Appendix A

Public Comments

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Appendix A
Public Comments

A.1 Introduction

This appendix contains comments received on the Proposed MND and Draft EA/IS. Each commentor, their associated agency/group, and assigned number identification is listed in Section A.2. Section A.3 includes the comment letters received with each comment bracketed and numbered for response. Appendix B includes responses to comments by comment number.

A.2 List of Commentors

Table A-1 presents commentors and associated agencies or groups that submitted comments on the 2014 SLDMWA Water Transfers EA/IS.

Table A-1. List of Commentors

Commentor	Agency/Group	Letter ID
Scott Gruendl	City of Chico	1
Thomas Lippe	Attorney representing AquAlliance	2
Barbara Vlamis	AquAlliance	3
Scott Cantrell	California Department of Fish and Wildlife	4

A.3 Comments

The full text of the comment letters received is included below. Comment letters 2 and 3 included multiple attachments; these attachments are available upon request.

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March 31, 2014

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Frances Mizuno
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Sent Via Email to frances.mizuno@sldmwa.org

Re: Comments on Draft Environmental Assessment/Initial Study for 2014 San Luis & Delta Mendota Water Authority Water Transfers

Dear Mr. Hubbard and Ms. Mizuno:

This letter is to express the City of Chico's concern with water transfers evaluated in the Draft Environmental Assessment/Initial Study (EA/IS) for the above referenced project.

I-1

Through its General Plan, it is Chico's policy to oppose regional sales and transfers of local groundwater, including water export contracts. The Tuscan aquifer is the primary groundwater basin underlying and providing municipal and agricultural water to Chico and its Planning Area. It's for this reason that the City opposes transfers of local groundwater in the long-term interest of a safe and reliable municipal water supply, and to support the regional economy and the environment.

It is important to note that the proposed water transfer program is not the only one contemplated in the region. Given the magnitude of this proposed water transfer program, previous water transfers, other transfer proposals under consideration, and the many unknowns regarding how groundwater basins function, the level of environmental review prepared by the Bureau and San Luis Delta Mendota Water Authority needs to be expanded. The City believes that an Environmental Impact Statement, as well as an Environmental Impact Report consistent with the requirements of California Environmental Quality Act, would be a more appropriate level of environmental review.

I-2

It appears your two agencies agree that a higher level of environmental review is required. On page 1-4 of the EA/IS, there is an acknowledgement that your two agencies are collaborating in the preparation of joint Environmental Impact Statement/Environmental Impact Report to analyze the effects of water transfers from water agencies in northern California to waters agencies south of the Delta and in the Bay Area over a 10-year period. Given that, it is unclear why you are moving forward with a water transfer program at this point that is not supported by a more robust environmental review that looks at the true cumulative impact associated with multiple water transfers over an extended period of time.

Specific concerns regarding the EA/IS include:

I-3

- The EA/IS alternatives analysis includes only two alternatives: 1) implement the proposed action; or 2) no project. Other ways of achieving the project's goals should be thoroughly explored, as

they will be required to in the EIS/EIR that is under preparation, including alternatives that do not rely on groundwater substitution transfers. 1-3

- The EA/IS does not adequately analyze the cumulative impacts of the proposed project and other transfer programs being considered. The location, magnitude, and impact of all potential transfer programs (both state and federal) over an extended period should be assessed as part of a comprehensive and quantitative cumulative impact analysis, especially given the successive dry water years the State is experiencing. 1-4

- The EA/IS provides no discussion of how the proposed project might affect water supplies and sub-surface interactions in light of climate change. Reduced snow pack and sustained droughts are identified as key outcomes of climate change in California. Add to this the significant uncertainty regarding stream/aquifer interaction and the multiple dry years experienced by the State. What affect might this project, in addition to other transfer programs, have on sensitive aquifer systems in light of the impacts of climate change? 1-5

- The cumulative groundwater resources impact discussion on page 3-57 of the EA/IS concludes that there will be no impact to groundwater resources because the Bureau "requires well review, monitoring, and *mitigation* to reduce effects to third party groundwater users for approval of transfers" (emphasis added). This is achieved by relying on the BOR's *Draft Technical Information for Preparing Water Transfer Proposals*. However, by its own admission, this document's main purpose is "to determine if [a] proposed transfer would cause legal injury to downstream water users." Well review, monitoring, and mitigation outlined in the document is not intended to reduce environmental impacts to groundwater or biological resources that could be caused by dropping groundwater levels. The proposed mitigation plan is designed to alleviate possible third-party impacts. The EA/IS should not defer mitigation to a program that is not designed to specifically to address groundwater resource impacts. 1-6

The City's greatest concern is that water agencies south of the Delta continue to be reliant on a water source that depends on water transfers' relying on groundwater. While a single water transfer may not alone pose a risk to the economy and environment of Chico and the north state, it sets a possibly dangerous precedent of numerous future annual water transfers that could negatively impact our region's economy and environment. 1-7

Thank you for your consideration of these concerns. If you have any questions, please feel free to contact Principal Planner Brendan Vieg at (530) 879-6806.

Sincerely,

Scott Gruendl
Mayor

cc: file

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April 2, 2014

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Re: Notice of Intent to Adopt a Mitigated Negative Declaration and Environmental Assessment for 2014 Water Transfers

Dear Mr. Hubbard and Ms. Mizuno:

This office represents AquAlliance regarding the above described Project. AquAlliance objects to approval of this Project on the grounds described below.

The Mitigated Negative Declaration (MND) and Environmental Assessment (EA) presents substantial evidence that the project will have significant air quality impacts. This is most obvious regarding NoX emission by Pelger Mutual Water Company, Pleasant Grove-Verona Mutual Water Company, and Tule Basin Farms (pp. 3-7, 3-8), but, as discussed below, it is also true for all of the sellers in all of the air districts. Therefore, the California Environmental Quality Act (CEQA) requires preparation and certification of an Environmental Impact Report (EIR) and the National Environmental Policy Act (NEPA) requires preparation and certification of an Environmental Impact Statement (EIS) before Project approval. 2-1

The MND/EA contends that these impacts will be reduced to less-than-significant with the adoption of mitigation measures. This conclusion is the result of failing to proceed in the manner required by law: (1) in assessing the significance of air quality impacts, (2) in developing specific mitigation measures to reduce the admitted significant air quality impacts; (3) in assessing the effectiveness of such mitigation measures; and (4) in adopting such mitigation measures. This conclusion is also unsupported by substantial evidence in the record.

