

# **Appendix A: Comment Letter and Reclamation's Response to Comments**



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**VIA EMAIL AND U.S. MAIL**

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Ms. Rain Emerson  
 South Central California Area Office  
 U.S. Bureau of Reclamation  
 1243 N St  
 Fresno, CA 93721

Re: Comments of PCFFA, SFCBOA, IFR and NCRA on Draft EA/FONSI for the Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2016-2018

Dear Ms. Emerson:

## I. INTRODUCTION

On behalf of Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, Inc., Institute for Fisheries Resources, and North Coast Rivers Alliance, we respectfully submit the following comments on the Draft Environmental Assessment ("EA") and Draft Finding of No Significant Impact ("FONSI") for the Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2016-2018 ("Project" or "Interim Contracts"). The EA and FONSI are deficient and an Environmental Impact Statement ("EIS") must be prepared, as required by the National Environmental Policy Act ("NEPA").

The EA was prompted by the Ninth Circuit's decision in *Pacific Coast Federation of Fishermen's Associations v. United States Department of the Interior* ("PCFFA"), 655 Fed. Appx. 595, 598 (9th Cir. 2016), wherein the court held that Reclamation's EA about a previous round of interim contracts violated NEPA because (1) it failed to consider a true no-action alternative, and (2) "Reclamation's decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study."

The new EA fails to remedy either of these deficiencies. First, its justification for failing to study "the alternative of a reduction in maximum interim contract water quantities" is even weaker than the prior, inadequate EA. In fact, the EA clearly states that Westlands had *too much*

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↑ water in the most recent year for which data was available – “Westlands had a surplus in 2011 of 65,127” acre-feet even though it received just an 80% allocation. EA at 12 (quote), 31 (historic allocations). The EA defies the *PCFFA* court’s instruction that Reclamation must “give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities.” *PCFFA*, 655 Fed.Appx. at 599. Second, the EA’s analysis of the no-action alternative, though superficially compliant with the *PCFFA* decision, in fact fails to meaningfully inform the public about the relative consequences of Reclamation’s choices and therefore violates NEPA.

The EA is further inadequate in three respects. First, the EA improperly excludes from analysis all of the source waters that the Project will harm, including the Trinity, American, and Sacramento rivers, the Delta, and their watersheds. Second, the EA’s analysis of the Project’s impacts, including impacts to biological resources and cumulative impacts, as well as the effects of global warming on the Project’s impacts, is inadequate. Third, the EA improperly relies upon outside documents addressing different issues to excuse its lack of analysis.

As a result of these deficiencies and other factors, an EIS must be prepared. 40 C.F.R. section 1508.27(b).

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## II. DISCUSSION

### A. THE EA FAILS TO SATISFY THE NINTH’S CIRCUIT’S *PCFFA* DECISION

#### 1. Background

In *PCFFA*, *PCFFA* successfully challenged Reclamation’s approval of a previous iteration of the interim contracts at issue here. 655 Fed.Appx. at 597. In that EA, Reclamation took the incorrect position that the Central Valley Project Improvement Act (“CVPIA”) required it to renew the interim contracts. *Id.* at 598. The earlier EA thus illogically compared the environmental impacts of renewing the contracts to itself (renewing contracts) – rather than to *not* renewing (or reducing the volume of) these contracts. Consequently it reached the untenable conclusion that diverting huge quantities of water from the Delta and supplying selenium-laced lands with water for two more years would have no environmental impacts. The Ninth Circuit “did not agree . . . that the . . . CVPIA . . . required Reclamation to enter into the interim contracts” because it expressly provides that Reclamation “may” renew interim contracts. *Id.*; CVPIA § 3404(c). Accordingly, under this EA’s no action alternative “Westlands would no longer be able to receive up to 1,192,948 [acre-feet] per year . . . of CVP water pursuant to the” interim “contracts. . . .”<sup>1</sup> EA at 9.

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<sup>1</sup> However, as discussed more fully below, the EA’s no action alternative still fails to adequately compare the impacts of renewing the contracts to the impacts of not renewing the contracts.

↑ The Ninth Circuit rejected all four reasons that Reclamation's prior EA gave for declining to study a reduced-contract-quantity alternative:

- Reclamation claimed that it was legally required to maintain existing contract quantities if the waters were beneficially used by the contractor, and further claimed that a 2006 water needs assessment with data from 1999 showed that Westlands could beneficially use all of its water. The *PCFFA* court held that "Reclamation's 2006 assessment was inadequate because it was prepared with data from 1999 that predated a land retirement project" and that "Reclamation acted unreasonably by relying on stale water needs data."
- Reclamation claimed an earlier PEIS selected a preferred alternative of renewal at full contract quantities. But the Ninth Circuit held that due to the serial nature of Reclamation's "interim" contracts, combined with the fact that the PEIS did not address the site-specific impacts of individual contracts, this excuse was unavailing.
- Reclamation claimed contractual shortage provisions allowed it to adjust contractual quantities as needed on an annual basis. In the court's view, "however, the existence of a mechanism for adjusting water quantities after contract approval did not relieve Reclamation of its obligation to consider a reduction in quantities prior to contract approval."
- Reclamation's final excuse for not studying a reduced-contract-quantity alternative was that "retaining the full historic water quantities under contract provides the contractors with assurance the water would be made available in wetter years and is necessary to support investments for local storage, water conservation improvements and capital repairs." The *PCFFA* court rejected this excuse because it "in large part reflect[ed] a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts."

Reclamation conducted a new water needs assessment for this EA, as required by the *PCFFA* court.<sup>2</sup> The new water needs assessment shows that Westlands had *too much water* in the most recent year for which data was available: "Westlands had a surplus in 2011 of 65,127" acre-feet in 2011 even though it received just an 80% allocation. EA at 12 (quote), 31 (historic allocations).

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<sup>2</sup> The EA makes no mention of the *PCFFA* ruling in its discussion of alternatives, and misleadingly states that "Reclamation reviewed the previous Water Needs Assessment completed for Westlands and determined that updates to the assessment were warranted" without disclosing why Reclamation "determined that" those "updates . . . were warranted." EA at 11.

As shown in the first sub-section below, the EA's no-action alternative relies upon untenable and unexplained assumptions about what Reclamation will do with excess water not given to Westlands. This omission prevented the public from meaningfully ascertaining the environmental impacts of Reclamation's decision to approve, or reject, the interim contracts, and thus violated both the *PCFFA* decision and NEPA. Moreover, while superficially the EA includes a no-action alternative of contract rejection, it in fact still improperly "assumes the existence of the very plan being proposed," and thus violates NEPA. *PCFFA*, 655 Fed.Appx. at 598

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As demonstrated in the second sub-section below, the EA's failure to study a reduced-contract-quantity alternative is directly contrary to the *PCFFA* court's instruction that Reclamation must "give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities." 655 Fed.Appx. at 599. The EA's claim that "Westlands *has* put their full contract quantity to beneficial use" is demonstrably false given that Westlands could not even use 80% of their full contract quantity in the most recent year for which data was available. And though the EA also relies on estimates of Westlands' water needs in 2050, those needs are *irrelevant* given that Reclamation is only considering what maximum quantity of water it should provide to Westlands through 2018, not 2050. Moreover, Reclamation blatantly manipulated its estimates of future demand in order to reach its predetermined outcome. Accurate future demand figures would show that Westlands also will have an excess of water in 2050.

## 2. The EA's No-Action Alternative Fails to Comply with *PCFFA*

The EA's no-action alternative superficially purports to comply with the *PCFFA* ruling but in fact fails to do so. Though it is true that the no-action alternative is now nominally non-renewal of the contracts, and the EA states that implementing the no-action alternative would cause Westlands to lose its water, the no-action alternative is still inadequate under *PCFFA*. Its conclusory and unsupported assertion that "[i]n general, Reclamation does not anticipate a change in CVP pumping or operations under the No Action alternative" (EA 9) unlawfully "assumes the existence of the very plan being proposed" and prevents the public from meaningfully ascertaining the environmental impacts of the Project. *PCFFA*, 655 Fed.Appx. at 598.

