

Appendix A Response to Comments

ARVIN-EDISON WATER STORAGE DISTRICT

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October 3, 2013

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Ben Lawrence
U.S. Department of the Interior
BUREAU OF RECLAMATION
1243 N Street,
Fresno, CA 93721

RE: Draft Environmental Assessment (EA) and Draft Findings of No Significant Impact (FONSI) – Cross Valley Contractors Interim Renewal Contracts (EA/FONSI-12-048)

Dear Ben:

Thank you for the opportunity to provide comments on the subject matter. Arvin-Edison Water Storage District (AEWSD or District) is supportive, in general, of the Cross-Valley (CV) Contract renewals. AEWSD has a long history of partnering in water management programs with the CV Contractors. AEWSD is specifically mentioned as an Article 5 Exchanger in the CV Contracts. AEWSD's comments upon review of the draft EA/FONSI are as follows:

Water Quality: Our primary concern of this subject program is water quality impacts, and more specifically, related to the proposed discharges of Cross Valley Canal (CVC) water into the Friant-Kern Canal (FKC), as mentioned in the appendices of the Draft EA. Discharges of CVC water into the FKC have potential water quality impacts to AEWSD. As you may be aware, AEWSD's turnout is located at the terminus of the FKC, and would be subject to any changes in water quality caused by these action(s) including, but not limited to, the use of the 500 cfs FKC/CVC Intertie, which is located less than 100 feet upstream of AEWSD's FKC turnout.

AEWSD would like to take this opportunity to remind Reclamation of its Section 9(d) contract language regarding water quality as follows:

“Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practicable manner to maintain the quality of the water at the highest level possible as determined by the contracting officer” (Article 17.(a))

The two supplies (FKC vs. CVC) are significantly different in water quality and particularly with regards to the importation of "salt" constituents (i.e. TDS, nitrates, sodium, chloride, etc).

Reclamation's San Joaquin River Restoration Program (SJRRP) EIR/EIS made the following findings regarding water quality changes (Chapter 14 Page 20) from similar actions, which confirm AEWSD's long standing position:

"...impacts on water quality in the CVP Friant Division ... would be associated with differences in constituent concentrations, particularly salinity, of water supplies diverted from the Delta and potentially delivered to some Friant Division contractors compared to water delivered via the Friant-Kern and Madera canals. These impacts could lead to plugging of drip irrigation systems, additional treatment requirements for M&I supplies, reduction in crop yield for sensitive crops, accumulation of salts in soils and groundwater, additional leaching requirements, enhanced corrosion of metals, and additional sedimentation in canals, reservoirs, and recharge basins."

Friant Water Authority (FWA) also recently commissioned a report prepared by Provost & Pritchard Engineering Group "Evaluation of Impacts from Re-circulated San Joaquin River Water" which provides more detailed information regarding the same above stated concerns and supports AEWSD's position.

The exchange and delivery of the water supply mentioned in the Draft EA, is very likely to be of similar quality as those reviewed in the SJRRP EIR/EIS and FWA analyses.

Having provided the above, it is very troubling to AEWSD that a water quality analysis was not completed, and in fact, **there was NO reference to water quality impacts to other water users at all with regards to this water supply** and consequential conveyance and delivery thereof. The lone water quality reference was in regards to fish or wildlife and/or their habitat.

AEWSD does not desire nor agree to have its contracted FKC water supplies degraded by the subject program from which AEWSD would receive no benefit while the participating districts in this program reap the benefits of both water quantity and water quality at AEWSD's expense. It should also be noted that due to the proximity of these proposed discharges to AEWSD's turnout, AEWSD has the potential to be more greatly impacted than any other district.

"Project Water" reference: In Appendix B (Potential Imbalanced Exchange Scenarios and Exchange Mechanism), "Project Water" is mentioned as a means to track the deliveries of these supplies through various conveyance and exchanges. Although "Project Water" is appropriate for administration of various water rights and/or contracts, this term however does not make it exempt from water quality standards and anti-degradation practices/tests.

Other Considerations: In Appendix C (Contractors and Exchange Partners), the AEWSD description is very outdated and obsolete. AEWSD has provided recent descriptions that are more appropriate. Please replace, in its entirety, the AEWSD language contained in this

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Draft EA with the attached language as well as update your records and files for future environmental documents.

In Appendix D (Conveyance Facilities and Waterways), the CVC description is outdated and obsolete. The CVC was recently expanded. Please update this section with a more recent description also attached.

For the reasons stated above Reclamation's certification of the EA/FONSI and approval of the subject program must be set aside or modified to reflect AEWSD'S concerns.

We would appreciate a written response to our comments from Reclamation. Thank you, and please call or email with any questions, comments or concerns.

Sincerely,



Steve Collup
Engineer-Manager

Enclosures

cc: Jeevan Muhar, Staff Engineer
Ernest Conant, Esq.
Michael Jackson, (USBR, Fresno)
Rena Ballew, (USBR, Fresno)
Mike Day, Provost & Pritchard

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Arvin-Edison Water Storage District

AEWSD was formed in 1942 to provide a reliable water supply for its landowners for agricultural purposes. In order to regulate a highly variable water supply, AEWSD developed and continues to develop water management programs based on the concept of delivering imported water in years of above average water supplies to 1) spreading ponds for groundwater recharge and/or 2) transfers/exchanges with other agencies and entities (such as MWD) that can in turn provide return water at times later in the same year (or in subsequent years) and typically during drought or low allocation years or periods. During below average or dry years or periods, AEWSD extracts (via wells) previously stored groundwater and/or accepts return of water from water transfers and exchanges to meet its agricultural demands when surface supplies are deficient.

AEWSD is a long term CVP-Contractor; its current facilities were primarily constructed in the 1960s and are based on the conjunctive use of surface water imported from the CVP, SWP, Kern River, including other supplies (i.e. flood flows) and groundwater resources that underlie AEWSD. AEWSD owns and operates spreading/percolation/recharge basins and groundwater extraction wells, which are used to supply previously banked groundwater to its landowners within its service area when surface water supplies are deficient. AEWSD facilities (recharge and extraction) are also made available to other water agencies for their utilization through water management programs/agreements on a second priority basis.

AEWSD has an annual contract entitlement with Reclamation for 40,000 AF of Class 1 and 311,675 AF of Class 2 Friant Division CVP supplies. The Class 2 supply comprises a large portion of their contract allocation; however, this supply is highly variable depending on availability and hydrology. AEWSD manages this supply by using an underlying groundwater reservoir to regulate water availability and to stabilize water reliability by percolating water through spreading basins in addition to water management programs (i.e. transfers/exchanges) with other water agencies outside its service area. AEWSD takes Friant CVP water from their Intake Canal located at the terminus of the FKC and serves landowners within its district through 45 miles of lined canals and 170 miles of pipeline.

AEWSD has historically made available a portion of its Friant Division CVP water supply to other CVP contractors located on the eastside of the San Joaquin Valley in exchange for alternate CVP supplies originating from the Sacramento-San Joaquin River Delta, diverted and wheeled through the Aqueduct for ultimate delivery to AEWSD. Due to a decrease in supply reliability, cost increases, and water quality concerns, several of these exchanges are no longer feasible to the extent they once were. As a result, it has been necessary for AEWSD to identify and implement additional programs to manage its highly variable CVP water supplies.