For all sellers except those in Glenn, Colusa and Shasta counties, the EA/MND analyzes Project emissions against numerical thresholds of significance established by three air quality management districts (Feather River, Sacramento Metropolitan, and Yolo-Solano) for the ozone precursors VOC and NoX. For sellers located in the air districts for Glenn, Colusa and Shasta counties, the EA/MND uses a numerical threshold of significance of 100 tons per years.

Table 3-1 of the EA/MND provides the "CEQA Thresholds of Significance" for the Feather River, Sacramento Metropolitan, Yolo-Solano air districts and provides a citation to the source documents published by each air district. (P. 3-6.) The EA/MND provides absolutely no information as to why these thresholds are valid, on the facts of this Project, to serve as thresholds of significance for these pollutants. But the EA/MND cannot simply rely on the fact that another agency has said that these thresholds are appropriate. "When adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence." (CEQA Guideline, 14 CCR § 15064.7(c).) 2-2

Indeed, the Sacramento air district publication that includes the thresholds table cited in the EA/MND, but in a portion not cited in the EA/MND, expressly advises other agencies that: "When considering a project's impact on air quality, a lead agency should provide substantial evidence that supports its conclusions in an explicit, quantitative analysis whenever possible."[1] This publication also indicates that its numerical thresholds cannot be used in isolation, stating:

> Tests of significance are not limited to the table or the criteria listed. Other factors, especially those related to the location of the project and potential impacts on nearby populations (e.g., schools, day care centers, residences, and hospitals) also should be examined. These factors include proximity of the project to population areas, proximity of the proposed project to other pollutant sources (e.g., industrial facilities emitting odorous or hazardous substances), and potential land use conflicts.[2]

More important, none of the three source publications cited in Table 3-1 of the EA/MND provide substantial evidence that these thresholds are appropriate for assessing the significance of project impacts under CEQA or NEPA. The only one that even tries is the Yolo-Solano publication, stating:

> B.1 Ozone Precursors (ROG and NOx) Threshold
> What is important for determining ozone impacts is the "substantial contribution" of

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[1] Exhibit 2: Guide to Air Quality Assessment in Sacramento County, Sacramento Metropolitan Air Quality Management District, 2009, Chapter 2, p.2-6.

[2] Exhibit 2: Guide to Air Quality Assessment in Sacramento County, Sacramento Metropolitan Air Quality Management District, 2009, Chapter 2, p.2-7.

> a project. The District defines "substantial contribution" for ozone precursor emissions in terms of California Clean Air Act (CCAA) requirements and implements it through Rule 3.20 - Ozone Transport Mitigation. By comparing a project's ozone precursor emissions with emission levels considered significant under state law, a project-level threshold of significance can be established. In the past, the District used Rule 3.4 – New Source Review: Offset Requirements that set emission thresholds above which stationary pollution sources must offset emissions. However, Rule 3.20 is more restrictive and accounts for the transport problem associated with ozone as a regional pollutant.
>
> As required by California Health and Safety Code (H&SC) §40912, districts responsible for air pollutant transport shall provide for attainment and maintenance of the state standards in the downwind districts. The ARB identified the District, as part of the "Broader Sacramento Area," as transporting to the Upper Sacramento Valley, the Mountain Counties, the San Joaquin Valley, and the San Francisco Bay Area. Therefore, pursuant to requirements of the Transport Mitigation Regulation, the District implements Rule 3.20, Ozone Transport Mitigation, which requires a 10 tons per year "no net increase" program for nitrogen oxides (NOx) and volatile organic compounds (VOCs). For purposes of this document, VOCs are equivalent to reactive organic gases (ROG). Since stationary sources are not allowed to contribute more than10 tons per year of NOx or VOC under Rule 3.20, this number serves as the project-level threshold of significance as well.[3]

2-2 cont

However, this text just informs the reader what was done to create the thresholds. It does not inform the reader why numbers derived from a different regulatory program are valid thresholds for CEQA/NEPA assessment.

The EA/MND's use of the air district thresholds of significance is erroneous as a matter of law.[4] The EA/MND cannot merely reference a project's compliance with another agency's regulations. Lead agencies must conduct their own fact-based analysis of project impacts, regardless of whether the project complies with other regulatory standards. The EA/MND uses air district thresholds uncritically, without any factual analysis of its own, in violation of CEQA.[5] This

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[3] Exhibit 3, Yolo-Solano Air Quality Management District, Handbook for Assessing and Mitigating Air Quality Impacts, 2007, p. B-1.

[4] *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793 ("The use of an erroneous legal standard [for the threshold of significance in an EIR] is a failure to proceed in the manner required by law that requires reversal.").

[5] *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [underscore emphasis added], citing *Communities for a Better Environment v. California*

uncritical application of the air district's thresholds of significance represents a failure exercise independent judgement in preparing the EA/MND.[6] Just as disagreement from another agency does not deprive a lead agency of discretion under CEQA to judge whether substantial evidence supports its conclusions,[7] agreement from another agency does not relieve a lead agency of separately discharging its obligations under CEQA.

2-2 Con't

As mentioned above, the cited air district publications do not provide any factual explanation as to why the numerical standards represent appropriate thresholds for judging the significance of project-level ozone pollution impacts. Moreover, the EA/MND also fails to include any such explanation, and is therefore inadequate as a matter of law.[8] It is well-settled that compliance with other regulatory standards cannot be used under CEQA as a basis for finding that a project's effects are insignificant, nor can it substitute for a fact-based analysis of those effects.[9]

Resources Agency (2002) 103 Cal.App.4th 98, 114 ("*CBE*"); accord *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 ["A threshold of significance is not conclusive...and does not relieve a public agency of the duty to consider the evidence under the fair argument standard."].)

[6] *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446.

[7] *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626.

[8] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405 ["whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report"]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 ["[I]nformation 'scattered here and there in EIR appendices' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis'"], 443 ["The audience to whom an EIR must communicate is not the reviewing court but the public and the government officials deciding on the project. That a party's briefs to the court may explain or supplement matters that are obscure or incomplete in the EIR, for example, is irrelevant ... The question is therefore not whether the project's significant environmental effects *can* be clearly explained, but whether they *were*"] (emphasis in original); *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.