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The EA claims that "[i]n general" CVP pumping and operations would not change under the no-action alternative because in that case "Reclamation intends to deliver full CVP water contract amounts to south-of-Delta contractors consistent with hydrologic conditions and regulatory . . . requirements as analyzed in the PEIR (i.e., up to 1,980,000 [acre-feet] for agricultural contractors, up to 880,000 [acre-feet] for the San Joaquin River Exchange Contractors, and up to 160,000 [acre-feet] for M&I contractors." EA 9. Essentially, the EA concludes that "[i]n general" Westlands' water would just be given to other south-of-Delta water contractors. *Id.* But there is no discussion of the circumstances in which this "general" rule

↑ would apply. It appears virtually certain that in wetter years it would be impossible for Reclamation to re-apportion Westlands' entire 1.2 million acre-feet of water to south-of-Delta agricultural contractors without exceeding the 1.98 million acre-foot cap on maximum deliveries anticipated in the PEIS. In such years, declining to provide Westlands with water would reduce the amount of time water pumps in the Delta need to be operated, which would have substantial environmental benefits including but not limited to reduced fish entrainment and increased in-stream flows.

Yet the EA discusses *none* of these impacts and instead ignores them completely. The EA's analysis is predicated on the false assumption that the no-action alternative will not change CVP operations in any way. For example, and for illustrative purposes only, the EA admits that discing of lands, an integral part of farming, can adversely affect certain special-status species, yet it inexplicably concludes that such effects "are likely to continue to occur in the future under *either* alternative" (EA 26; emphasis added) even though the EA concedes elsewhere that if the no-action alternative is implemented at least 125,000 acres of land within Westlands' service area could not continue to sustain farming. EA 15. How will these special-status species be benefitted if such a large amount of land retirement occurs? The EA does not say. The entire point of a no-action alternative analysis is to compare what will happen if the project was implemented to what will happen if it is not, and yet Reclamation's EA completely fails in that role. This "meaningless" analysis improperly "assumes the existence of the very plan being proposed," and thus violates NEPA. *PCFFA*, 655 Fed.Appx. at 598.

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The EA's no-action alternatives analysis also violates *PCFFA* and NEPA because it is self-contradictory and prevents the public and Reclamation from meaningfully ascertaining the environmental impacts of Reclamation's decision to either approve or reject the interim contracts. The entire no-action alternative analysis is skewed to support Reclamation's predetermined outcome of approving the Project. For example, the EA states that the no-action alternative would cause Westlands to fallow about 125,000 acres of land and that this fallowing would cause "an increased risk of windblown sand and dust" in a region already struggling to attain compliance with air quality standards. EA 15. But if the EA is correct that all of Westlands' water can somehow in fact be re-apportioned to other south-of-Delta water contractors<sup>3</sup> – whose allocations will therefore increase, allowing them to plant more land with crops – then windblown sand and dust should decrease in *those* contractors' service areas. Yet the EA contains no comparative analysis of the costs and benefits of this choice that Reclamation is making. Similar flaws pervade the EA. *See, e.g.*, EA 24 (EA claims no-action alternative would increase weeds and pest populations in Westlands' fallowed lands, but fails to consider

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<sup>3</sup> As discussed above, the EA does not show any support for this claim, which appears implausible given the large size of Westlands' maximum contract quantities relative to maximum south-of-Delta deliveries.

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↑ decreases in weeds and pests in other contractors' service areas<sup>4</sup>), EA 30-31 (EA claims rejection of interim contracts would be economically calamitous for seasonal workers, yet ignores whether increased allocations to other south-of-Delta contractors would create jobs), EA 38-39 (EA claims rejection of interim contracts would dramatically increase groundwater pumping, but ignores whether groundwater pumping would decrease elsewhere).

The EA fails to consider how Reclamation's decision to reject or approve the interim contracts would affect the environment. It therefore runs afoul of both *PCFFA* and NEPA. 655 Fed.Appx. at 598.

### 3. The EA's Rejection of a Reduced-Maximum-Contract-Quantity Alternative Cannot Be Squared with *PCFFA*

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The substance of the EA's alternatives analysis is *even more brief and cursory* than the previous analysis that the *PCFFA* court rejected. Rather than providing four (inadequate) excuses for declining to study a reduced-contract-quantity alternative, as it did in the EA before the *PCFFA* court, Reclamation now provides just one: "Reclamation has determined that Westlands *has put their full contract quantity to beneficial use* and will continue to do so in the future. As such, a reduction in contract quantity is not warranted." EA 12 (emphasis added). The italicized statement is demonstrably false. In fact, the most recent available data shows that Westlands *does not need its entire contract allocation*, as the EA admits by conceding that "Westlands had a surplus in 2011 of 65,127 [acre-feet]." EA 12. Moreover, Westlands had a surplus that year even though it received only an 80% allocation. EA 31.

Thus, there is simply no factual basis for the EA's statement that "Westlands *has put their full contract quantity* to beneficial use." EA 12 (emphasis added). Since that statement is the foundation for the EA's refusal to study a reduced-contract-quantity alternative, the EA failed to "give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities," as the *PCFFA* court required. 655 Fed.Appx. at 599. *PCFFA* vindicated the public's interest in making sure that Westlands complies with its obligation to make beneficial use of its CVP allocation by obtaining a court order requiring Reclamation to update its out-of-date water needs data (*id.*), and that data unequivocally shows that Westlands has in fact *not* been able to "put their full contract quantity to beneficial use." EA 12. Reclamation's studied refusal to consider its ability to provide Westlands with less water cannot be squared with either the facts or NEPA. *PCFFA*, 655 Fed.Appx. at 599.

↓ While that one flaw itself renders the EA legally inadequate, the EA's discussion is further inadequate for the additional reason that it uses goosed estimates of Westlands' water

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<sup>4</sup> The EA's analysis is also inadequate and misleading in this regard because (1) it does not account for the adverse environmental impacts of the pesticides that will no longer be sprayed on fallowed land; and (2) assumes without any evidence that empty land with no water supply could somehow support a meaningful population of "pests" and weeds.



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↑ needs in 2050 and 2051 to justify its untenable refusal to study the option of giving Westlands only as much water as it can actually use. This excuse is logically flawed because Westlands' water needs in 2050 and 2051 do not and cannot justify Reclamation's decision here about whether it should modify Westlands' contract quantities during a period that ends in 2018.<sup>5</sup> Again, the most recent data indicates that Westlands had excess water when given an 80% allocation in the most recent year for which data is available. Whether Westlands might be able to use more water 35 years from now is completely irrelevant, especially for the purpose of this less-than-1-year renewal.

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In addition to being illogical, the EA's reliance on Westlands' future water needs is factually flawed because the water needs assessment relied upon a number of demonstrably false and arbitrary assumptions. EA Appendix D, a one-page chart, is the Water Needs Assessment. It does not contain any explanatory information. The EA's brief discussion of how Reclamation updated the prior, inadequate, water needs assessment likewise fails to inform the reader of how Reclamation made the assumptions underpinning the document.<sup>6</sup> And many of these assumptions are either inexplicable or false:

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- The water needs assessment accounted for Westlands' groundwater supply in 2011, by including it in the total water supply, but did not do so for 2050 or 2051 (Appendix D, column 10). Yet a sustainable amount of groundwater pumping in Westlands' service area is "about 225,000 [acre-feet]" annually (EA 39). Including this 225,000 acre-feet of groundwater supply in Westlands' total supply would turn Westlands' supposed shortfalls in both 2050 and 2051 into a surplus.