Cross Valley Canal

The CVC, a locally-financed facility completed in 1975. The canal extends from the California Aqueduct near Tupman to Bakersfield. It consists of 6 pumping lifts, which has a capacity of 1,400 cubic-feet per second (cfs) from the Aqueduct to AEWS's Intake Canal (also near the FKC terminus and Kern River). The CVC "extension", an unlined canal, continues past AEWS Intake Canal, of which is rated 342 cfs and has an additional 2 pumping lifts. The CVC is a joint-use facility owned by various "Participants", including Cross Valley Contractors and AEWS. The CVC, which is operated by the KCWA, can convey water from the Aqueduct to the Kern Water Bank, the City of Bakersfield groundwater recharge facility, the Berrenda Mesa Property, the Pioneer Banking Project, the Kern River channel, to AEWS's Intake Canal, or to various member units of KCWA and other districts who have access to the CVC. The CVC is also capable of conveying 500 cfs, in reverse flow-gravity mode, to the Aqueduct. In 2008, as part of the CVC expansion project, an additional 500 cfs turnout was constructed from the FKC that can deliver water by gravity into either the AEWS Intake Canal or the CVC.

Response to Arvin-Edison Water District Comment Letter of October 3, 2013

Arvin-Edison 1 Reclamation requires that the operation and maintenance of CVP facilities shall be performed in such a manner as is practical to maintain the quality of raw water at the highest level that is reasonably attainable. Reclamation and other affected water agencies monitor the quality of water at various points in the delivery system to determine compliance with applicable standards. Additional monitoring activities are being considered and may be included at a later date. Arvin-Edison and other stakeholders would have an opportunity to provide feedback on any modifications to the monitoring program at that time.

Arvin-Edison 2 Thank you for providing this updated information. The descriptions of AEWSD and the CVC have been updated accordingly.

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October 4, 2013

VIA EMAIL AND U.S. POST

Ben Lawrence
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email: blawrence@usbr.gov

Re: Comments of North Coast Rivers Alliance on Draft Environmental Assessment for Cross-Valley Contractors Interim Renewal Contracts EA-12-048 and Draft Finding of No Significant Impact Cross-Valley Contractors Interim Renewal Contracts FONSI-12-048

Dear Mr. Lawrence:

On behalf of the North Coast Rivers Alliance, we urge you to prepare a full Environmental Impact Statement for the proposed renewal of the Cross-Valley Contractors water service contract. We object to your continued reliance upon incomplete environmental assessments that fail to address the long-term, significant impacts of renewals of this contract on both the San Francisco Bay-Delta and its tributary watersheds, as well as on the areas that receive water under the contract. We also urge you to consider a full range of alternatives rather than simply compare the project to itself. The Draft Environmental Assessment considers only a form of “no-action alternative” that ignores the Bureau’s authority to reject this water service contract, reduce the quantity of water delivered, or reallocate some or all of the water to other beneficial purposes such as the protection and enhancement of imperiled fish and wildlife. Finally, we also object to the Draft Environmental Assessment’s erroneous reliance upon the existing Biological Opinions that have not been found adequate and complete by reviewing courts. Continued unsustainable exports of excessive quantities of water from the Delta will further imperil fish and wildlife listed under the Endangered Species Act.

Thank you for affording us this opportunity to comment.

Very truly yours,


Stephan C. Volker

Attorney for North Coast Rivers Alliance

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Response to North Coast Rivers Alliance Comment Letter of October 4, 2013

North Coast 1 Large-scale issues related to the Central Valley Project Improvement Act (CVPIA) were evaluated by the Programmatic Environmental Impacts Statement (PEIS) for the CVPIA. The PEIS included analysis of the region-wide and cumulative impacts of the CVPIA, including renewal of water service contracts. It also included provisions for issuance of interim renewal contracts until long-term contracts can be issued. This Environmental Assessment is “tiered” from the CVPIA, meaning that it analyzes site-specific impacts to the human environment, with the larger-scale analysis of the CVPIA EIS as background.

Renewal of the interim contracts is a continuation of current conditions, and although there are financial and administrative changes to the contracts, existing use and allocation of resources would not be changed. Water would come from the same sources to the same group of recipients for the same purposes as in the past. On March 8, 2013, the Eastern District of California found that Reclamation “appropriately defined the status quo as the ‘continued delivery of CVP water under the interim renewal of existing contracts’” and that “[t]he indisputable historical pattern of use of the resource (water) further supports the Bureau’s definition of the no-action alternative”. The Court further found that “that where the Proposed Action does not alter the status quo, no EIS is required” (Document 52 for Case 1:12-cv-01303-LJO-MJS).

The Reclamation Project Acts of 1956 and 1963 provide for renewal of existing contracts upon request. Section 3404(c) of the CVPIA states that “...Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.” The CVPIA only altered the 1956 Act with respect to the right of renewal for irrigation contracts, not the provision related to contract quantity. Further, the Water Needs Assessment demonstrated a need for water for beneficial uses beyond the contract amounts, even with a full allocation. Reclamation therefore believes that the agency does not have the discretionary authority to reduce contract quantities or decline to renew the interim renewal contracts, and those alternatives were not evaluated further.

North Coast 2 The Central Valley Project (CVP) and State Water Project (SWP) Biological Opinions referenced by the commenter were remanded by the court without vacatur. This meant that new agency consultation for the CVP and SWP would be required, but the existing BOs and any interim orders could be used to demonstrate compliance in the meantime.

Specific to the Cross-Valley interim renewal contracts, Reclamation elected to address biological coverage through consultation with the USFWS following issuance of the draft Environmental Assessment. See Section 3.4 of the Final Environmental Assessment for further information.



Lawrence, Benjamin <blawrence@usbr.gov>

Cross Valley Canal Interim Contract Renewals

Winckel, Joy <joy_winckel@fws.gov>

Mon, Sep 30, 2013 at 2:42 PM

To: blawrence@usbr.gov, David E Hyatt <dhyatt@usbr.gov>

Cc: SHAUNA A McDonald <SMcDonald@usbr.gov>, Russell Grimes <rwgrimes@usbr.gov>, Daniel Russell <daniel_russell@fws.gov>, Thomas Leeman <thomas_leeman@fws.gov>

Hi Dave and Ben,

Thank you for providing us with the press release announcing the availability of a Draft EA on Interim Contract Renewals and Article 5 Exchanges (DEA) for the Cross Valley Contractors (CVC IRCs). Based on the information provided in the DEA for CVC IRCs, we cannot concur with your effects determinations for listed species. We have consulted either formally or informally on IRCs that have included the CVC contractors since those IRCs first expired back in the 90's. For the current CVC IRCs, Reclamation has not requested consultation with the Service, relying instead on the analysis and commitments from the 2001 BiOp written for long term contract renewals for Friant and Cross Valley (2001 BiOp; Service File No., 01-F-0027). It was our understanding from our coordination meetings that Reclamation would be providing us with a white paper explaining this change in approach for ESA consultations on IRCs. We have not yet received this white paper, so our comments are based solely on the information provided in the DEA. There are numerous issues with respect to this change in approach which we summarize briefly below. Although the legal claims over the Friant BiOp against Reclamation and the Service were dropped in 2006 as part of the Settlement on San Joaquin River Restoration, the deficiencies in the 2001 BiOp that were identified by the district court still remain.