[9] *See*, e.g., *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16 (lead agencies must review the site-specific impacts of pesticide applications under their jurisdiction, because "DPR's [Department of Pesticide Regulation] registration does not and cannot account for specific uses of pesticides..., such as the specific chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application, and the like"); *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588 (state agency applying pesticides cannot rely on pesticide registration status to avoid further environmental review under CEQA); *Oro Fino Gold Mining Corporation v. County*

Moreover, regardless of what evidence might be included in the air district documents, that evidence cannot overcome a fundamental logical and legal flaw in the EA/MND's assumption that these thresholds are appropriate for the purpose for which they are used. Using the EA/MND's logic, if one project in the Sacramento district will add 64 lbs/day of VOC, it is considered a less-than-significant impact, but if that project will add 65 lbs/day of ozone precursors, it is considered significant. Yet, if two new projects are approved in the area in the same time period, each emitting 64 lbs/day of VOC (for a total of 128 lbs/day), it is considered less-than-significant even though the total far exceeds the "threshold." Thus, the thresholds violate a fundamental CEQA principal that regardless of whether projects' incremental impacts are deemed insignificant in isolation, they may be cumulatively significant. 2-2 Con't

All of the areas subject to this Project are in "non-attainment" status under federal and State clean air laws for these criteria pollutants; and this project, along with many others, will substantially contribute to that existing significant adverse impact. There is no evidence to the contrary. The City's untenable position is that public agencies in the Air Basin can approve project after project, each emitting (in the case of ozone precursors) up to the threshold amount of new and additional ozone precursors, without ever causing a cumulatively considerable increase in air pollution. This approach runs counter to the reason for conducting cumulative impact analysis. If agencies in each air district continue to find projects that make air quality worse - when it is already significantly degraded - do not have a significant adverse cumulative impact on air quality, then the City will have no legal obligation to adopt feasible mitigation measures to reduce the significant cumulative impact. 2-3

The significance of a cumulative impact depends on the environmental setting in which it occurs, especially the severity of existing environmental harm. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 ("*CBE*") ["[T]he relevant question"... is not how the effect of the project at issue compares to the preexisting cumulative effect, but whether "any additional amount" of effect should be considered significant in the context of the existing cumulative effect. [footnote omitted] In the end, the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant. [footnote omitted]"]; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721.) Therefore, the idea that agencies can forever approve multiple projects that each add less than the thresholds amount of VOC and NOx to the air

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of El Dorado (1990) 225 Cal.App.3d 872, 881-882 (rejects contention that project noise level would be insignificant simply by being consistent with general plan standards for the zone in question). *See also City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1331-1332 (EIR required for construction of road and sewer lines even though these were shown on city general plan); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712-718 (agency erred by "wrongly assum[ing] that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality.").

every day and never be deemed cumulatively considerable, regardless of the number of such projects, is unsupported and inconsistent with the definition of cumulative impacts. Rather than explain why this is not true, the EA/MND ignores the issue.

2-3 con't

As noted above, for sellers located in the air districts for Glenn, Colusa and Shasta counties, the EA/MND uses a numerical threshold of significance of 100 tons per year. No source or justification is provided. For purposes of comparison, it is worth noting that the Sacramento air district threshold of 65 lbs/day translates to 11.8 tons per year; and the Feather River air district threshold of 25 lbs/day translates to 4.5 tons per year. Thus, the number the EA/MND picks out of the air for sellers located in the Glenn, Colusa and Shasta county air districts is almost ten times higher than the Sacramento threshold, and more than 20 times higher than the Feather River threshold. This is arbitrary and capricious and not supported by substantial evidence.

The EA/MND concedes that:

> The Proposed Action could exceed NOx standards (an O3 precursor) in areas that are in nonattainment for O3, which would be a cumulatively considerable effect. However, implementation of mitigation measures AQ-1 through AQ-4 would reduce individual impacts to less than significant and reduce the cumulative contribution. Therefore, air quality impacts would not be cumulatively considerable.

2-4

(Page 3-10.) Mitigation measures AQ-1 through AQ-4 are:

> • AQ-1 – All diesel-fueled engines would either be replaced with an engine that would meet the applicable emission standards for model year 2013 or would be retrofit to meet the same emission standards.
> • AQ-2 – Natural gas engines will be retrofit with a selective catalytic reduction device (or equivalent) that is capable of achieving a NOx control efficiency of at least 90 percent.
> • AQ-3 – Any engines operating in the area of analysis that are capable of operating as either electric or natural gas engines would only operate with electricity during any groundwater transfers.
> • AQ-4 – Selling agency would reduce pumping at diesel or natural gas wells to reduce emissions to below the thresholds.

(Page A-6.)

The reliance on mitigation measures AQ-1 through AQ-4 to reduce impacts to less than significant is misplaced for several reasons. All of these measures are intended to achieve the less-than-significant" standard as measured by the thresholds discussed above; therefore, the mitigation plan suffers from the same flaws as the impact assessment discussed above. Also, there is no analysis indicating that AQ-1 or AQ-2 will achieve any particular degree of mitigation. With respect

to AQ-3, there is no data indicating how many engines can operate on electricity; therefore, there is no information indicating how much mitigation AQ-3 will achieve. Regarding AQ-4, even if the "thresholds" were valid, there is no evidence that achieving the thresholds is feasible. It is not even clear whether the thresholds are intended to apply to each well individually or to each seller's wells in aggregate. Therefore, there are no objective metrics by which to judge whether the AQ-4 thresholds are achieved.

2-4 con't

Thank you for your attention to this matter.

Very Truly Yours,

Tom Lippe

Thomas N. Lippe

List of Exhibits

1. Feather River Air Quality Management District, Indirect Source Review Guidelines: A Technical Guide to Assess the Air Quality Impact of Land Use Projects Under the California Environmental Quality Act, 2010.