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<sup>5</sup> In fact, the water needs assessment assumes that maximum contract quantities – "total/maximum deliveries" in the parlance of Appendix D – for the year 2051 will be reduced by over 250,000 acre-feet compared to the current contract maximum, further demonstrating the feasibility of such an alternative and the arbitrariness of Reclamation's refusal to consider it now. EA Appendix D column 3.

<sup>6</sup> The EA's failure to provide information that allows members of the public to easily understand how the water needs assessment was created is itself a violation of NEPA. *See, e.g., National Parks & Conservation Ass'n v. Bureau of Land Management*, 606 F.3d 1059, 1073-1074 (9th Cir. 2009) (EIS's analysis of eutrophication – the introduction of nutrients into the environment – violated NEPA not because it was substantively inadequate but because a "reader seeking enlightenment on the issue would have to cull through entirely unrelated sections of the EIS and then put the pieces together" and should not be required to "cobble together" such a "patchwork" analysis under NEPA).

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- The water needs assessment does not explain why crop water requirements are supposedly hundreds of thousands of acre-feet higher in 2050 and 2051 than in 2011 (EA Appendix D, column 15), and these differences are not proportional to the relative number of acres that supposedly will be irrigated in these years (EA Appendix D column 21).

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- Relatedly, the water needs assessment assumes that 560,700 acres will be irrigated by Westlands in 2050 (EA Appendix D column 21), but in fact, within Westlands service area “only approximately 467,000 acres receive CVP water due to legal settlements and Reclamation law.” EA 28. Appendix D provides no explanation of how it is reasonable to assume that in 2050 Westlands will irrigate nearly 100,000 acres of land *more* than can legally be planted under “legal settlements and Reclamation law.” EA 28. In addition to any other legal settlements, Westlands is under a binding obligation not to plant lands that have been fallowed for more than three years (EA 10); it is unclear how increasing the amount of land planted by nearly 100,000 acres above current levels (EA Appendix D column 21) could be consistent with this requirement.

Just as the prior water needs assessment’s “stale . . . data” made Reclamation’s use of it “unreasonable” and an “abuse of discretion” (*PCFFA*, 655 Fed.Appx. at 599), these arbitrary assumptions, with which Reclamation justified its predetermined refusal to consider reducing Westlands’ allocation of CVP water, invalidate the current water needs assessment .

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Moreover, even assuming solely for the sake of argument that Westlands *has* put their full contract quantity to beneficial use, which is false, that would not be a sufficient basis for completely excluding such an alternative from analysis. As discussed, the CVPIA makes contract renewal entirely optional, and therefore necessarily empowers Reclamation to partially approve the contract.<sup>7</sup> Renewing the interim contracts but significantly reducing the contract quantity could substantially reduce the environmental impacts of the contracts and therefore warrants careful review by Reclamation. The benefits of reducing contract quantities include reduced contaminated drainage and harms from discing, increased in-stream flows available for fisheries resources, and reduced operation of Delta pumps, which entrain special-status fish.

Finally, assuming contrary to law and fact both that Westlands had beneficially used its entire contract maximum and that Reclamation is somehow statutorily disabled from reducing the maximum contract quantity – which, again, is not the case in either respect – Reclamation would *still* need to analyze such an alternative because NEPA is intended to inform both the

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<sup>7</sup> Similarly, an EA’s purpose and need statement is fatally flawed if, as here, it is based on the agency’s erroneous premise that “it had no discretion to consider” a broader purpose and range of options. *Center for Biological Diversity v. National Highway Traffic Safety Admin.* (“*NHTSA*”), 538 F.3d 1172, 1219 (9th Cir. 2008). Such an assumption prevents the agency from effectively considering the action’s impacts and alternatives. *Western Watersheds Proj. v. Abbey*, 719 F.3d 1035, 1052 (9th Cir. 2013).

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cont. ↑ executive branch *and* Congress. An “alternative may be reasonable, and therefore required by NEPA to be discussed in the EIS, even though it requires legislative action to put it into effect.” *Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454 (9th Cir. 1984).

Volker-9 As the Ninth Circuit held in *PCFFA*, Reclamation has made “a policy decision to promote the economic security of agricultural users” rather than protect the environment. *PCFFA*, 655 Fed.Appx. at 600. NEPA requires that this *policy decision* be made with a full understanding of its environmental impacts. Though “NEPA does not prohibit the government from taking actions for whatever political, ecological or economic reasons motivate the proposed action[, i]t does, however, require a transparent process so that the public is informed about their choices.” *Soda Mountain Wilderness Council v. Norton*, 424 F.Supp.2d 1241, 1262 (E.D.Cal. 2006). It is unlawful for Reclamation to pre-emptively refuse to consider the environmental benefits of an alternative within its authority on the grounds that it would prefer to make a policy choice that allocates even more water to agricultural interests. *PCFFA*, 655 Fed.Appx. at 599 (Reclamation’s unlawful prior “reasoning in large part reflect[ed] a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts”).

NEPA’s purpose is to inform agencies of the environmental consequences of exercising their discretion and thereby “foster both informed decision-making and informed public participation.” *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 960 (9th Cir. 2005). The EA’s lack of meaningful alternatives, prompted by its refusal to consider the undisputed fact that Westlands has more water than it beneficially uses, frustrate these objectives by precluding Reclamation from making an informed decision about the environmental consequences of not reducing water deliveries. That violates NEPA.

**B. THE EA IMPROPERLY LIMITS THE STUDY AREA TO THE CONTRACTORS’ SERVICE AREAS**

Volker-10 The EA ignores the fact that each water delivery requires a water diversion, and that each water diversion has an environmental impact on its water *source*. It accomplishes this biased analysis by limiting its consideration of environmental impacts to the service areas of the water contractors, where those receiving the deliveries naturally insist that the deliveries are beneficial. EA at 7 (scope of EA excludes Delta), 13 (“Proposed Action Area” only includes contractors’ service areas). The EA ignores the *diversions’* environmental impacts on the water *sources* – including the American, Trinity, and Sacramento rivers, and the Delta – by narrowly defining the “Proposed Action Area” to *exclude* the areas most adversely affected, including the source watersheds and their downstream waterways including the Delta and San Francisco Bay. EA 13. This error is prejudicial because the PEIS from which this EA was tiered “did not analyze site specific impacts of contract renewal,” and thus likewise ignored impacts on the source watersheds. EA 3. The Study Area must be expanded so as to encompass *all* areas potentially affected by the Project’s site specific impacts, including all water sources and their watersheds and waterways.

↑ Impacts to the Delta and its species are profound. Continued operation of the CVP and SWP is likely to *jeopardize the continued existence* of endangered species in the Delta, as previous biological opinions have confirmed. Those projects' diversions of flows from the Delta, and contamination of the San Joaquin River and thence the Delta with selenium and other toxic substances from agricultural runoff and subsurface drainage from Westlands' CVP-irrigated lands, is a double whammy. This contamination is already adversely affecting the reproductive systems of protected species. Since these impacts are potentially significant, an EIS must be prepared. 40 C.F.R. § 1508.27(b)(9).

Volker-10 cont. NEPA prohibits agencies from arbitrarily circumscribing the geographic scope of their analysis. In *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1121-23 (9th Cir. 2004), for example, the Ninth Circuit set aside the Army Corps of Engineers' EA because the Corps had "improperly constrained its NEPA analysis" by limiting its review to impacts within the desert washes under its jurisdiction rather than the entire property proposed for development. Similarly, in *Border Power Plant Working Group*, 260 F.Supp.2d 997, 1017 (S.D. Cal. 2003), the court rejected the agency's attempt to limit its environmental review to the impacts of the domestic power *line* it proposed to construct and ignore the impacts of the Mexican power *plant* the line would serve. So too here, the EA should have – but did not – consider *both* the direct effect of the Interim Contracts' water deliveries on land in the contractors' service areas *and* the indirect effect of those deliveries on the Delta (and its fisheries) *from which the water would be taken, and to which contaminated return flows would be discharged*.