Summary of ESA Issues

1. The 2001 BiOp did not include analysis of the source of CVC water (Delta), pumping or conveyance of CVC water from the Delta through CA Aqueduct.
2. The 2001 BiOp did not include adverse mod or recovery analysis of critical habitat as required under Gifford Pinchot.
3. The 2001 BiOp analyzed historic average deliveries not full water contract deliveries.
4. Critical habitat (CH) has been designated subsequent to the 2001 BiOp for Vernal Pool species and California Tiger Salamander that occurs within the CVC IRCs Action Area.
5. Reclamation "covers" the effect of CH in the CVC IRC Action Area in the DEA based on a commitment that Reclamation and the project proponents (CVC contractors) would implement: "*No native or untilled land (fallow for three consecutive years or more) may be cultivated with this water.*" It is unclear what the mechanism is to ensure the project proponents would comply with this requirement, nor is there any means specified in the DEA to verify compliance.
6. As part of the CVPIA BiOp of 2000 (Service File No., 98-F-0124), Reclamation and the Service committed to develop a Comprehensive Mapping Program to identify remaining natural habitats and cropping patterns within CVP Service Areas, and identify any changes within those habitats that have occurred from 1993 to 1999, and then every 5 years thereafter. Reclamation completed a mapping assessment of habitat changes from 1993 to 1999 and 2005. We have not received any recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation since 2005. We requested in last year's IRC ESA consultations, that prior to the next round of IRCs, Reclamation would update this comprehensive mapping effort with current imagery and compare it with the previous mapping efforts to update the environmental baseline and verify assumptions by Reclamation that the IRCs do not result in land use changes that would affect federally listed species (i.e., result in native or untilled land being converted to agricultural or municipal uses). That information was not included in the DEA for the CVC IRCs.

Thank you for the opportunity to comment on the DEA for the CVC IRCs. We look forward to discussing these

issues with you at one of our future coordination meetings.

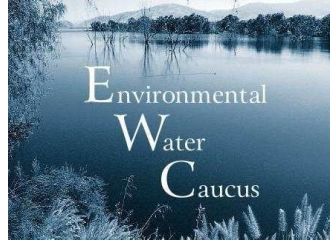
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Joy Winckel

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Response to US Fish and Wildlife Service Comment Email of September 30, 2013

- USFWS 1** Reclamation elected to address these concerns through consultation. See Section 3.4 of the Final Environmental Assessment for further information.
- USFWS 2** Reclamation tracks compliance with environmental commitments using a formal Environmental Commitment Program (ECP), which includes a follow-up component. For a multi-year action such as this, it is typical to verify compliance with project proponents on an annual basis.
- USFWS 3** As described above, Reclamation initiated consultation following posting of the Draft Environmental Assessment. The most recent mapping available was provided to the Service as part of consultation.



CA Save Our Streams Council



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September 26, 2013

Rain Healer
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RE: Comments on Draft Environmental Assessment Cross-Valley Contractors Interim Renewal Contracts EA-12-048 and Draft Finding of No Significant Impact Cross-Valley Contractors Interim Renewal Contracts FONSI-12-048

Dear Ms Healer,

The undersigned respectfully submit the following comments regarding the above referenced Draft Environmental Assessment and Draft Finding of No Significant Impact for the renewal of the Cross-Valley Contractors water service contract. We urge a full environmental impact analysis be conducted. We include by reference the documents previously submitted disclosing the environmental impacts associated with this type of serial “temporary” interim contract renewal included in Exhibit A and adopted here by reference.

Broad Impacts from both CVP and SWP Project Water Deliveries Renewed Under the Proposed Project Have Not Been Disclosed.

Coalition
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Over two decades of interim contract renewals, USBR has used consecutive cookie cutter Environmental Assessments to thwart the Congressional intent and letter of the law, which requires tiered pricing for this taxpayer subsidized water and disclosure in a clear, complete, and straightforward manner for decision makers and the public of the full environmental impacts of this federal water delivery under Central Valley Water Project Contracts.¹ Using two major federal and state water projects—both the State Water Project and Federal Central Valley Project—along with local water delivery projects and five counties—Fresno, Tulare, Kern, Kings, Benito—with source water impacts from Trinity, Sacramento, Placer, San Joaquin, Merced, and Stanislaus counties, just to name a few, this “new” FONSI and DEA proclaims that renewal of up to 128,300 acre feet of exports from the Delta will not have impacts to the environment.² Without analysis or data, the DEA proclaims that these eight interim renewal contracts and proposed Article 5 exchanges will not have an impact on endangered species. Thus, it is claimed, there is no need for consultation with either the United States Fish and Wildlife Service or the National Marine and Fishery Service. We understand, according the DEA, that “*Environmental documents for long-term contract renewal with the Cross Valley Contractors have not been completed, as ESA consultation for the CVP/SWP Coordinated Operations is ongoing.*” [DEA @pg 7], but this is simply not adequate. Further the proposed water deliveries and diversions will impact critical habitat. The proposed actions will cause direct adverse modification to critical habitat, which will be compounded by the interrelated export of substitute water from the Delta to the Exchange Contractors.³

Coalition
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Finally, the DEA brushes aside impacts to the areas from where the water is taken, where it is delivered, land fallowing, and contract assignments as not needing analysis to reach an informed decision regarding environmental impacts. [DEA @ pg 9] No analysis or data

¹ A contract that binds the United States to renewal of interim contracts is contrary to Section 3404 (c) of the CVPIA. See also previous NEPA documents that along with this document fail utterly to allow the reader to follow the water to the specific place of use and specific user and to understand specific impacts of the delivered water.

² “Up to 128,300 acre-feet (AF) per year (AF/y) of the CV contractors’ contractual CVP water supply from the Delta would be allowed to be exchanged for Friant Division CVP supplies and other sources (other sources of water include rivers, streams, creeks, groundwater, and SWP water). The CV contractors and potential exchange partners (other CVP contractors and non-CVP contractors) are all located within Fresno, Tulare, Kings, and Kern counties. This EA covers the broadest flexibility for Article 5 exchange arrangements known at this time.” [DEA @pdf pg12] The CV contractors are currently in their fourteenth IRC and the proposed renewal would be the fifteenth. [DEA @pdf 17] In addition, Reclamation proposes to approve the CV contractors’ exchange arrangements with individually proposed exchange partners for the 2014 and 2015 contract years (March 1, 2014 through February 29, 2016) for up to the full CV contractors’ CVP contract supply of 128,300 AF/y. The Proposed Action would also include the continued historical exchanges between the CV contractors and AEWS.

³ NRDC v. Rodgers, No. S-88-1658 LKK, Order at 19-20 (May 31, 1995).

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regarding impacts to air quality, visual resources, recreation resources, and global climate change are provided, and all are deemed by fiat to not be significant or necessary to analyze.

Failure to Consider a Full Range of Alternatives

Failing to consider a full range of alternatives, the DEA compares the project to itself. The only alternative considered, the no action alternative, briefly discusses the existing 14 serial “interim” contract renewals spanning over a decade and with only one modification requiring tiered water pricing. [DEA @ pdf pg 16] The alternative is dismissed out of hand.⁴ The DEA incorrectly claims that the Bureau is bound by law to renew the contracts without adequate environmental impact analysis or considerations. [DEA pdf @ pg 16]. Reduction of contract water quantities due to delivery constraints on the CVP system was considered in certain cases, but eliminated from the analysis of the eight IRCs, basically claiming federal law requires contracts of the full amount of water even if delivery of that amount of water is not feasible or would harm the environment. [DEA pg 14] This interpretation of the law is incorrect. Section 3404 (c) of the CVPIA which reads in pertinent part as follows: (c) Renewal of Existing Long-Term Contracts.—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), *the Secretary shall, upon request, renew any existing long term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.*

Coalition
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*(1) No such renewal shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the **completion of the environmental impact statement required by section 3409** may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above [Emphasis added.]*

The contract improperly asserts and assumes that Reclamation *will approve renewal of the interim contracts.* This is contrary to section 3404 (c) of the CVPIA which expressly authorizes Reclamation to decline to execute an interim contract. Thus the contract provision asserting Reclamation *will* renew is contrary to Congressional intent and the law’s plain language.

