,000~~165,000 acre-feet over 3 consecutive dry years of a maximum of 133,000 acre-feet in any single dry year.

Page 3-12, lines 7-12: Both the Freeport and WSMP documents indicate that no specific work or analysis on impacts to downstream users from taking water at Freeport under transfers has been performed (EBMUD 2009, p. 5.2.A-20). ~~With impacts unknown and not~~

~~modeled, it is prudent to conclude a potentially significant impact exists until proven otherwise.~~ To enable a future transfer, the potential water user/transferee north of the Delta would need to complete ~~the~~ an analysis of potential impacts associated with the transfer. As stated in the WSMP, EBMUD would complete appropriate project-level environmental documentation prior to implementing a transfer project. ~~For the purposes of this Water Transfer Program EIS/EIR, however, the impacts from the transfers would be consistent with CVP/SWP contract supplies because the Exchange Contractors would only transfer water to CVP entities that do not exceed their CVP contract maximum. That is, the Exchange Contractors would provide substitute water for CVP supply and would not expand any CVP supply amounts or diversion rates.~~ If EBMUD does not receive the necessary permits, NEPA and/or CEQA approval, then the Exchange Contractors would not transfer water to them.

Page 3-20, lines 21-22: In the Proposed Action, the SCVWD would deliver up to 100,000 acre-feet per year of CVP supplies for delivery to the groundwater bank, and SCVWD could recover up to 100,000 acre-feet per year of water from the bank.

Page 3-21, lines 19-22: ~~Reclamation has not completed ESA consultation with the Service on this groundwater banking storage and exchange project. This needs to be completed if SCVWD is to participate in the Proposed Water Transfer Program with use of the groundwater storage facility and water exchange with Semitropic.~~

Page 3-23, lines 19-22: ~~The long-term contracts for SWP water to the SCVWD were executed prior to the enactment of CEQA in 1970; therefore, no environmental clearance document currently exists. However, CEQA compliance will be required when DWR extends the long-term contracts (Greg Meamber, pers. comm., 2011).~~

In 2010, the DWR certified an EIR for the Monterey Amendment for use of SWP water that included SCVWD (DWR 2010a): *Final Environmental Impact Report, Monterey Amendment to the State Water Projects (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus) SCH #2003011118*. The environmental analysis had four different No Project alternatives, which considered various water transfers scenarios with and without the Monterey Amendment allocations. The preferred project was considered to be the

approval of permanent transfers of 130,000 acre-feet of water and retirement of 45,000 acre-feet of SWP long-term water supply contracts. The EIR found that most of the impacts would be reduced to less-than-significant levels, other than the specific impacts described in the Kern County Water Agency subsection below.

Chapter 4.0 Surface Water Resources

Page 4-16, lines 10-11:

- ~~The VAMP Vernalis flow requirements ended in Spring 2011 and has not been updated or replaced. D-1641 flow objectives for Vernalis are assumed to be required, applicable to Reclamations operation of New Melones Reservoir.~~ Although VAMP expired in 2011, and a VAMP-like condition is expected to continue into the future, no explicit program to implement VAMP was included in the model. The State Water Resources Control Board (Board) has initiated a process to comprehensively review the flow objectives at Vernalis and has recently issued a *Substitute Environmental Document (SED) in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality*. In addition, stakeholders are currently in discussions to settle future flow and implementation issues on the Lower San Joaquin.

Page 4-25, line 39, and Page 4-26, line 1:

~~The effect of additional flows from the SJRRP within the alternative would be a reduction in releases and a gain in storage due to a lesser need to provide flows for compliance to Vernalis flow and quality objectives. Such gains in New Melones Reservoir water supply would provide an improvement in water supplies to all purposes.~~

Chapter 13.0 Other Required Disclosures

Page 13-5, lines 28-34:

Sales to these agencies would be limited to amounts listed in Table 2-2~~.~~, and for CCWD and EBMUD to the amounts explained in Section 3.3.4. Transfers to EBMUD would be made in dry years only and would be diverted along with EBMUD's CVP contract water within the existing capacity of the Freeport Regional Water Project. EBMUD's CVP contract is uniquely structured to only provide water in drought years when EBMUD's primary supplies from the Mokelumne River are insufficient to meet customer demands.

Page 13-6, lines 4-6:

Based on information contained in this ~~Draft~~ EIS/EIR and comments received during the public review period, Reclamation and the Exchange Contractors ~~will identify~~ have identified the environmentally preferred alternative ~~for the Final EIS/EIR~~as Alternative D.

G.4 Additional References

The references below are newly cited in this Appendix G and were not included in the Draft EIS/EIR:

Bureau of Reclamation. 2001. Refuge Water Supply Long-Term Water Supply Agreements, Sacramento River Basin – Final EA/IS. January.

Bureau of Reclamation. 2001. Refuge Water Supply Long-Term Water Supply Agreements, Tulare Lake Basin – Final EA. January.

Bureau of Reclamation. 2010. 2010-2011 Water Transfer Program, Final Environmental Assessment. February.

California Department of Water Resources (DWR). 2012. Bay Delta Conservation Plan. Framework Brochure. July.

State Water Resources Control Board (State Board). 2012. Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality, Public Draft. December.