The EA relies upon outside documents to excuse its lack of analysis. *E.g.*, EA 1-8. But as discussed below, these documents do not and cannot remedy the EA's deficiencies.

In summary, the EA violates NEPA because Reclamation arbitrarily limited the geographic scope of its analysis and thereby ignored the significant environmental impacts that Project approval will have on source watersheds and the species that reside within them. *Save Our Sonoran, Inc.*, 408 F.3d at 1121-23.

### C. THE EA'S IMPACT ANALYSIS IS INADEQUATE

#### 1. Impacts to Listed Species

Volker-11 The EA's analysis of impacts to listed species is entirely conclusory and inadequate. First, it improperly assumes that under the proposed action, conditions for special status species and habitats will remain constant, despite their continued *decline*. Second, the EA fails to take a hard look at the impacts to anadromous fish species downstream of the contract lands. Last, it does not adequately consider the impacts to other listed species.

Volker-12 The EA states that "conditions of special status species and habitat would remain the same as current conditions" because the proposed action would provide for delivery of CVP water to the same lands and up to the same amounts as the previous contracts. EA 25. But this

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↑ statement overlooks the cumulatively significant impacts of continuing the current conditions, which have repeatedly decimated fish populations. Instead of discussing the impacts of delivering CVP water, the EA relies upon the Long Term Operation (“LTO”) EIS, prepared to implement the U.S. Fish and Wildlife Service’s (“FWS’s”) and National Marine Fisheries Service’s (“NMFS’s”) Biological Opinions to assert that continued operation will avoid either jeopardy or adverse modification. EA 23-26. But the LTO EIS erroneously treated the FWS and NMFS Reasonably Prudent Alternatives to protect those species as the ceiling, rather than the floor, for appropriate management actions to prevent the extinction of listed species, and the LTO EIS does not address the site specific impacts of contract renewal. These site specific impacts to listed species and habitat, both at the point of delivery *and* at the points of diversion (i.e., the original source) and rediversion (e.g., from storage reservoirs), must be addressed now.

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Second, the EA fails to address the potential impacts to listed anadromous fish and fish habitat from contaminated drainage caused or exacerbated by the proposed action. The EA acknowledges that the Project may affect endangered fish, including the Sacramento River winter-run Chinook, Central Valley spring-run Chinook, Central Valley steelhead, and green sturgeon. EA 16-18. Water provided pursuant to the Project will be applied to land contaminated with selenium, and that selenium will be conveyed to the Delta, where it will have substantial adverse effects on species teetering on the verge of extinction. If no such water is provided, or if Westlands’ water is re-allocated to contractors whose lands are not contaminated with selenium, these environmental impacts would *cease*. Selenium contamination is thus a direct result of approval of the Project and the EA’s failure to provide any analysis of this issue prevents the public from meaningfully reviewing and commenting upon the impacts of contract renewal on anadromous fish. While the EA relies upon the Grassland Bypass Project’s reduction in contaminated drainage flows to minimize impacts to some species (which is inappropriate, as discussed below), that project does *not* currently *eliminate* polluted selenium discharges from Westlands, which is something Reclamation could accomplish by exercising its discretion to reject the Project. The EA’s wholesale failure to discuss this issue renders it inadequate as an environmental document.

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Third, the EA *completely ignores* its *own admission* that the Project “[m]ay adversely affect” the California least tern and giant garter snake and will affect the San Joaquin woolly-threads and the blunt-nosed leopard lizard in some undisclosed negative way. EA 17, 19-20 (Table 4). There is *no* discussion of these impacts other than a brief mention in a table – which states that the Project “[m]ay adversely affect” the species in question “due to contaminated drainage within foraging habitat in Westlands” – with *no* supporting analysis. *Id.* The *only* other mention is a statement at the very end of the EA that FWS concluded that approving the Project would not jeopardize the continued existence of these two species; there is no accompanying explanation of what factors prompted this decision. FWS’ no-jeopardy opinion *specifically finds* that the selenium pollution that approval of the interim contracts will create *will adversely affect*

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↑ these species.<sup>8</sup> See, e.g., EA Appendix B at 21 (“drainage contamination from [Westlands] likely contributes to degraded downstream water quality in the Grasslands wetland supply channels. Westlands’ . . . contribution to selenium contamination in the Grasslands wetland supply channels and the San Joaquin River associated with IRC CVP deliveries may adversely affect the giant garter snake during the two year life of the project”); *id.* at 19 (same for California least tern). The magnitude of this effect is not disclosed, even though all of these species either are or may be present within Westlands’ service area (EA 22), all of them will be adversely affected by the selenium-contaminated drainage that the Project will create (EA 17, 20), and all of them would be positively affected if Reclamation were to exercise its discretion to reject Westlands’ interim contract. The *only* protected species discussed in the EA are *other* protected species that supposedly will *not* be adversely affected by the Project.<sup>9</sup>

Reclamation also claims that impacts will be avoided because it will comply with “all measures contained within” a biological opinion issued by the US Fish and Wildlife Service. EA 41 (citing EA Appendix B, the Biological Opinion). That Biological Opinion is flawed in a number of significant respects. First, it assumes compliance with the Grasslands Bypass Project Biological Opinion, and the SLDFR Biological Opinion, despite the fact that future funding for these Projects is *uncertain* and other factors could prevent compliance. Further, the Biological Opinion – like the EA – improperly assumes no direct adverse impacts to listed species solely on the basis that the contracts continue existing conditions for only a short period. EA Appendix B at 17-18. The Biological Opinion concludes that “the short duration of the [interim contracts]” is a factor in USFWS’s conclusion that the interim renewal contracts are not likely to adversely impact the giant garter snake, San Joaquin kit fox or blunt-nosed leopard lizard. EA Appendix B at 22. But the “short duration” of these interim contracts is illusory, given that interim contracts have been issued by Reclamation continually *since 1994* – 23 years to date. EA 4.

Reclamation must recirculate the EA for public review and comment when the missing analysis about the Project’s effects on listed species is added. 40 C.F.R. §§ 1502.9, 1508.9. Should Reclamation instead insert a new discussion of the impacts on protected species into a final EA, it will improperly preclude informed public comment and subvert the decision-making

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<sup>8</sup> As noted above, it is unlawful to require readers to search through multiple unrelated sections of an EA in order to cobble together a missing impact analysis that should have been clearly provided by the agency. *NPCA, supra*, 606 F.3d at 1073-1074. Moreover, as noted below, it is unlawful to equate a lack of jeopardy under the ESA with a lack of an impact under NEPA because the standards under the two statutes are different. *Klamath-Siskiyou Wildlands Center v. U.S. Forest Service*, 373 F.Supp.2d 1069, 1080 (E.D.Cal. 2004).

<sup>9</sup> The EA’s analysis of these species, which include but are not limited to the San Joaquin kit fox, is superficial and states that Reclamation does not have any control over such effects because such effects are caused by farming rather than water deliveries. As discussed in the no-action alternative section, this is false because Reclamation could cause the retirement of about 125,000 acres of land within Westlands’ service area by rejecting the contracts. EA 15.

↑ process.

Volker-14  
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By never fully analyzing the contract-specific impacts of contract renewal, Reclamation failed to take a hard look at the proposed action's impacts on listed species.