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Additionally, proposed contract renewals suggest that there are no environmental impacts from issuing water contracts that cannot be delivered or that there are no impacts from delivering these unsustainable supplies in wetter years. The DEA asserts:

⁴ *Many of the contractors’ service areas are planted in permanent crops, and in very dry years they have shown a willingness to pay rates above what would be expected in a tiered pricing structure, to preserve their crop planting investment. Therefore it is not expected that switching to a tiered pricing structure would prompt CV contractors to change water use patterns.* [DEA @ pdf @ pg 24]

“Further, CVP operations and contract implementation, including determination of water available for delivery, is subject to the requirements of BOs issued under the federal ESA for those purposes. If contractual shortages result because of such requirements, the Contracting Officer has imposed them without liability under the contracts. Fourth, retaining the full historic water quantities under contract provides the contractors with assurance the water will be made available in wetter years and is necessary to support investments for local storage, water conservation improvements and capital repairs. Therefore, an alternative reducing contract quantities would not be consistent with Reclamation law or the PEIS ROD, would be unnecessary to achieve the balancing requirements of CVPIA or to implement actions or measure that benefit fish and wildlife, and could impede efficient water use planning in those years when full contract quantities can be delivered.”[DEA @pg 14-15]

And yet recent data suggest otherwise. Water quality standards are not being met, temperatures are being exceeded, pulse flows are not being provided and species are in fact facing deteriorating habitat and extirpation. [See exhibit C] The DEA fails to recognize and consider that the CVC water from Friant can be conveyed down the San Joaquin River and recirculated to a Cross Valley contractor or an exchange via the Mendota Pool or the Delta, and analyze the potential environmental benefits of this alternative. Further Reclamation’s absurdly limited range of alternatives in the DEA are also defective because the approach to the “needs analysis” fails to adequately address alternative needs for the water including environmental needs such as restoration of the Delta and the San Joaquin River.

Failure to Comply with the Endangered Species Act (16 U.S.C. § 1531 et seq.)

Unfortunately, the existing Biological Opinions cited in the DEA have not been deemed adequate and species remain threatened with extirpation. The Bureau’s reliance on the USFWS opinion, in this circumstance, does not discharge its section 7(a)(2) procedural obligation to consult with the USFWS or its substantive obligation to ensure that its action would not jeopardize, or cause adverse modification to the critical habitat of, threatened or endangered species.

During the course of its consultation on CVP contract renewals, USFWS was required to “[e]valuate the effects of the [contract renewals] on the listed species.” 50 C.F.R. § 402.14(g)(3). The biological opinion that USFWS produced after consultation was similarly required to include “[t]he Service’s opinion on whether the action is likely to jeopardize the continued existence of a listed species.” Id. at § 402.14(h)(3). The DEA relies on the USFWS Friant Biological Opinion which did not do so.

The Opinion lists 42 species that were ostensibly considered, and then concludes that the long-term renewal of contracts is not likely to jeopardize 36 of these species. See USFWS Friant Biological Opinion at 1-5 to 1-7, 5-1. The biological opinion states no specific conclusion as to the effect of the contract renewals on the remaining six species, however. See id. These six other species include two, the Mountain Yellow-legged Frog and the Yosemite Toad, that were at that

time candidate species; subsequently, the Mountain Yellow-legged Frog was listed as endangered. 67 Fed. Reg. 44382 (July 2, 2002). The other four species as to which FWS reached no conclusion are: the riparian brush rabbit; the riparian woodrat, the Little Kern golden trout; and the longhorn fairy shrimp. USFWS Friant Biological Opinion at 1-6, 3-30 to 3-31, 3-57 The Biological Opinion includes discussion of possible negative effects on each of these species. Yet the Opinion simply omits these species from its list of species as to which the contract renewals purportedly pose no jeopardy. The Opinion also contains no analysis demonstrating that the contract renewals will not cause jeopardy to these species or result in adverse modification of their critical habitat. Reliance on this Biological Opinion to renew these proposed contracts does not meet the requirements of the law. The Bureau has failed to consult and conclude consultation with the USFWS on several listed species. In fact there is no evidence from the documents listed in the DEA that the Bureau has consulted on these operations and impacts from the contract renewals and exchanges.⁵

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Typical operation and maintenance operations impacting endangered species are not mentioned or considered. Nor are these activities considered in the cited Biological Opinions. Among the maintenance activities not considered by the USFWS and NMFS in the Friant Biological Opinions are periodic applications of toxic aquatic pesticides to channels, gates, weirs, levees, and other water delivery facilities. See generally *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526, 528-29 (9th Cir. 2001). These pollutants may, in some circumstances, reach stretches of the San Joaquin River and/or the San Francisco Bay-Delta that provide habitat for winter-run Chinook salmon, spring-run Chinook salmon, Central Valley steelhead, Delta smelt, and Sacramento splittail. See generally USFWS & NMFS Biological Opinion for the California Toxics Rule (March 24, 2000) (file no. 1-1-98-F-21). The referenced USFWS issued a BO (1-1-04-F-0368), dated February 17, 2005, for routine operations and maintenance (O&M) activities on SCCAO lands in San Joaquin, Stanislaus, Merced, Madera, Fresno, Santa Clara, San Benito and Contra Costa counties (USFWS, 2005) referenced DEA @ pg 36 is insufficient and much of the information and monitoring required by that Opinion has never been provided and certainly is not provided in this DEA.⁶ Specifically Reclamation is required to provide:

Coalition
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- An update of the SCCAO O&M Plan every two to five years. Additionally *“Reclamation and the Service will meet every five years to review the effectiveness of avoidance and minimization measures,and reinitiate consultation as appropriate on*

⁵ *“However, transfers and/or exchanges involving Friant Division or CV contractors were not addressed by the LTCR Opinion. In addition, the LTCR Opinion did not address some of the species and critical habitats covered in this EA, because their listings/designations occurred after the BO was issued. These species and critical habitats are: the vernal pool fairy shrimp, the vernal pool tadpole shrimp, all critical habitats for vernal pool species, and critical habitat for the California tiger salamander.”* See http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=8831

newly listed species and designated critical habitat.” [BO @ pg.7] No such plan is provided in the DEA nor has one been developed to the best of the signees knowledge.

- Within 2 years of the issuance of the BO, Reclamation “shall develop a final Integrated Pest Management Plan.” (BO @ pg 98) No such plan is provided in the DEA nor has one been developed to the best of the signees knowledge.
- Annually “*Reclamation must provide the Service with reports to describe the progress of implementation of all the commitments in the Conservation Measures and Terms and Conditions sections of this biological and conference opinion. The first report is due January 31, the first year after the issuance of this biological and conference opinion, and bi-annually thereafter.*” [BO @pg 99] No such report information is provided in the DEA nor has one been developed to the best of the signees knowledge.

Another set of routine maintenance operations not considered by the DEA or in previous USFWS’s biological opinions is the discharge of selenium-contaminated water from check drains and sumps along the Delta Mendota Canal (“DMC”). The check drains and sumps are necessitated by DMC operations which, in turn, result in large part from the Bureau’s decision to deliver water to the CV contractors from the Delta, so that the Bureau can continue to divert San Joaquin River water to the Friant and CV contractors. See generally NRDC v. Rodgers, No. S-88-1658 LKK, Order at 19-20 (May 31, 1995) (holding that the Friant Dam diversions affect the entire Bay-Delta system and have “required the export of Delta water through the Delta-Mendota Canal”).