2. Guide to Air Quality Assessment in Sacramento County, Sacramento Metropolitan Air Quality Management District, 2009.

3. Yolo-Solano Air Quality Management District, Handbook for Assessing and Mitigating Air Quality Impacts, 2007.

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AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS

california water impact network

April 2, 2014

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Subject: Comments on the *Draft Environmental Assessment/Initial Study 2014 San Luis & Delta Mendota Water Authority Water Transfers*

Dear Mr. Hubbard and Ms. Mizuno:

AquAlliance submits the following comments and questions for the Bureau of Reclamation ("Bureau") and the San Luis Delta Mendota Water Authority's ("SLDMWA") ("Agencies") *Draft Environmental Assessment* ("EA") and *Initial Study* ("IS") ("EA/IS"), for the *2014 San Luis & Delta Mendota Water Authority Water Transfers* program ("Project"). We include by reference the comments and documents submitted by AquAlliance's Executive Director for the *2009 Drought Water Bank* ("DWB"), the *2010-2011 Water Transfer Program*, and the *2013 Water Transfer Program* with other items in Appendix A that disclose the environmental impacts associated with these types of serial "temporary" transfers. 3-1

I. Lead Agency

SLDMWA is not the proper Lead Agency for the Project. California Environmental Quality Act ("CEQA") Guidelines section 15367 and Section 15051 require that the California Department of Water Resources, as the operator of the California Aqueduct and who has responsibility to protect the public health and safety and the financial security of bondholders with respect to the aqueduct, is the more appropriate lead agency. In *PCL v DWR*, the court found that DWR's attempt to delegate lead agency authority impermissibly insulated the department from "public awareness and possible reaction to the individual members' environmental and economic values."[1] DWR clearly has approval authority for parts of the Project and is guiding the transfer process as noted on page 3-41: "Potential sellers will be required to submit well data for Reclamation and, where appropriate, DWR review, as part of the transfer approval process. Required information is detailed in the *DRAFT Technical Information for Preparing Water Transfer Proposals* (Reclamation and DWR 2013) and Addendum (Reclamation and DWR 2014) for groundwater substitution transfers." 3-2

[1] *Planning and Conservation League et al. v Department of Water Resources* (2000) 83 Cal.App.4th 892, 907, citing Kleist v. City of Glendale (1976) 56 Cal. App. 3d 770, 779.

Additionally, the EA/IS p 1-2 says: "Other transfers not involving the SLDMWA and its Participating Members could occur during the same time period. The Tehama-Colusa Canal Authority (TCCA) is releasing a separate EA/IS to analyze transfers from a very similar list of sellers to the TCCA Member Units. These two documents reflect different potential buyers for the same water sources; that is, the sellers have only the amounts of water listed in Section 2 available for transfer, but the water could be purchased by SLDMWA or TCCA members." This is another reason that DWR should be the lead agency: environmental review of transfers should be unified and comprehensive, and cumulative across both geography and over time. 3-2

II. Document Presentation

Document Identification

A foundational requirement under the National Environmental Policy Act ("NEPA") and CEQA is disclosure. This begins with the proper identification of the document that is circulated for public review. The title page of the environmental review document provided for the proposed Project states that it is a *Draft Environmental Assessment/Initial Study 2014 San Luis & Delta Mendota Water Authority Water Transfers*. The headers on alternate pages throughout the document and the appendices identify the document with: *2014 San Luis & Delta-Mendota Water Authority Water Transfers Draft Environmental Assessment/Initial Study*. From these titles, the Bureau appears not to be a party to the document. 3-3

The Notice of Intent that was mailed to AquAlliance, but was not available on the Bureau's web site (http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=16681), asserts that SLDMWA plans to adopt a Mitigated Negative Declaration and refers the reader to the Bureau's web site provided above for the EA/IS. In addition, the CEQA cover sheets that were initially attached to the EA/IS when it was first released on the Bureau's web site, but are now absent from the site, also asserted the intent to adopt a Mitigated Declaration. Included in the CEQA cover sheets are two pages signed by Frances Mizuno on March 11, 2014 entitled *MITIGATED NEGATIVE DECLARATION FOR 2014 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY WATER TRANSFERS* that refers the reader to the Bureau's web site for the EA/IS, but, as stated above, these four cover pages are no longer available on the Bureau's web site (http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=16681). Lastly, to add to the confusion, there is no mention of a Mitigated Negative Declaration anywhere in the EA/IS. 3-4

As discussed above, there is an absence of clarity regarding 1) the intent to adopt a Mitigated Declaration under CEQA and 2) the ownership of the NEPA/CEQA document. On March 14, 2014, the day after the formal release of the EA/IS on the Bureau's web site, the cover pages that informed the reader that SLDMWA intended to adopt a Mitigated Negative Declaration vanished. What has been available for public review since that date is confusing and deficient. It must also be emphasized that the NEPA/CEQA document is only available at the Bureau's web site. Next, regarding the lead agencies for the NEPA/CEQA document, we acknowledge that page 1-1 reveals the lead agency roles of the Bureau and SLDMWA, but we find that the lack of clear, dual ownership in the document's title and page headers confusing and deficient for the public.

Document Navigation

- The Index fails to provide details for Chapter 3 with the CEQA check list headings and pages making the document less than user-friendly.

3-5

III. Purpose and Need

The Bureau's *Reclamation's NEPA Handbook* (2012) states, "The need for an accurate (and adequate) purpose and need statement early in the NEPA process cannot be overstated. This statement gives direction to the entire process and ensures alternatives are designed to address project goals." (p.11-1) While "need" is disclosed in section 1.2 (p. 1-3), there is no coherent discussion of that "need" that would establish how SLDMWA members find themselves in the current situation. Merely stating that, "As a result of the significantly reduced allocation, the SLDMWA is in need of water for irrigation, primarily of permanent crops to prevent the long term impacts of allowing these crops to die," lacks context, specificity, and rigor. First, the hydrologic conditions described on page 1-3 apply to the entire state, including the region where buyers are sought, not just the areas served by SLDMWA as presented here. Second, SLDMWA has chronic water shortages due to its contractors' junior position in water rights, risks taken by growers to plant permanent crops, and serious long-term overdraft in its service area. Where is this divulged? Third, SLDMWA or its member agencies have sought to buy and actually procured water in many past water years to make up for poor planning and risky business decisions. which violates CEQA's prohibition against segmenting a project to evade proper environmental review?[2]

3-6

In reference to the Bureau, the EA/IS states, "Reclamation's need is to approve the transfer of Base Supply or Project Water that may require the use of CVP facilities, consistent with state and federal law, the Sacramento River Settlement Contract, and the Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project Improvement Act (Title XXXIV of Public Law 102-575). This "need" statement, highlights the conflicts in the Bureau's mission, deficiencies in planning for 2014, and the inadequacy of the EA/IS that should provide, among other things, the following background.