## 2. Global Warming

The EA fails to analyze how global climate change will affect the project. Climate change is likely to reduce flows, increase water temperatures even assuming constant flows, reduce dissolved oxygen, increase salinity, reduce the populations of fish species, and, overall, add many more stressors to already compromised Delta fish and wildlife. Yet the EA does not analyze whether and how global climate change will increase the environmental impacts of the proposed interim contract by negatively affecting the environment surrounding it. That violates NEPA, as recent guidance from the Council on Environmental Quality ("CEQ") makes clear. On August 1, 2016, the CEQ issued its official guidance about federal agencies' analysis of greenhouse gases, titled "Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," which is attached hereto as Exhibit 1, and which PCFFA cites for its persuasive value. The CEQ's Guidance emphasizes that agencies have an obligation to disclose how the environmental impacts of their actions will be exacerbated by climate change:

Volker-15

For example, a proposed action may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is already warming due to increasing atmospheric temperatures. Such considerations are squarely within the scope of NEPA and can inform decisions on whether to proceed with, and how to design, the proposed action to eliminate or mitigate impacts exacerbated by climate change.

Exhibit 1 at 21. Reclamation must provide detailed and specific information about how climate change will affect the impacts of approving the interim contracts to enable the public to understand the consequences of its actions. *Id.*; *Neighbors of Cuddy Mountain*, 137 F.3d at 1379. Though the EA claims it is appropriate to ignore climate change because the Project only lasts two years (EA 14), this excuse is untenable in light of the fact that Reclamation has been issuing "interim" contracts for 23 years, since 1994. EA 4. It is utterly specious for Reclamation to spend decades excusing itself from an obligation on the untenable grounds that it is only approving a "short-term" contract. Reclamation must stop approving decades' worth of "interim" contracts because it has never reviewed the long-term consequences of doing so, in plain violation of NEPA.

## 3. Cumulative Impacts

Volker-16

NEPA mandates that agencies "consider" cumulative impacts. 40 C.F.R. §

1508.25(c)(3). “To ‘consider’ cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency]’s decisions, can be assured that the [agency] provided the hard look that it is required to provide.” *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379-1380 (9th Cir. 1998). Here, the EA falls far short of this requirement.

The EA includes *no* substantive analysis of cumulative impacts, instead merely stating that because the Proposed Action “represent[s] a continuation of existing conditions” no cumulative impacts would occur. *E.g.*, EA 26. This is entirely inadequate to account for the deteriorating condition of the Delta, wherein species are moving ever-closer to extinction. Reclamation is obliged to analyze how the environmental impacts of current operations are magnified by such conditions. As the Delta’s water quality continues to decline, and its fish and wildlife are pushed closer to extirpation, the impacts of a given quantity of diversions are magnified. The EA completely fails to grapple with these impacts and thus violates NEPA.

Volker-16  
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Consideration of these cumulative impacts is required now because they were not considered in the CVPIA PEIS. FWS made clear during its review of the CVPIA PEIS that “[s]ubsequent tiered consultations, addressing future actions or programs carried out by Reclamation (e.g. *contract renewal*), shall consider what incremental effect, if any, such action or program causes in addition to the effects included in the existing environmental baseline.” FWS CVPIA BiOp (Exhibit 2) at 3.<sup>10</sup> The cumulative impacts of interim contract renewals have *never* been considered. Moreover, each successive interim contract has an *incremental* environmental impact because selenium and other pollutants bioaccumulate, meaning that concentrations of the pollutant increase when constant quantities of the pollutant are released over time. This “incremental effect” has never been considered. *Id.* at 3. That omission is particularly galling because Reclamation has been issuing “interim” contracts *since 1994*. EA 4. Reclamation has *never* considered the long-term effects of its serial approval of such “interim” contracts. By failing to provide “quantified or detailed information” about the Project’s cumulative impacts, Reclamation violated NEPA. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d at 1379-1380.

Volker-17

The EA also improperly relies upon compliance with the Endangered Species Act to satisfy compliance with NEPA. *E.g.*, EA 41. This is inadequate because the standards under the two statutes are entirely different. The ESA is concerned with avoiding jeopardy to endangered species, whereas NEPA mandates the disclosure of *all* significant impacts *whether or not they also cause jeopardy*. For the “purposes of NEPA, a project need not jeopardize the continued

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<sup>10</sup> This document, the full title of which is “Biological Opinion on Implementation of the CVPIA and Continued Operation and Maintenance of the CVP,” is attached hereto as Exhibit 2. Reclamation produced this copy of this document during PCFFA’s prior litigation of Reclamation’s interim contracts, but the copy Reclamation provided contains various formatting errors. This document is already in Reclamation’s files; please include a clean copy of this document in the administrative record.



Volker-17  
cont.

↑ existence of a threatened or endangered species to have a ‘significant’ effect on the environment.” *Klamath-Siskiyou Wildlands Center v. U.S. Forest Service*, 373 F.Supp.2d 1069, 1080 (E.D.Cal. 2004). Relying on future ESA constraints to avoid jeopardy to endangered species is not a substitute for meaningful analysis of whether the proposed action will directly or cumulatively cause impacts to endangered species short of jeopardy. *Id.* The EA’s improper equation of the two violates NEPA.

**D. The EA’s Reliance on the Outside Documents Is Improper**

The EA relies upon outside documents to excuse its lack of analysis. *E.g.*, EA 1-8 (relying on CVPIA PEIS, LTO EIS, and SLDFR-FEIS). However, these documents do not and cannot remedy the EA’s deficiencies, for two reasons.

First, none of these documents analyzed the site-specific impacts of contract renewal. The EA expressly states that the CVPIA PEIS “did not analyze site specific impacts of contract renewal.” EA 2. Indeed, FWS made clear in its Biological Opinion about the CVPIA PEIS that “[s]ubsequent tiered consultations, addressing future actions or programs carried out by Reclamation (*e.g. contract renewal*), shall consider what incremental effect, if any, such action or program causes in addition to the effects included in the existing environmental baseline.” FWS CVPIA BiOp at 3. Moreover, the PEIS never considered an alternative of reducing contract quantities, so it never considered or disclosed the environmental benefits of reducing the amount of water delivered to Panoche and San Luis Water Districts. FWS CVPIA BiOp at 32 (“The PEIS assumed that contracts would be renewed for the same quantity of water as the existing contracts”). And as discussed above, neither the GBP BiOp nor the LTO EIS analyzed the site-specific impacts of contract renewal. The GBP permits do not purport to mitigate impacts to species under NMFS’ jurisdiction, and moreover they address the environmental impacts of providing drainage service rather than the environmental impacts of providing the water deliveries that create the drainage in the first instance. Refusing to provide Westlands with water – a choice within Reclamation’s discretion – would substantially reduce the amount of selenium-contaminated drainage that ends up in the Delta. Similarly, the LTO EIS impermissibly treated the Reasonable and Prudent Alternatives as the ceiling – rather than the floor – for future management measures and does not purport to fully mitigate all impacts of long-term CVP operation.

Volker-18

NEPA also forbids Reclamation from satisfying its informational obligations by incorporating outside documents into an EA. *Natural Resources Defense Council v. Duvall*, 777 F.Supp. 1533, 1538-39 (E.D.Cal. 1991) (disallowing incorporation by reference into an EA because (1) 40 C.F.R. section 1508.21, allowing incorporation by reference, applies only to EISs and (2) an EA’s conclusions should “be close to self-evident and . . . not require an extended document incorporating other studies”). NEPA requires Reclamation to study the impacts of its actions and expose its conclusions to public scrutiny, not obliquely and opaquely refer the reader to outside documents whose location the reader is not directed to and whose conclusions – let alone data and analysis – are not summarized or provided to the reader. As mentioned, the EA

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↑ here improperly incorporates by reference the CVPIA PEIS, the SLDFR-FEIS, and the LTO EIS (EA 1-8), and in doing so it violates NEPA. *Duvall*, 777 F.Supp. at 1538-1539.