Still another impact not addressed in the DEA and serial contract renewals are the cumulative impacts from Delta exports to the Westside of the San Joaquin Valley from the Delta Mendota Canal, San Luis Unit and Cross Valley Contractors. For example exchanges, transfers [water sales] and diversions impact DMC receiving waters, into which the check drains and sumps discharge, ultimately flow into habitat for a variety of listed species, including the Mendota Wildlife Area and, in some circumstances, through the Mendota Pool, down the San Joaquin River, and ultimately to the San Francisco Bay-Delta – each of which waterways is impaired by selenium. Monitoring data on these discharges indicates that the drains and sumps discharge mass loadings and concentrations of selenium that could reasonably be expected to contribute to the jeopardy of numerous listed species (including the giant garter snake, Sacramento winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, Delta smelt, and Sacramento splittail). These discharges also contaminate, and adversely modify, critical habitat for several of these species.⁷ The Bureau has not consulted on

⁷ Not considered in the DEA are impacts from CV renewal contracts to Critical Habitat designated since the Friant Biological Opinion and not considered in this DEA: Vernal Pools http://www.fws.gov/sacramento/es/critical-habitat/Vernal-Pool/es_critical-habitat-maps_vernal-pool.htm CA Tiger Salamander in 2005 <http://www.gpo.gov/fdsys/pkg/FR-2005-08-23/pdf/05-16234.pdf> http://www.fws.gov/sacramento/es/critical-habitat/CA-Tiger-Salamander/es_critical-habitat-maps_ca-tiger-salamander.htm Along with other critical habitat

these operations impacted by the proposed contracts, exchanges, exports and water deliveries. Further the Bureau unlawfully failed to complete consultations on these activities prior to executing the Friant contracts and issuing the Biological Opinion. See generally 50 C.F.R. §§ 402.02, 402.12(a), & 402.14(c)(4), (d) & (g)(4).

Excess water exports from the Delta have led to over 52 species being listed as threatened or endangered. The evidence before the Bureau and the Services demonstrates that these diversions from the Delta to the Cross Valley contractors may appreciably reduce the likelihood of survival and recovery of at least three listed species under NMFS jurisdiction (Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead) and at least two listed species of fish under USFWS jurisdiction (the Delta smelt and Sacramento splittail). The evidence also demonstrates that these Delta diversions do adversely modify the critical habitat for these species. The specific cumulative impacts of these serial contract renewals and the specific impacts from the proposed Cross Valley Contract renewals have not been analyzed, nor have the required monitoring data and mapping required under existing biological opinions. The Bureau has failed to consult or complete consultation on numerous actions specifically authorized by the contracts, renewals, exchanges and transfers [sales]. Further the Bureau has failed to complete consultation with the USFWS on the contract water quantities that the Bureau actually authorized in the serial contract renewals and in the proposed contract renewals.

USFWS Biological Opinion on US Bureau of Reclamation Long Term Contract renewal of Friant and Cross Valley Unit Contracts January 19, 2001 File Number 1-1-01-F-0027. See pages 2-31-32:

*“Monitoring will be used to assess the condition and impacts of Reclamation actions on listed species. Reclamation and the Service are actively developing a monitoring strategy based on the comprehensive mapping program. **The land cover database for year 2000, described in Phase III above, will be revisited every 5 years for monitoring purposes.**” ... “Additionally, Reclamation and the Service **commit to revisit and update the land cover database for year 2000 every 5 years for monitoring and trends analysis purposes.**” [emphasis added.]*

“The Land Use Monitoring and Reporting Program will be implemented immediately to test and track, for the purpose of validating over the life of the project, the assumptions made in this biological opinion that the baselines of the species on Table 1.1 are stable or increasing.

*Monitoring will be used to assess the condition and impacts of Reclamation actions on listed species. Reclamation and the Service are actively developing a monitoring strategy based on the comprehensive mapping program. **The land cover database for year 2000, described in Phase III above, will be revisited every 5 years for monitoring purposes.***”
[emphasis added]

The DEA fails except in a generalized listing to disclose the size and complexity of the proposed interim contracts and exchanges on vast tracks of lands and then brushes aside any analysis of endangered species: “Due to the size of the Proposed Action’s Action Area, the list of endangered, threatened and sensitive species includes species that may occur within the Counties of Fresno, Kings, Tulare and Kern (San Joaquin Valley portion). The BOs described in Chapter 1.2 contain more detailed descriptions of biological resources in the contractors’ service areas and boundaries. [DEA pdf @ pg 28] And yet as noted above, USBR and the contractors do not appear to be in compliance with the provision of these Biological Opinions.

None of the required monitoring or mapping is provided in this DEA. [See Exhibit B for Cross Valley acreage included in the BO] It is critically important to understand and evaluate the effectiveness and effects of the 20 years of water diversions that have occurred. In February 2013 USFWS determined in a consultation within a similar service area that the Bureau and interim contractors had failed to abide by monitoring and mapping required and concluded changes were necessary to the water contracts to test assumptions and impacts from previous diversions and deliveries.⁸:

“In the CVPIA Programmatic biological opinion, dated November 2000 (Service File No. 98-F-0124), Reclamation and the Service committed to develop a Comprehensive Mapping Program to identify remaining natural habitats and cropping patterns within CVP Service Areas, and identify any changes within those habitats that have occurred from 1993 to 1999, and then every 5 years thereafter (pages 2-62 and 2-63). Reclamation completed a mapping assessment of habitat changes from 1993 to 1999 and 2005. The Service is unaware of any recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation since 2005. The Service therefore requests that prior to the next IRC or Long Term Contract Renewal, this comprehensive mapping effort be updated with current imagery and compared with the previous mapping efforts to update the environmental baseline and to verify assumptions by Reclamation that the IRCs do not result in land use changes that would affect federally listed species. Water Supply Deliveries and Sources and Off-Site Conjunctive Use of CVP Water As part of the baseline information provided by Reclamation, the Service asks that Reclamation provide recent data on the following:

⁸ USFWS Correspondence FR: Thomas Leeman to USBR, David Hyatt Re: Consultation on the Interim Renewal of Water Service Contracts for the Cities of Avenal, Coalinga, Huron and California Department of Fish and Game 2013-2015. February 7, 2013.

- *Summary of recent water deliveries and sources under Reclamation's purview (e.g., CVP, water transfers, exchanges, etc.) for the contractors under consideration.*
- *Summary of off-site conjunctive use projects used to store CVP water supply (e.g., the amount of water stored, location and information on where the water was stored, used etc.)."*

Reclamation goes on to determine in the DEA without analysis or information that the *"Proposed Action would not affect any Federally listed or proposed species or any critical habitat beyond what has already been addressed in other consultations. For species under NMFS responsibility Reclamation discussed the Proposed Action and it was determined that federally listed salmonids would not require consultation/conferencing for this interim renewal. Therefore, further consultation under the Endangered Species Act is not required."* [DEA pdf @pg36]

Further claiming, *"All of these species and habitats were addressed however by the BOs on coordinated long-term operations of the CVP and SWP and associated documents. Listed salmonids are not expected to return to the upper San Joaquin during this interim renewal period and so don't require consultation/conferencing."* [DEA pdf @pg 29] This claim is not supported by fact. The Biological Opinions identified in the document have been deemed insufficient and further, the specific impacts of the tiered actions have not been disclosed or analyzed. Nor have the impacts from operational changes, "The exchanges when added to the Article 55 provision in the SWP contracts could result in more frequency of DWR pumping and conveying the 128,300 af/y of water."⁹ This fails to consider recent violations of temperature, salinity and flow requirements of D-1641.¹⁰ [Also see Exhibit C]

Cumulative Impacts Are Not Disclosed or Analyzed from Over a Decade of "Interim" Contract Renewals.