- During Bureau meetings held in 2013[3], the Bureau and DWR knew full well that 2013 was a dry year and that reservoir levels at the dams were exceedingly low[4]. Despite that awareness, the same federal and state agencies continued to export almost 2,400,000 AF of water to South State interests between June and December 2013. (*Id at p. 8*)
- In 2011 the Bureau gave away approximately 450,000 AF of additional storage water and DWR exported more than 826,000 AF of water above what it disclosed it could in 2013.[5]
- After taking the above actions, the Bureau (p. 1-3) and DWR are diminishing water allocations to senior water rights holders in and north of the Delta and yet asking some of the same water districts to actually sell water.

3-7

[2] Laurel Heights Improvement Association v. Regents of the University of California, 1988, 47 Cal.3d 376
[3] http://www.usbr.gov/mp/Waters_Supply_Meetings/About.html
[4] Bureau WY 2013 Handout (4)
[5] http://calsport.org/news/wp-content/uploads/St-Bd-Drought-Wkshp.pdf

The Proposed Action Alternative is poorly specified and needs additional clarity before decision makers and the public can understand the human and environmental consequences of the *2014 Water Transfers*. The EA describes the Proposed Action Alternative as one reflecting the Bureau's intention to approve transfers of Central Valley Project water from willing sellers who contract with the Bureau ordinarily to use surface water on their croplands. Up to 195,126 AF of CVP water are offered from these sellers, according to Table 2-1. (EA/IS p. 2-3). In contrast to the EA/FONSI for the 2009 Drought Water Bank (p. 3-88), the Project EA/IS contains no "priority criteria" to determine water deliveries and simply acknowledges that CVP river water will be transferred to San Luis & Delta Mendota Water Authority contractors. The EA/IS fails to indicate how much water has been requested by the buyers of CVP or non-CVP water, which is also in contrast to the 2009 DWB EA/FONSI and DWR's addendum for the 2009 DWB. Potential buyers of non-CVP water are also not disclosed. These significant omissions eliminate the public's ability to consider, assess, and comment on possible impacts in the receiving areas. This denial of information further obfuscates the need for the Project.

3-8

The Bureau and SLDMWA's draft environmental review of the Project does not comply with the requirements of NEPA[6] or CEQA[7] for the reasons described below.

IV. An EIS/EIR is Required

The Bureau must prepare an environmental impact statement ("EIS") and DWR, as the proper lead agency (not SLDMWA), must prepare an environmental impact report ("EIR") on this proposal. The current project is similar to the 2009 Drought Water Bank project that allowed up to 600,000 acre-feet (AF) of surface water transfers, up to 340,000 AF of groundwater substitution, and significant crop idling. At that time, DWR staff conceded that the 2009 Drought Water Bank project would have significant environmental impacts. The 2009 Drought Water Bank (2009 DWB) was a water transfer program very similar to the current proposal. Litigation of the 2009 DWB disclosed internal DWR emails showing DWR staff's view that the 2009 DWB would have significant impacts on the environment.[8] (See Supplemental Administrative Record ("Suppl. AR") 2007 [email from Curt Spencer stating: "Without an air override, we face a limited water supply, See Suppl. AR 2020, 203.)[9] DWR staff were also concerned the proposed addendum would not meet CEQA's requirements because the mitigation measures for impacts on the giant garter snake were based on an expired 2003 biological opinion. (See Suppl. AR 2010, 2014, 2022, 2044, and 2056.) Other concerns included the adequacy of the mitigation measures to protect the giant garter snake given the lack of up to date scientific information on the species (see Suppl. AR 2026, 2028, and 2034). Indeed, even after invoking the emergency exemption, DWR continued to express concerns regarding the project's potentially significant environmental impacts and whether these impacts would be mitigated. (See Suppl. AR 2064, 2066, and 2070 [emails discussing concern re air impacts]; Suppl. AR 2054 [email planning

3-9

[6] 42 U.S.C. §4321 *et seq*
[7] Public Resources Code §21000 *et seq*
[8] DWR E-mail Regarding 2009 Drought Water Bank.
[9] Pages of the Suppl AR are attached hereto as Exhibit __.

"CEQA analysis [that] will focus on the emissions impacts associated with the increased use of diesel [ground water] pumps."].)

The proposed Project also mirrors the *2010-2011 Water Transfer Program* that sought approval for 200,000 AF of CVP related water and assumed NEPA coverage for additional non-CVP transfer water up to 195,910 AF and the *2013 Water Transfer Program* that sought approval for 37,505 AF of CVP water made available by groundwater substitution and NEPA coverage for an additional 92,806 AF of North State water from groundwater substitution and 65,000 AF from reservoir storage. 3-9

NEPA requires federal agencies to prepare a detailed EIS on all "major Federal actions significantly affecting the quality of the human environment . . . ."[10] and CEQA has similar requirements and criteria. NEPA regulations promulgated by the Council on Environmental Quality identify factors that the Bureau must consider in assessing whether a project may have significant environmental effects, including:

> (1) "The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks." 40 C.F.R. §1508.27(b)(5).
> (2) "The degree to which the effects on the quality of the human environment are likely to be highly controversial." *Id.* §1508.27(b)(4).
> (3) "Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate on a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts." *Id.* §1508.27(b)(7). 3-10
> (4) "The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." *Id.* §1508.27(b)(6).
> (5) "The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." *Id.* §1508.27(b)(9).

Here, the Bureau and the state agency have failed to take a hard look at the environmental impacts of the Project. As elucidated below, there are substantial questions about whether the Project's proposed water transfers will have significant effects on the region's environment, biology, and hydrology. There are also substantial questions about whether the Project will have significant adverse environmental impacts when considered in conjunction with the other related water projects underway, planned, and proposed in the region. The Bureau and the state agency simply cannot, consistent with NEPA, allow these foreseeable environmental impacts to escape full analysis in an EIS of the proposed Project. AquAlliance's comments below will further highlight the EA/IS deficiencies in disclosure, analysis, and justification for its conclusions.

[10] 42 U.S.C. §4332(2)(C).

The EA/IS Violates NEPA and CEQA Rules Against Segmenting Environmental Review of Projects

It is noteworthy that the Bureau and the state agency assert that the Project is not part of a "Program" as it has for past water transfers (p. 1-2) and that a draft Findings of No Significant Impact ("FONSI") has not been provided with the release of the EA/IS as is the Bureau's custom.