Even assuming for the sake of argument that the requirements governing incorporation by reference into EISs are also applicable to EAs, Reclamation failed to satisfy them. Putatively incorporated documents must satisfy “three standards: 1) the material is reasonably available; 2) the statement is understandable without undue cross reference; and 3) the incorporation by reference meets a general standard of reasonableness.” *Duvall*, 777 F.Supp. at 1539. Because Reclamation’s EA neither summarizes the conclusions of the outside documents nor tells the reader where they can be obtained, the incorporation requires undue cross reference and fails the general standard of reasonableness. *E.g.*, EA at 1-8; *cf. Siskiyou Regional Education Project v. Rose*, 87 F.Supp.2d 1074, 1097 (D.Or. 1999) (incorporation impermissible because EA failed to specify which portions of documents it incorporated). Additionally, Reclamation’s failure to instruct readers as to where they could find the documents means the material is not “reasonably available,” as required. *Duvall*, 777 F.Supp. at 1539

Volker-18  
cont.

#### **E. An EIS Is Required**

“An agency is required to prepare an EIS where there are substantial questions about whether a project *may* cause significant degradation of the human environment.” *Native Ecosystems Council v. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis supplied); *Western Watersheds Proj.*, 719 F.3d at 1050. When determining whether an action may have a significant effect on the environment, agencies must consider “context and intensity.” 40 C.F.R. § 1508.27; 42 U.S.C. § 4332(2)(C). “Context refers to the setting in which the proposed action takes place. . . . Intensity means the severity of the impact,” as determined by “up to ten factors” listed in 40 C.F.R. section 1508.27(b). *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 865 (9th Cir. 2004). These factors indicate that an action is significant “where it is reasonable to anticipate a cumulatively significant impact.” 40 C.F.R. § 1508.27(b)(7). In examining whether an action is significant, agencies must consider “the degree to which the action may adversely affect an endangered or threatened species” or its critical habitat. 40 C.F.R. § 1508.27(b)(9). The presence of just “one of these factors may be sufficient to require preparation of an EIS.” *Ocean Advocates*, 402 F.3d at 865.

Volker-19

Here, at least eight of the factors are met, so an EIS is required. Approving the Project may affect public health and safety, and may affect the unique environment of the Delta – the largest estuary on the west coast of North America – so an EIS is required. 40 C.F.R. §§ 1508.27(b)(2), (3). The effects of the action are “highly controversial” because of Reclamation’s mismanagement of the Delta and its wholesale failure to even attempt to balance its environmental obligations with its predetermined desire to subsidize agricultural uses of water. 40 C.F.R. § 1508.27(b)(4). The EA’s failure to engage in substantive analysis of the Project’s environmental impacts, as discussed, means that the Project’s impacts are “highly uncertain” such that an EIS is required. 40 C.F.R. § 1508.27(b)(5). Reclamation’s serial approval of a series of “interim” contracts appears to “establish a precedent for future actions with significant effects.” 40 C.F.R. § 1508.27(b)(6). As explained above, approval of the Project will have

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Volker-19  
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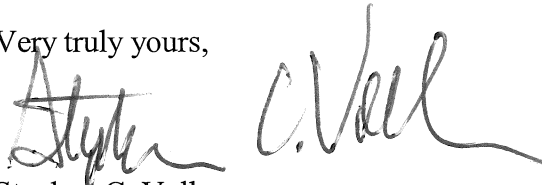
potentially significant cumulative impacts, because selenium and other pollutants bio-accumulate, which further indicates the need for an EIS. 40 C.F.R. § 1507.27(b)(7) (“Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts”). And finally, because the Project may have a significant impact on endangered species, which have significant scientific value, an EIS is required. 40 C.F.R. §§ 1508.27(b)(8), (9). While each of these reasons is independently sufficient to mandate an EIS, they collectively remove all doubt about the need for Reclamation to conduct a thorough analysis by preparing such a document. *Ocean Advocates*, 402 F.3d at 865.

### III. CONCLUSION

For all of these reasons, Pacific Coast Federation of Fishermen’s Associations, San Francisco Crab Boat Owners Association, Inc., Institute for Fisheries Resources, and North Coast Rivers Alliance urge Reclamation to reject the proposed EA and FONSI and to prepare an EIS.

Thank you for considering our comments on this important matter.

Very truly yours,



Stephan C. Volker

Pacific Coast Federation of Fishermen’s Associations, San Francisco Crab Boat Owners Association, Inc., Institute for Fisheries Resources, and North Coast Rivers Alliance

### TABLE OF EXHIBITS

- Exhibit 1: Council on Environmental Quality, “Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews” (August 1, 2016)
- Exhibit 2: U.S. Fish and Wildlife Service, “Biological Opinion on Implementation of the CVPIA and Continued Operation and Maintenance of the CVP” (November 2000)

## Response to Stephan C. Volker Comment Letter, April 6, 2017

- Volker-1 Comment noted. This comment consists of conclusory summary statements of the comments that are set forth in more detail in the remainder of the letter. Please see specific responses below.
- Volker-2 Reclamation disagrees that the revised Draft EA (DEA-15-023A) no action alternative does not comply with the Ninth Circuit Court's decision in *Pacific Coast Federation of Fishermen's Associations v. United States Department of the Interior*, Case: 14-15514. As required in the Ninth Circuit's decision and noted in Section 1 of DEA-15-023A, Reclamation prepared DEA-15-023A to include a non-contract renewal No Action Alternative and considered a reduced contract quantity alternative based on an updated water needs assessment consistent with the Ninth Circuit Court determination.

The commenter is incorrect that if Reclamation "re-apportioned" the Westlands contract allocation (up to 1,192,948 AF per year) under the No Action alternative to other Project purposes south-of-Delta (SOD), including to other SOD CVP contractors and wildlife refuges, that the 1.98 million AF deliveries considered in the CVPIA PEIS would be exceeded. Westlands' 1,192,948 AF maximum contract quantity is included as part of the 1.98 million AF total for SOD CVP agricultural contractors.

As described in Section 2.1 in DEA-15-023A, in general, for most water year types, Reclamation does not anticipate a change in CVP pumping or operations under the No Action alternative. However, whether a change in pumping or operations occurs would be dependent on specific hydrologic conditions, as well as regulatory, and environmental requirements in play on any given day.

It is possible that in wetter years the up to 1,192,948 AF that otherwise would have been made available to Westlands would be re-apportioned either by (1) re-allocating to other south-of-Delta CVP contractors including wildlife refuges, (2) retained in upstream CVP storage, (3) released for use by other water rights diverters, and/or (4) passed through the Delta un-diverted by Reclamation. The actual re-apportionment would be dependent on specific hydrologic conditions, as well as regulatory, and environmental requirements at issue.

As an example, based on actual allocations shown in Table 7 in Section 3.7.1 in DEA-15-023A, during the recent drought in 2012 and 2013, Westlands received allocations of only 40% or 20% of its maximum contract amount, respectively. Therefore, the amount available for re-apportionment under the No Action alternative would have been 40% and 20% of Westlands maximum contract amount in those years. By contrast, in 2014 and 2015, the amount of CVP water made available to Westlands was 0%. As such, no water would be available for re-apportionment under the No Action alternative.

Reclamation has updated DEA-15-023A to clarify what could occur under the No Action alternative to address potential effects of re-allocation of Westlands' otherwise available water supply for comparison with the Proposed Action. See Sections 2.1 and 3 in Final EA-15-023A.

For example, as the commenter states, discing is an "integral part of farming". Even under the No Action alternative, some level of farming is still expected and assumed to occur in the District, and, as such, some level of discing would continue to occur in the District, including some for weed and pest abatement purposes in fallowed areas, potentially impacting special-status species as it could under the Proposed Action. These effects have occurred previously and are likely to continue to occur in the future under either alternative as they are the effect of farming practices and not an effect of the Proposed Action, as described in Section 3.3.2 of DEA-15-023A.

It should be noted that numerous activities unrelated to the Proposed Action continue to result in loss and degradation of habitat used by listed threatened and endangered species in the Action area. For example, habitat loss and degradation affecting both animals and plants continues as a result of urbanization, oil and gas development, road and utility right-of-way management, flood control projects, livestock grazing, and continued agricultural expansion. Listed animal species also are affected by poisoning, shooting, increased predation associated with human development, and reduction of food sources.