The list of EA's from 1994 to 2012, which do not include adequate environmental or biological review, document how USBR has thwarted the law and Congressional intent to disclose the impacts from these discretionary water deliveries and diversions from the Delta, surrounding watersheds and site specific impacts. This failure to disclose environmental impacts has been further compounded by the litany of EA's from 2005 to 2012 for exchanges and transfers [water sales] that are related, but have been put forward in a segmented, piece-meal fashion that precludes analysis of impacts of the project as a whole. For the first time in 2012,

⁹ http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=2575 February 2007 - Renewal of Interim Water Service Contracts

¹⁰ Sacramento River Chinook salmon spawning this year [2013] are threatened by the relaxation of water temperature standards on the upper Sacramento River combined with the violations of water quality standards in the Delta, the result of the over-allocation of scarce water supplies and diverting too much water in a dry year. http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/conserves/docs/05292013swrcb.pdf
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/conserves/docs/05242013swrcb.pdf

Article 5 Exchanges were incorporated into the EA for the IRCs rather than as a separate EA. This change was made because the two elements are interrelated and it was determined that a combined EA presents a clearer explanation of the overall project. [DEA pdf @ pg 11] This change, while an improvement in disclosing the impacts, still is deficient and documents the piece-meal analysis that historically has occurred. As presented in the environmental assessment, the exchanges and transfers [water sales] and associated biological and environmental impacts provide insufficient data and information to support the conclusion that there are no impacts. Further the failure disclose in a straightforward manner specifically where the water has been used and how much was used and which of those transfers [sales of water] or exchanges will continue does not provide sufficient information on the necessary site-specific review that NEPA requires.¹¹

Thank you for the opportunity to comment.



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¹¹ In 2012 a federal budget rider relaxed water transfer [sales] rules allowing the sale of water outside of the CVP service area to areas for example such as Kern Water Bank and other non CVP contractors. See: The Consolidated Appropriations Act, 2012, Division B, Energy and Water Development Appropriations Act, Section 207(c) and deemed the water transfer [sale] also “ meet the conditions described in subparagraphs (a) and (i) of §3405(a)(1) of CVPIA.” The impacts of this expanded water use and delivery are not disclosed.

http://www.usbr.gov/mp/PA/water/docs/CVP_Water_Transfer_Program_Fact_Sheet.pdf

Further the impacts and ultimate use of the water is not disclosed. As noted in previous NEPA documents, “*The CVP water supplies for ARVIN-EDISON WATER STORAGE DISTRICT [AEWSD] are variable and regulates this water by use of the groundwater reservoir underlying AEWSD. In addition, AEWSD engages in Article 5 exchanges of CVP water with the CV Contractors. Up to 128,300 af/y of CV Contractor’s CVP water is delivered to AEWSD. This water is diverted from the Delta through the Aqueduct and to the CVC.In 1997, AEWSD entered into a 25-year agreement with the Metropolitan Water District of Southern California (MWD), in which AEWSD agreed to bank approximately 250,000 af/y of MWD State Water Project Supply for later extraction in drought years. AEWSD has completed construction of an Intertie pipeline connecting the terminus of its canal to the California Aqueduct to enhance the water banking and exchange program. The Intertie pipeline does not create new or additional contractual supplies.*” http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=6086



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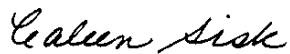
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Exhibit A: Documented Public Interest & Comments Incorporated by Reference [All Documents can be found in the record of earlier contract renewals, earlier NEPA processes and in some cases on the BOR website.]

- 1. 1-29-10 “ Draft Environmental Assessment and Finding of No Significant Impact for the San Luis Unit Water Service Interim Renewal Contracts” To Rain Healer from Joseph Membrino for Hoopa Valley Tribe.**
- 2. 1-29-10 “Comments of The Bay Institute and NRDC on Draft Environmental Assessment (EA) and Draft Findings of No Significant Impact (FONSI) for the San Luis Unit interim renewal contracts (Central Valley Project, California)” To Rain Healer from Hamilton Candee**
- 3. 2-18-2010 “Comments Re Two Year Interim Renewal Central Valley Project Water Service Contracts: Westlands Water District [WWD] Contracts 14-06-200-8237A-IR13; 14-06-200-8238A-IR13; WWD DD1-Broadview 14-06-200-8092-IR12; WWD DD1 Centinella 7-07-20-W0055-IR12-B; WWD1 Widren 14-06-200-8018-IR12-B; WWD DD2 Mercy Springs 14-06-200-3365A-IR12-C. To Karen Hall, USBR, from 11 Conservation, Fishery and Community Organizations.**
- 4. 3-2-2010 “Final Scoping Comments for Westlands Water District [Westlands] Proposed “Conveyance of Nonproject Groundwater from the Canal side project using the California Aqueduct”. The project proposes to discharge up to 100,000 acre feet of groundwater into the State Water Project California Aqueduct, a Drinking Water Supply for Approximately 20 Million People”. To Russ Freeman from 14 Conservation, Fishery and Community Organizations.**
- 5. 5-19-10 Letter to Donald Glaser, USBR From David Ortmann, Pacific Coast Management Council**
- 6. 7-30-2010 “San Joaquin River Central Valley Selenium Basin Plan Waiver, 303 (d) Delisting of San Joaquin River for Selenium and the California Toxics Rule” To Jared Blumenfeld, EPA from 16 Conservation, Fishery and Community Organizations.**
- 7. 9-22-2010 USFWS “Comment Letter – San Joaquin River Selenium Control Plan Basin Plan Amendment” To: Ms. Jeanine Townsend, Clerk to the Board from Susan K. Moore.**
- 8. 11-16-2010 “Letter to Senator Feinstein on Long Term Solution to Westlands Drainage Problem” To Commissioner Connor from Environmental Working Group.**
- 9. 12-13-2010 Comments on the Draft Finding of No Significant Impact [FONSI] San Luis Water District’s [SLD] and Panoche Water District’s [PWD] Water Service**

Interim Renewal Contracts 2011-2013 FONSI-10-070. To Rain Healer, USBR, From 8 Conservation, Fishery and Community Organizations.