The Bureau and DWR have known for over a decade that programmatic environmental review was and is necessary for water transfers from the Sacramento Valley. The following examples highlight the Bureau and DWR's deficiencies in complying with NEPA and CEQA.

- The Sacramento Valley Water Management Agreement was signed in 2002, and the need for a programmatic EIS/EIR was clear at that time it was initiated but never completed.[11]
- In 2000, the Governor's Advisory Drought Planning Panel report, *Critical Water Shortage Contingency Plan* promised a program EIR on a drought-response water transfer program, but was never undertaken.
- Twice in recent history, the state readily acknowledged that CEQA review for a major drought water banking program was appropriate.
- Last, but not least, is the attempt by the Bureau and SLDMWA to analyze the 10-Year Plan, which also has failed to materialize since the scoping period in January 2011.

The Bureau's most recent transfer approvals include:

- In 2009, the Bureau approved a 1 year water transfer program under which a number of transfers were made. Regarding NEPA, the Bureau issued a FONSI based on an EA.
- In 2010, the Bureau approved a 2 year water transfer program (for 2010 and 2011). No actual transfers were made under this approval. Regarding NEPA, the Bureau again issued a FONSI based on an EA.
- In 2013, the Bureau approved a 1 year water transfer program, again issuing a FONSI based on an EA. The EA incorporates by reference the environmental analysis in the 2010-2011 EA.

These Water Transfer approvals are "programmatic" in the sense that they cover a large geographic area, and applicants for specific water transfers must still obtain additional approvals (from the Bureau and from the SWRCB) before executing any specific water transfer. The additional approvals include:

3-11

[11] The Bureau and DWR actually began a joint Programmatic EIS/EIR to facilitate water transfers from the Sacramento Valley and the interconnected actions that are integrally related to the transfers, but never completed it. The Bureau has impermissibly broken out this current segment of the overall Program for piecemeal review in the present draft EA. See 68 Federal Register 46218 (Aug 5, 2003) (promising a Programmatic EIS on these related activities, "includ[ing] groundwater substitution in lieu of surface water supplies, conjunctive use of groundwater and surface water, refurbish existing groundwater extraction wells, install groundwater monitoring stations, install new groundwater extraction wells…" *Id.* At 46219. See also http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=788 (current Bureau website on "Short-term Sacramento Valley Water Management Program EIS/EIR").

- A specific authorization from the Bureau, based on an application defined by a document entitled: "Draft Technical Information for Water Transfers in 2013."
- A specific approval from the State Water Board of a petition for change in place or purpose of use under Water Code § 1725 et seq).

In sum, the Bureau and the state have approved water transfer programs (either 1-year or 2-year programs) in 5 out of the last 6 years. Therefore, it is clear that the need for such programs in the future (to the extent a need exists at all), is virtually certain. Therefore, to avoid violating the rules under both NEPA and CEQA against segmenting environmental review of projects, the Bureau and state are required to include future water transfers in the current environmental analysis, either as (1) part of the project description, as reasonably foreseeable future activities associated with the project, and/or as part of the assessment of cumulative impacts. The EA/IS fails to do so,

3-11

V. Chapter 2, Alternatives

The most fundamental deficiency of the EA/IS is the lack of alternatives considered, which, once again, continues the Bureau's failure to comply with NEPA and DWR's failure to comply with CEQA. NEPA's implementing regulations call analysis of alternatives "the heart of the environmental impact statement," 40 C.F.R. §1502.14, and they require an analysis of alternatives within an EA. *Id.* §1408.9. The statute itself specifically requires federal agencies to:

> study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning available uses of resources.

42 U.S.C. §4332(2)(E). CEQA has parallel requirements for alternatives to be analyzed in an EIR. Here, because the Bureau's EA considers only the proposed Project and a "No Action" alternative, the EA violates NEPA.

3-12

The case law makes clear that an adequate analysis of alternatives is an essential element of an EA, and is designed to allow the decision-maker and the public to compare the environmental consequences of the proposed action with the environmental effects of other options for accomplishing the agency's purpose. The Ninth Circuit has explained that "[i]nformed and meaningful consideration of alternatives ... is ... an integral part of the statutory scheme."[12] An EA must consider a reasonable range of alternatives, and courts have not hesitated to overturn EAs that omit consideration of a reasonable and feasible alternative.[13]

Here, there are only two alternatives presented: the No Action and the Proposed Action. The lack of *any* alternative action proposal is unreasonable and is by itself a violation of NEPA's requirement to consider a reasonable range of alternatives. 42 U.S.C. § 4332(2)(E).

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[12] *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988) (holding that EA was flawed where it failed adequately to consider alternatives).
[13] *See People ex rel. Van de Kamp v. Marsh*, 687 F.Supp. 495, 499 (N.D. Cal. 1988); *Sierra Club v. Watkins*, 808 F.Supp. 852, 870-75 (D.D.C. 1991).

2.2 Proposed Action/Proposed Project

Pages 2-3 to 2-6 present the sellers and the amounts of water that may be transferred under two different scenarios: Current Hydrologic Conditions and Improved Conditions. Table 2-1, *The Maximum Potential Transfer by Seller (Acre Feet)* indicates that the total under current hydrologic conditions may be 91,313 and under improved conditions may be 195,126. This is straight forward. However, when attempting to determine how much water may come from fallowing or groundwater substitution during two different time periods, April-June and July-September, the reader is left to guess.

The numbers in the "totals" row of Table 2-2 presumably should add up to 91,313. Instead, they add up to 110, 789. The numbers in the "totals" row of Table 2-3 presumably should add up to 195,126. Instead, they add up to 249,997. Both Tables 2-2 and 2-3 have a footnote stating: "These totals cannot be added together. Agencies could make water available through groundwater substitution, cropland idling, or a combination of the two; however, they will not make the full quantity available through both methods. Table 2-1 reflects the total upper limit for each agency."

3-13

This "explanation" is no explanation at all. As a result, the reader cannot know how much water is expected to be generated by groundwater substitution versus crop idling. This amount of uncertainty regarding potential sources of the water and the nature of the Project is confusing and impairs the public's ability to assess its environmental impacts.