The commenter is incorrect that DEA-15-023A's "entire no-action alternative analysis is skewed to support Reclamation's predetermined outcome of approving the Project." The analysis recognizes that, based on historical operations, the water that otherwise would be allocated to Westlands under the Proposed Action could instead be re-allocated to other SOD CVP contractors, including wildlife refuges, remain in upstream storage, and/or pass through the Delta un-diverted. All of which would be dependent on how much of Westlands otherwise available water supply is made available to be re-apportioned.

Volker-3

As described in Section 1.1 of DEA-15-023A, interim renewal contracts have been and continue to be undertaken under the authority of the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the execution of new long-term water service contracts as provided for in the CVPIA. As Reclamation is required to provide long-term contract renewals for these contractors (pending site-specific environmental review which is ongoing), Reclamation prepared updated Water Needs Assessments to cover interim renewal and long-term contract renewal time periods.

As provided in the Ninth Circuit Court's decision, "In satisfying the duty [of considering a reduced contract alternative], Reclamation may rely upon any water needs assessment for which the data remain accurate" (Case: 14-15514, 07/25/2016, pg 11). As described in Section 2.3 of DEA-15-023A, Reclamation

reviewed the previous Water Needs Assessment completed for Westlands and determined that updates to the assessment were warranted. A new updated Water Needs Assessment was prepared for Westlands and included as Appendix D of DEA-15-023A.

Water Needs Assessments have been performed for each CVP water contractor eligible to participate in the CVP long-term contract renewal process. These Water Needs Assessments serve three general purposes: 1) confirm past beneficial use of CVP water; 2) provide water demand and supply information under current and future conditions for the environmental documents; and 3) provide an estimate of contractor-specific needs for CVP water for a given benchmark year for discussions regarding contract quantities in the negotiation process. The overall purpose of the Water Needs Assessment is to show what could be beneficially used by a District given a constant reliable source of water, growing seasons, crop prices, and other ideal water delivery conditions.

CVP contractors often obtain other sources of water supply in order to diversify their water supply portfolios; however, this does not necessarily mean a reduced quantity of CVP water is appropriate. Reclamation considers CVP reliability and whether a contractor would abandon or reduce other water supplies if enough CVP water were available. Reclamation also considers whether or not a contractor is more likely to use CVP water over water that is purchased from other sources due to cost and/or environmental consequences, such as cost of extraction, subsidence, and/or long-term unsustainability of groundwater pumping from a given aquifer.

As described in Section 2.3 in DEA-15-023A, Water Needs Assessments were completed by Reclamation between 2000 and 2004. The purpose of the Water Needs Assessments and methodology used by Reclamation for these assessments was included as Appendix C of DEA-15-023A. Reclamation followed the same methodology, which has previously undergone public review, in preparing the new and updated Water Needs Assessments for contractors with interim renewal contracts, including Westlands, consistent with the Ninth Circuit Court's determination. Certain specific modifications to the methodology for the new and updated Water Needs Assessments were described in Section 2.3 of DEA-15-023A.

Reclamation makes CVP water available to contractors for reasonable and beneficial uses, but this water supply varies widely from year to year and sometimes even within a given year, and is often insufficient to meet all of the irrigation water service contractors' water supply needs due to hydrologic conditions and/or regulatory constraints. As shown in Table 7 of DEA-15-023A, SOD CVP agricultural allocations ranged between 0% and 100% and averaged 40% between 2005 and 2016. For 8 out of the last 12 years, the SOD CVP agricultural allocation was less than 50% due to drought conditions and regulatory requirements. Consequently, CVP contractors, including Westlands, consider the

past and must make assumptions to adaptively manage water supplies based on current and projected hydrologic conditions (that are also dependent upon regulatory and environmental requirements) in order to proactively assess their risk in making business, economic, cropping, planting, and irrigation decisions.

As described in the methodology included in Appendix C of DEA-15-023A, if the results of the Water Needs Assessments are “positive or only slightly negative” (meaning that the contractors need is determined to be above or only slightly below the contract maximum) then the CVP water contractor is deemed to have full future need of the maximum annual CVP supply currently under contract for all year types.” Further, “[i]f the negative amount is within 10% for contracts in excess of 15,000 acre-feet, or within 25% for contracts equal to, or less than, 15,000 acre-feet; the test of full future need of CVP supplies under contract is deemed to be met.”

Reclamation used Westlands’ most recent published Water Management Plan (2013) to update the Water Needs Assessments. The Water Management Plan was based on data from 2011.

Each year displayed within the new and updated Water Needs Assessments represents a snapshot in time specific to either contractor risk based assumptions such as those noted above coming into the year and what actually occurred (e.g. 2011), or what is projected to reasonably occur for a given set of assumptions (e.g. year 2050 and year 2051).

In 2011, as shown in the updated Water Needs Assessment, Westlands transferred 115,615 AF, plus pumped 69,000 AF of groundwater and only irrigated 460,884 acres. However, if Westlands had received a 100% allocation it is reasonable to assume that landowners within Westlands would have planted as much as 81,000 additional acres (for a total of 541,884 acres) and reduced the combined amount of groundwater pumping and acquired transfers by as much as 45,000 AF (for a total of 140,000 AF). This would have changed Westlands’ 2011 estimated and calculated surplus of 65,127 AF to an unmet demand of 5,794 AF. As such, this supports Reclamation’s determination that Westlands has the capability to put their maximum contract quantity to beneficial use. Reclamation has clarified the language that incorrectly suggested Westlands had used its maximum contract quantity to indicate that Westlands has the capability to use its maximum contract quantity.

In addition, as stated in Section 2.2.3 of Final EA-15-023A, Westlands is projected to have an estimated and calculated unmet demand of 156,014 AF and 259,282 AF for the years 2050 and 2051, respectively. Pursuant to the methodology, Reclamation determined that Westlands has demonstrated the capability to put their full contract quantity to beneficial use and could continue to do so in the future under the long-term contract renewal contemplated by the

CVPIA and PEIS. As such, a reduction in contract quantity is not warranted and Reclamation eliminated a contract reduction alternative from further review.

Volker-4 The commenter states that Appendix D from DEA-15-023A “does not contain any explanatory information.” The explanatory information the comment requests concerning how the updates to the Water Needs Assessments occurred was explained in Section 2.3 of DEA-15-023A. As stated in Section 2.3, Reclamation’s methodology for preparing the Water Needs Assessments was included as Appendix C of DEA-15-023A. Reclamation followed the same methodology, which has previously undergone public review, in preparing the updated Water Needs Assessments for contractors with interim renewal contracts, including Westlands. Certain specific modifications to the methodology for the updated Water Needs Assessments was also described in Section 2.3 of DEA-15-023A. Reclamation has included additional language in Section 2.3 of the Final EA-15-023A to further clarify. See also Response to Volker-3.

Volker-5 The commenter questions why Reclamation did not include groundwater in total water supply for 2050 and 2051. Reclamation included 69,000 AF of pumped groundwater in 2011 as it is an actual number reported in Westlands’ 2013 Water Management Plan. Reclamation did not include groundwater pumping in 2050 and 2051 because it is not clear that pumping will be sustainable in the long-term. The comment letter states that a “sustainable amount of groundwater pumping for the area” is about 225,000 AF. The 225,000 AF is an estimated safe yield provided by Westlands (Westlands 2017) based on conjunctive use and is not part of the calculated water supply for the District. As stated on page 38 of DEA-15-023A, “it is unknown what precise level of groundwater pumping in the Westlands area is sustainable and as such any associated assumption(s) would be speculative”. Therefore, Reclamation did not include a safe yield reference or supply for the benchmark years 2050 and 2051 in part because Westlands’ estimated safe yield “range from 200,000 AF to 250,000 AF” may change due to current ongoing concerns with subsidence in the area and implementation of SGMA.