- 10. 2-28-2011 “Scoping Comments Proposed Ten Year North to South Water Transfer of CVP and Non CVP Water Using State Water Project (SWP) and Central Valley Water Project (CVP) Facilities” To Brad Hubbard, USBR et. al from 10 Conservation, Fishery and Community Organizations.**
- 11. 5-5-11 “Request for Revised Notice of Intent for the Bay Delta Conservation Plan (BDCP) that Recognizes Water Supply Realities” To Deputy Interior Secretary Hayes from 16 Conservation, Fishery and Community Organizations.**
- 12. 8-11-2011 “Opposition to the Proposal to Curtail Monitoring at the Grassland Bypass Project.” To Michael C. S. Eacock (Chris), Donald R. Glaser, USBR and Ren Lohofener USFWS et. al from 7 Conservation, Fishery and Community Organizations.**
- 13. 10-17-2011 “Comments on Draft EA/FONSI (DEA) for the San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche Drainage District’s San Joaquin River Improvement Project (SJ RIP) FONSI-10-030” To Rain Healer, USBR from 8 Conservation, Fishery and Community Organizations.**
- 14. 11-15-2011 “Full Environmental Impact Statement Needed for San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche Drainage District [FONSI-10-030]” To Donald Glaser from 13 Conservation, Fishery and Community Organizations.**
- 15. 11-16-2011 Notice Inviting Public Comment on BDCP MOA to Hon. Kenneth Salazar, Secretary John Laird, Secretary from 190 Conservation, Fishery and Community Organizations.**
- 16. 1-5-2012 “Comments on Draft EA/FONSI for Three Delta Division and Five San Luis Unit Water Service interim Renewal Contracts 2012-2014” To Rain Healer from Stephen Volker on behalf of 4 Tribal, Conservation, Fishery and Community Groups.**
- 17. 1-18-2012 “Comments on Draft EA/FONSI for Oro Loma Water District Partial Assignment of Central Valley Project Water to Westlands Water District FONSI-11-092” To Rain Healer, USBR from 12 Conservation, Fishery and Community Organizations.**
- 18. 1-20-2012 “Delta Division, San Luis Unite and Cross Valley CVP Interim renewal contracts—Comments of the Hoopa Valley Tribe on draft EA-11-049 and EA-11-011 and FONSI 11-049 and FONSI 11-011” To Rain Healer, USBR from Leonard E. Masten Jr. Chariman.**

19. 3-26-2012 “Comments on CVP Interim Renewal Contracts for three Delta Division and five San Luis Unit interim water service renewal contracts for: Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and Westlands Water District (five contracts) 2012 to 2014 and Environmental Documents.” To Hon. David J. Hayes, Donald R. Glaser, Michael L. Connor, Hilary Tompkins and Michael Jackson from PCFFA et. al [13 Conservation, Fishery and Community Organizations.]

Exhibit C:

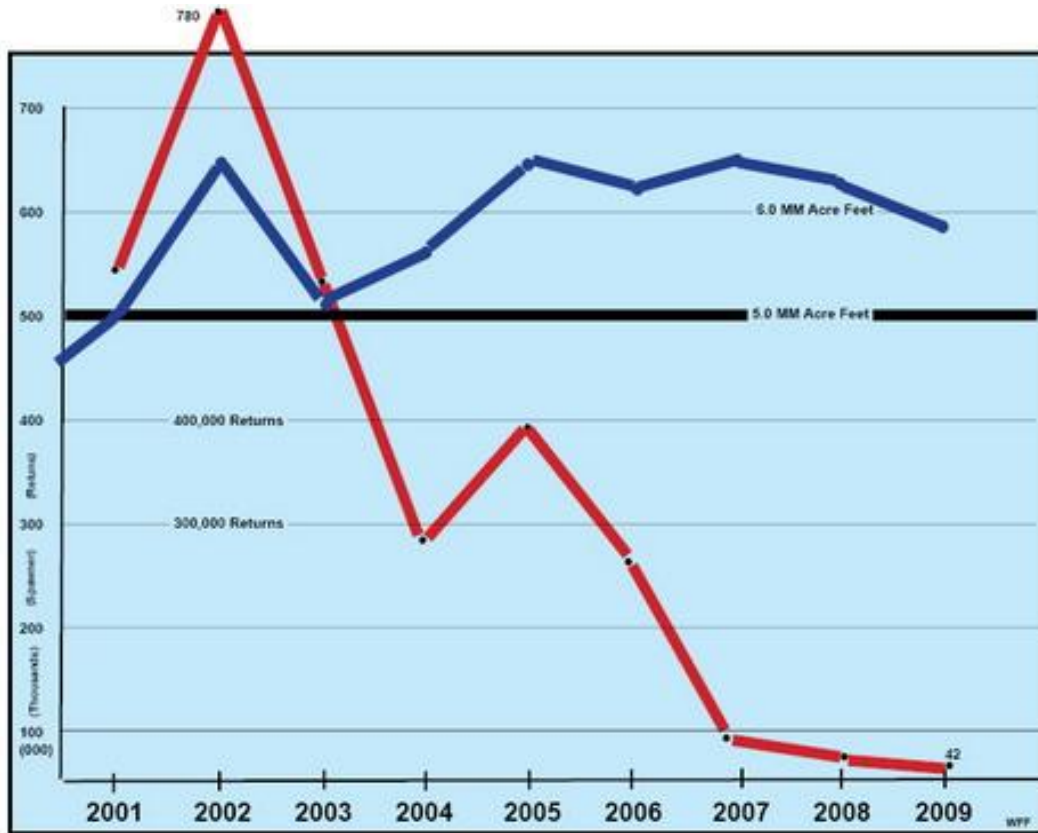


Figure 1. *Pumping increased and salmon crashed* <http://water4fish.org/>

<http://www.counterpunch.org/2012/05/07/carnage-in-the-pumps/>

Report Documents Record Delta Water Exports and Massive Fish Kills

Carnage in the Pumps

by DAN BACHER

A report written by Geir Aasen of the California Department of Fish and Game documents the massive numbers of fish salvaged at the federal Central Valley Project's Tracy Fish Collection Facility (TFCF) and the State Water Projects' Skinner Delta Fish Protective Facility (SDFPF) during the 2011 water year, as well as the record amounts of water exported to corporate agribusiness and southern California by the state and federal projects.

The report appeared in the [Interagency Ecological Program for the San Francisco Estuary Newsletter](#), Fall/Winter 2012 edition.

The State Water Project reported record high water exports, 4.90 billion cubic meters of water, the highest export rate recorded since 1981, the report stated. The federal Central Valley Project exported 3.13 billion cubic meters of water, an increase from exports in 2008-2011, but comparable to exports from 2002 to 2007.

Translated into acre feet, the annual export total via the state and federal Delta pumps was 6,520,000 acre-feet in 2011 – 217,000 acre-feet more than the previous record of 6,303,000 acre-feet set in 2005.

“Annual fish salvage (all species combined) at the TFCF (federal) was high (8,724,498), but well below the record high salvage of 37,659,835 in 2006,” according to the report. “Annual salvage at the SDFPF (state) was 3,0092,553, an increase from 2007 to 2010 which ranged from 646,290 to 2,484,282.”

When you combine the fish “salvaged” in the state and federal facilities, the total count is 11,817,051 fish of all species.

“Splittail were the most salvaged species at both facilities,” the report said. “Threadfin shad (591,111) and American shad (100,233) were the 2nd and 3rd most salvaged fish at TFCF. American shad (558,731) and striped bass (507,619) were the 2nd and 3rd most-salvaged fish at SDFPF. Relatively few Chinook salmon, steelhead, delta smelt and longfin smelt were salvaged at the SDFPF ($=0.7\%$ of total annual salvage combined) and the TFCF (<math><0.3\%</math> of total annual salvage.)”

The total splittail salvage was 7,660,024 in the federal facilities and 1,326,065 in the state facilities, a total of 8,986,089 fish, nearly 9 million splittail and a new salvage record for the species. The fish, formerly listed as “threatened” under the Endangered Species Act (ESA), is no longer listed.

Conservation organizations first petitioned for federal ESA protection for splittail in 1992 and the species was listed as threatened in 1999. After litigation by water agencies challenging the listing, the Bush administration improperly removed the splittail from the threatened list, despite strong consensus by agency scientists and fisheries experts that it should retain protected status.

The Center for Biological Diversity sued, and the Fish and Wildlife Service agreed to revisit the tainted Bush-era decision. The critically endangered splittail was again denied Endangered Species Protection by the Obama administration in October 2010, in spite of an analysis of splittail population trends by the Bay Institute showing that there

has been a significant decline in the abundance of splittail during the past several decades.