The following paragraph is found on page 2-9:

> An objective in planning a groundwater substitution transfer is to ensure that groundwater levels recover to their seasonal high levels under average hydrologic conditions. Because groundwater levels generally recover at the expense of stream flow, the wells used in a groundwater substitution transfer should be sited and pumped in such a manner that the stream flow losses resulting from pumping are primarily during the wet season, when losses to stream flow minimally affect other legal users of water. For the purposes of this EA/IS, the stream flow losses are assumed to be 12 percent of the amount pumped for transfer. The quantity of water available for transfer would be reduced by these estimated stream flow losses.

3-14

The EA's use of "average hydrologic conditions" as the baseline for assessing degree of impact and effectiveness of mitigation measures is unlawful for several reasons. "Average hydrologic conditions" is undefined. The EA asserts elsewhere that hydrologic conditions in 2014 are not "average." The assumption that "[s]tream flow losses are assumed to be 12 percent of the amount pumped for transfer" is unsupported for any location, including the locations where groundwater substitution transfers will occur. The suggestion that "the wells used in a groundwater substitution transfer should be sited and pumped in such a manner that the stream flow losses resulting from pumping are primarily during the wet season" is not embodied in any enforceable condition or mitigation measure. Since there is no guarantee this suggestion will be honored, it does not support a FONSI for impacts related to stream flow losses. Also, the EA/IS considers

the effects of stream flow losses on other water users, and fails to assess the effect of stream flow losses (either below or above the 12% threshold) on other environmental values and resources, such as:

3-14

Page 2-11, bullet one states that, "Historical amounts of idled land vary year-to-year by close to 20 percent, which indicates that the local economy has adjusted to similar amounts of crop idling." What data support this assertion? Where is it presented in the EA/IS? If it is presented in the EA/IS, why is not cited with the above quotation? If GCID planned to idle about 15 percent of the district's rice land with a 75 percent CVP allocation, it is fair to conclude that it would more than double with what is currently proposed at a 40 percent allocation. (EA/IS p. 4-5). The impacts from increased fallowing due to decreased CVP allocations, let alone in combination with the proposed transfers, are not presented here.

As the Agencies well know, the overall economy and the environment are supposed to be protected from unreasonable effects according to California Water Code Section 1810 and the CVPIA. Page 2-11, bullet two states that, "Cropland idling has not generally resulted in economic impacts outside of the historical variations." What data support this assertion? How is "generally" defined in this context? What data are used to evaluate economic impacts from fallowing if there are unusual conditions? Where are these issues presented in the EA/IS? If they are presented in the EA/IS, why are they not cited with the above quotation? If the Agencies have data that support the quoted assertion, although it is not cited or presented in the EA/IS for public review, aren't the current, unusually dry conditions (presented in Section 1.2, *Need for Proposal and Project Objectives*) combined with unprecedented cuts to CVP water deliveries a time when unusually significant impacts might occur? Over a decade ago David Gallo assessed the impacts on local economies from fallowing and concluded that the costs ranged from $157 - $170 per acre foot of water sold.[14] This is what should have been analyzed and evaluated in the EA/IS, or better yet, in what the Agencies know is necessary: an EIS/EIR (EA/IS p.1-4).

3-15

In Chapter 2, Alternatives, page 2-11, bullet three states that, "Water Code Section 1745.05(b) requires a public hearing under some circumstances in which the amount of water from land idling exceeds 20 percent of the water that would have been applied or stored by the water supplier absent the water transfer in any given hydrologic year. Third parties would be able to attend the hearing and could argue to limit the transfer based on its economic effects." With water deliveries potentially cut to 50 percent for senior SWP contractors and 40% for senior CVP contractors, what is the potential to exceed the 20 percent figure, particularly when cropland idling transfers are added to the cumulative impacts? Is a public hearing scheduled? How will potentially affected and interested parties receive notice of a hearing? It is noticeable that the EA/IS bullet language fails to disclose where a public hearing might be held and before what governmental body.

[14] Gallo, David. Estimating Third Party Impacts From Water Transfers Through Riceland Fallowing: A Suggested Approach.

Section 2.3, *Recent Environmental Documents*, proudly touts the production of the *2010/2011 Water Transfer Program* Environmental Assessment. Although discussion of the document's failings are not disclosed here, AquAlliance presented many of them in our comments on the EA/FONSI and filed litigation to challenge it. During the litigation the Bureau decided to initiate the 10-Year Water Transfer Program (600,000 AF per year) with scoping meetings for an EIS/EIR in concert with SLDMWA. Despite the acknowledgment that an EIS/EIR is necessary for the repetitious water transfers, the release of the EIS/EIR has been delayed year-after-year while the Bureau continues to pursue one-year, so-called "temporary" transfers.

3-16

Mitigation and Monitoring

Where are the data that are referenced on page 2-12? "As part of the monitoring plans required by the EA/IS, the transferring parties have collected monitoring data starting pre-transfer. To date (through January 2014), the available monitoring data indicates that the groundwater aquifer is recovering to pre-transfer levels, as described in the EA. Final monitoring reports that describe the monitoring data will be available in May 2014." If the public doesn't have access to the "pre-transfer" data and the Agencies will not have final reports until May 2014, how can the public adequately comment and how can the Agencies reach a conclusion? This gaping hole in the assessment of the impacts from the 2013 water transfers indicates at a minimum that the 2014 Project EA/IS was circulated prematurely.