The total chinook salmon salvage in the state facilities was 18,830 and the federal facilities was 18,135, a total of 36,965 fish. While the report says that is “relatively few” salmon, fish advocates note that this is still a lot of wild spring run and fall run salmon.

The report says record low numbers of Delta smelt, 51, were salvaged at the federal facilities, while no Delta smelt were salvaged at the state facilities for the first time recorded for 1981 to 2011. Salvage was also low in 2010 (22).

The report breaks down the total amount of fish salvaged by species in a number of charts and graphs.

CWIN, Winnemem Wintu Tribe and GGSA respond to report

After reading the report, Carolee Krieger, president of the California Water Impact Network, commented, “It’s outrageous that the greed of a few growers, who are irrigating poisoned land south of the Delta on the west side of the San Joaquin Valley, is causing this unnecessary fish kill. At the same time, these growers have the most junior water rights in the state of California.”

Caleen Sisk, Chief and Spiritual Leader of the Winnemem Wintu Tribe, emphasized that the “salvaged” salmon mentioned in the report are only a fraction of the total number of salmon that die in the state and federal pumping facilities.

“It seems to me that when a DFG report claims that they only counted 36,965 salmon, which they claim represents ‘relatively few,’ there still remains the gross ‘uncounted and uncountable’ and ‘underestimated’ numbers of salmon that die in the pumps yearly that is not addressed,” Sisk said. “This should be a major concern in the report when the overall return of all wild salmon are on a steady, clear decline. Where is the report that evaluates the health of the estuary from these huge unnecessary fish kills?”

“There seems to be enough studies that verifies the Delta pumps are killing the fish by the millions and they are the reason our water to ocean system is dying,” she stated. “An estuary is like a beaver pond, it is a sacred pool that brings life! We call a beaver pond “k’Od Bisus” (giver of life). Man cannot make an “estuary,” – after such damage, all water systems will respond and change. This is a major concern of the Winnemem Wintu Tribe who sing and dance for the return of salmon to the McCloud River.”

“The salmon are the indicators of how healthy the water systems are from the high mountain waters to the oceans and back again. There should be better safeguard for

such an irreplaceable 'public trust' asset that provides water for all. This is not about 'money' or 'who gets the water' - it is about how an estuary and salmon surviving corporate greed," concluded Sisk.

"The pumps continue to kill our salmon at alarming rates," responded Victor Gonella, President of the Golden Gate Salmon Association (GGSA). "Thanks to the hard work of many, we do have the biological opinions in place to reduce pumping slightly in critical times of migration. We must all remain steadfast to insure the biops are adhered to and push for further pumping reductions in the future."

Bay Institute report documents carnage in the pumps

In March, the Bay Institute released a ground breaking report titled "Collateral Damage" revealing the enormous numbers of fish that are "salvaged" by the state and federal pumps on the South Delta every year.

The report revealed that the record number of any fish salvaged in one year, 13,541,203, was set by striped bass. The annual "salvage" numbers for striped bass from 1993 to 2011 averaged a horrendous 1,773,079 fish.

The report said the average salvage total for all species is 9,237,444 fish, including striped bass, splittail and threadfin shad, as well as ESA listed Sacramento River chinook salmon, Central Valley steelhead, Delta smelt, green sturgeon, and longfin smelt. Over 42 species have been recorded in the state and federal pumping facilities.

However, salvage numbers are only the "tip of the iceberg" of the total fish lost in the pumping facilities. "Salvage numbers drastically underestimate the actual impact," according to the Bay Institute. "Although the exact numbers are uncertain, it is clear that tens of millions of fish are killed each year, and only a small fraction of this is reflected in the salvage numbers that are reported."

A conservative estimate (Kimmerer, 2008) is that, for juvenile salmon that have been pulled towards the pumps, only 1 in 5 will survive long enough to be counted in salvage (the rest are lost to predators or other factors), resulting in an overall loss of up to 10% of the migrating fish (Castillo, 2010). Another study of "pre-screen loss" estimated that as many as 19 of every 20 fish perished before being counted (Castillo, 2010).

"The fact is, the salvage numbers look really bad but the real impact of export-related mortality is probably far worse," the report added.

You can download the Bay Institute's report, Collateral Damage, by going to: <http://bay.org/publications/collateral-damage>).

While this massive carnage takes place in the Delta pumps every year, the Brown administration is fast-tracking the construction of the peripheral canal or tunnel through the Bay Delta Conservation Plan (BDCP). The canal is likely to lead to the extinction of Central Valley steelhead, Sacramento River chinook salmon, Delta smelt, longfin smelt, green sturgeon, Sacramento splittail and other species.

Response to Coalition Letter of September 26, 2013

Coalition 1 The Environmental Assessment was developed consistent with National Environmental Policy Act (NEPA) regulations, guidance from the Council on Environmental Quality (CEQ), and the Department of the Interior's NEPA regulations. Reclamation has followed applicable procedures in the preparation of EA 12-048, which includes the required components of an EA as described in the CEQ's NEPA regulations (40 CFR 1508.9).

With regard to biological issues, Reclamation elected to address these concerns through consultation. See Section 3.4 of the Final Environmental Assessment for further information.

Coalition 2 Under NEPA and guidance from the CEQ, the degree of analysis for particular resources should be proportional to the potential for effects to those resources. Therefore, an action such as this, which does not introduce new visual elements, would not be expected to trigger a comprehensive analysis of visual impacts. Analysis is limited for the other items mentioned (global climate, etc.) for similar reasons.

Coalition 3 The Reclamation Project Acts of 1956 and 1963 provide for renewal of existing contracts upon request. Section 3404(c) of the CVPIA states that "...Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each." The CVPIA only altered the 1956 Act with respect to the right of renewal for irrigation contracts, not the provision related to contract quantity. Further, the Water Needs Assessment demonstrated a need for water for beneficial uses beyond the contract amounts, even with a full allocation. Reclamation therefore believes that the agency does not have the discretionary authority to reduce contract quantities or decline to renew the interim renewal contracts, and those alternatives were not evaluated further.

Coalition 4 The commenter has not provided data to support the assertion that water quality standards are not being met, that temperatures are being exceeded or that pulse flows are not being provided. Reclamation consistently meets standards for flow, temperature and salinity at Vernalis, at the southern end of the Delta. Monitoring data are publicly available at http://www.water.ca.gov/waterquality/sjr_realtime/.

Balancing the various needs for water in the San Joaquin Valley, including habitat preservation and sustaining wildlife, was addressed by the CVPIA and its Programmatic Environmental Impact Statement (PEIS). It is beyond the scope of this EA to revisit those previous decisions and determinations. Also see the response to "Coalition 3" regarding the range of alternatives considered.

Coalition 5 Please see the response to "Coalition 1", above.

Coalition 6 As described above, Reclamation initiated consultation with the Service following posting of the Draft Environmental Assessment. The most recent mapping available was provided to the Service as part of consultation.

Coalition 7

Delta exports of CVP water for delivery under interim renewal contracts are on-going actions and the diversions of source waters for export to South-of-Delta CVP contractors were described in the CVPIA PEIS (see Chapter III of the PEIS). The PEIS also included analysis of the region-wide and cumulative impacts of the CVPIA, including exchanges, renewal of long-term water service contracts, and provisions for issuance of interim renewal contracts until long-term contracts can be issued. This Environmental Assessment is “tiered” from the CVPIA, meaning that it analyzes site-specific impacts to the human environment, with the larger-scale analysis of the CVPIA EIS as background.

Also see the response to “Coalition 6”.