3-17

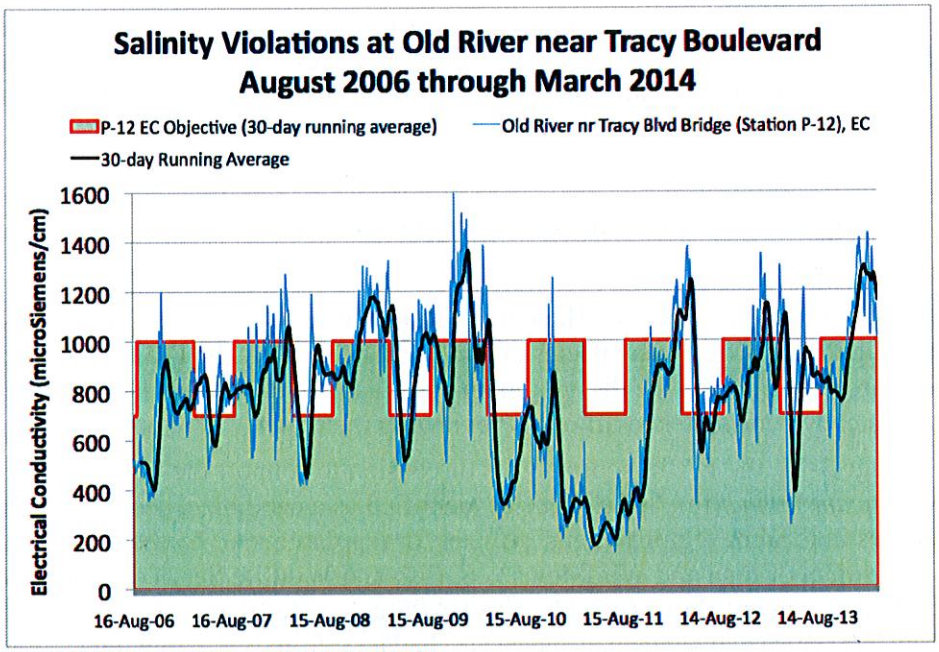
In light of the EA/IS's deficit in presenting groundwater conditions in the Sacramento Valley after the 2013 groundwater substitution transfers or historic trends, we attach the most current DWR maps that illustrate the serious condition of the groundwater basins in the Sacramento Valley. These DWR maps[15] present a very different picture than what is supplied in Appendix F's attempt at modeling. There is a clear and significant downward trend in regional groundwater levels.

- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2012 to Fall 2013, Shallow Aquifer Zone
- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2012 to Fall 2013, Intermediate Aquifer Zone
- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2012 to Fall 2013, Deep Aquifer Zone
- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2004 to Fall 2013, Shallow Aquifer Zone
- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2004 to Fall 2013, Intermediate Aquifer Zone
- Northern Sacramento Valley Change In Groundwater Elevation Map Change in Deep Fall 2004 to Fall 2013, Deep Aquifer Zone

[15] http://www.water.ca.gov/groundwater/data_and_monitoring/northern_region/GroundwaterLevel/gw_level_monitoring.cfm#Level%20Monitoring%20Reports%20and%20Maps

Environmental Commitments

Page 2-12 (also p. A-1) attempts to assure the public that, "Carriage water will be used to maintain water quality standards in the Delta." With that promise in mind, the Bureau and DWR have a record of violating these standards. [16]



Source: California Data Exchange Center, Station OLD.

On what basis should decision-makers or the public rely on the promises made by the Bureau and DWR, let alone the buyer, SLDMWA, which facilitates some of the most destructive practices in California: growing permanent crops in a desert, creating massive amounts of polluted water and soil,[17] and crying foul when the spigot is dry.

3-18

Page 2-12 continues with assurances that, "Well reviews and monitoring and mitigation plans will be implemented to minimize potential effects of groundwater substitution on nearby surface and groundwater water resources. Well reviews, monitoring and mitigation plans will be coordinated and implemented in conjunction with local ordinances, basin management objectives, and all other applicable regulations." The Agencies are asking the public to trust that this will happen and that the mitigation and monitoring plans will be adequate. The public has no mechanism to verify how well this has or hasn't been handled in the past and isn't presented with an opportunity for this year. Mitigation and Monitoring Plans must be available concurrently

3-19

[16] Stroshane chart and table 2014, Salinity Violations at Old River Near Tracy Blvd. August 2006-August 2013.
[17] According to the December 2000 United States Geological Survey Open File Report 00-416, even if irrigation of drainage problem areas were halted today, it would take 63 to 300 years to drain contaminated water from the Western San Joaquin Valley's aquifer underlying contaminated soils in WWD. The USGS report reiterates the findings in the Rainbow Report [USGS, Gilliom et.al. 1989] that the drainage problem area in 1990 was 450,000 acres. If irrigation continues without a resolution, the problem area will be 950,000 acres in 2040.

with NEPA and CEQA documents, so the public, knowledgeable about the areas where transfer sales are proposed, may evaluate and provide comments on their efficacy. This has been a repeated failure by the Bureau and DWR. 3-19

Geology and Soils (2.5.4)

Page 2-17 states, "There are some earthquake faults in the region but earthquakes are generally associated with coastal California, west of the Central Valley." This casual statement fails to disclose significant history and information that is easily available.[18] The major faults in the region should, at minimum, be disclosed. 3-20

VI. Chapter 3 - Environmental Impacts

Biological Resources (IV)

a) Check list item "a" fails to include the National Marine Fisheries Service ("NMFS") as a jurisdictional agency over species that may be affected by the Project (p.3-11) although they are referenced in the discussion on pages 3-12 to 3-13. This lack of clarity and consistency contributes to difficulty reviewing the EA/IS. 3-21

b) On page 3-13, the EA/IS continues its discussion to support the finding of *Less Than Significant Impact* for, "[a]ny species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service," with NMFS excluded as noted above (p.3-11). The EA/IS concludes that, "The incremental effects of transfers on special status fish species in the Delta from water transfers would be less than significant." What data and analysis support this conclusion and where is the material found? Analysis conducted by Thomas Cannon contradicts the *Less Than Significant Impact* finding with disturbing results from the summer of 2013.[19] His research reveals that summer water transfers are devastating, especially in dry years when the low salinity zone is in the western Delta and smelt are stuck within the Delta and threatened by warm water, which has been made available for transfer by either fallowing or groundwater substitution, and predators, 3-22

c) The Bureau and DWR, not SLDMWA, should prepare an EIR because the Project will likely have significant environmental effects on the Giant Garter Snake (*Thamnophis gigas*)("GGS"), a listed threatened species under the federal Endangered Species Act and California Endangered Species Act. 40 C.F.R. §1508.27(b)(9). 3-23

[18] "Detailed analyses of this seismicity and focal mechanisms indicate that active geologic structures include blind thrust and reverse faults and associated folds (e.g., Dunnigan Hills) within the CRSB boundary zone on the western margin of the Sacramento Valley, the Willows and Corning faults in the valley interior, and reactivated portions of the Foothill fault system. Other possibly seismogenic faults include the Chico monocline fault in the Sierran foothills and the Paskenta, Elder Creek and Cold Fork faults on the northwestern margin of the Sacramento Valley." http://archives.datapages.com/data/pacific/data/088/088001/5_ps0880005.htm

[19] *Summer 2013: The demise of Delta smelt under D-1641 Delta Water Quality Standards*