However, even if Reclamation had included up to Westlands’ maximum estimated safe yield (225,000 AF) as projected groundwater pumping for 2050 and 2051, Westlands would still fall within Reclamation’s 10% criteria for considering whether or not detailed analysis for a reduced contract quantity alternative is warranted (Appendix C in DEA-15-023A). Adding 225,000 AF of groundwater to Westlands’ maximum contract amounts of 1,150,000 AF and 895,000 AF would result in surpluses of 68,986 AF (6% of contract maximum) and 11,101 AF (1% of contract maximum), respectively as shown in the Table below.



Year	Allocation	CVP Supply	Transfers In	Ground water	Transfers Out	Total Supply	Demand*	Unmet Demand/ Surplus	Unmet Demand/ Surplus as % of Contract Maximum
2011	80%	983,306	115,615	69,000	1,440	1,166,481	1,101,354	-65,127	-6%
2017**	100%	1,150,000	140,000	-	0	1,290,000	1,294,354	4,354	0%
2050	100%	1,150,000	45,383	225,000	0	1,420,383	1,351,397	-68,986	-6%
2051	100%	895,000	45,383	225,000	0	1,165,383	1,154,282	-11,101	-1%

\*Demand estimated and calculated from updated Water Needs Assessment (see Appendix E in Final EA-15-023A).

\*\*Westlands provided estimates for 2017 Transfers In, Groundwater, Transfers Out, and Irrigated Acreage\*\*\* and included Groundwater within the 140,000 AF total identified under Transfers In.

\*\*\*Irrigated Acreage in 2011 = 460,884; 2017 = 541,884; 2050 = 560,700; 2051 = 460,700

The updated water needs assessment supports Reclamation’s determination that Westlands meets the test for current and projected future (year 2051) need of full CVP water supplies as described in Appendix C in DEA-15-023A. As such, Reclamation’s determination that detailed analysis of a reduced contract quantity alternative is not warranted still stands.

See also Response to Volker-4.

Volker-6 The commenter states that the “water needs assessments does not explain why crop water requirements are supposedly hundreds of thousands of acre-feet higher in 2050 and 2051 than in 2011” and that they are “not proportional to the relative number of acres that supposedly will be irrigated in these years”.

As noted in the updated Water Needs Assessment (Appendix C) and stated in Section 2.3 of DEA-15-023A, Reclamation used Westlands most recent Water Management Plan (Westlands 2013) which included published data from 2011. Information from the 2013 Water Management Plan was used for 2011 in the updated Water Needs Assessment including Crop Water Requirements (Column 15).

As stated in Section 2.3 of DEA-15-023A, Reclamation applied the maximum productive acreage for Westlands (560,700 acres) for its irrigation calculations as representative of the total volume of water needed by the contractor in the benchmark year 2050 (i.e., as part of the analysis would the contractor be able to beneficially use its maximum contract quantity at full build out). Reclamation added the year 2051 to the updated Water Needs Assessment to address the quantity of permanently retired lands (100,000 acres) consistent with the Westlands Drainage Settlement (reducing maximum productive acreage to 460,700 acres). It should be noted that Westlands 2051 available CVP water supply is 255,000 AF less than what is projected for 2050 and its maximum irrigable acres is 100,000 acres less in 2051 than 2050 consistent with the Westlands Drainage Settlement.

As described on page 4 in Appendix C (methodology) of DEA-15-023A, Reclamation estimates crop water requirements for benchmark years (e.g., 2050 and 2051) based on the CVP water contractors' estimates of future crops and acreage planted multiplied by estimates of the farm delivery requirements (FDR) for each crop. Reclamation followed the same methodology included in Appendix C in DEA-15-023A to estimate future crop water requirements based on estimated cropping and conveyance losses provided by Westlands.

Specifically, Reclamation estimated Crop Water Requirements (Column 15) for 2050 and 2051 using the following calculation:

Calculated Net Crop Water Requirement [Column 19] =  
(Crop Water Requirement [Column 15] – Effective Precipitation [Column 17]) ÷  
Irrigation Efficiency [Column 16]

As it is unknown what the Effective Precipitation (EP) would be for 2050 or 2051, Reclamation made a reasonable assumption and used the Reference EP (Column 18) for EP (Column 17) in the updated Water Needs Assessment. The calculated Reference EP (Column 18) is based on DWR references in AF/acre based on assumed hydrologic years \* Reference Irrigated Acres (Column 22).

Crops for 2011, 2050, and 2051 were those reported in Westlands 2013 Water Management Plan and adjusted for actual acreage totals estimated in 2050 and 2051.

See also Responses to Volker-3 through Volker-5.

Volker-7

The commenter states that “Appendix D provides no explanation of how it is reasonable to assume that in 2050 Westlands will irrigate nearly 100,000 acres of land *more* than can legally be planted under ‘legal settlements and Reclamation law’”.

Reclamation has replaced the language in DEA-15-023A with the following language to further explain what can be irrigated versus what is irrigable in Westlands:

“Westlands comprises approximately 614,700 acres on the west side of the San Joaquin Valley in Fresno and Kings Counties. Substantially all the land within Westlands has historically been in agricultural production; from 2001-2011, irrigated acres in Westlands ranged from 559,744 to 568,700 (Westlands 2013); however, for the purposes of the updated Water Needs Assessment Reclamation assumed that 560,700 acres are irrigable based on 2011 Reclamation Mid-Pacific Region GIS data that classified irrigable acres in Westlands.

Westlands “allocates” CVP water made available by Reclamation in a given year to about 467,000 acres due to an internal settlement (aka Sagospe Settlement)

between landowners in Westlands. Under the settlement, Westlands acquired the landowners right to receive the CVP water allocation from 93,000 acres within Westlands in order to make the annual CVP water allocation rate (i.e., AF/acre) the same for the 467,000 acres noted above. However, while 36,000 acres of the 93,000 acres have non-irrigation covenants, there are still irrigation demands on approximately 57,000 acres that can still be farmed with CVP water transferred internally from other lands within Westlands, groundwater, and/or other available water supplies.

It should be noted that growers within Westlands periodically plant and harvest crops two times per year on a given parcel of land (often referred to as “double cropping”) that approximately doubles the water demand on the same acreage. For example, over a 10-year period (2001-2011) double cropping has ranged between 6,330 acres (2009) and 20,312 (2006) acres (Westlands 2013).”

As described in Section 2.3 of DEA-15-023A and in Response to Volker-6, Reclamation reduced the amount of irrigable acres in 2051 by 100,000 acres in order to address permanently retired lands consistent with the Westlands Drainage Settlement (an aggregate of not less than 100,000 acres). Under SLDFR, 44,106 acres of permanently retired lands would be increased by 65,000 acres if drainage service is not provided to Westlands, for a total of 109,106 acres (Reclamation 2005h).

Reclamation has revised the updated Water Needs Assessment to replace the reference to 109,106 retired acres in 2051 with 100,000 acres in order to be consistent with the Westlands Drainage Settlement (see Appendix E in Final EA-15-023A).

Volker-8 The commenter is incorrect that Reclamation used “arbitrary assumptions” in preparing the updated Water Needs Assessments to justify not considering a reduced contract alternative for Westlands. As provided in the Ninth Circuit Court’s decision, “In satisfying the duty [of considering a reduced contract alternative], Reclamation may rely upon any water needs assessment for which the data remain accurate” (Case: 14-15514, 07/25/2016, pg 11).

As described in Section 2.3 in DEA-15-023A, the purpose of the Water Needs Assessments and methodology used by Reclamation for these assessments was included as Appendix C of DEA-15-023A. Reclamation followed the same methodology, which has previously undergone public review, in preparing the updated Water Needs Assessments for contractors with interim renewal contracts, including Westlands. Certain specific modifications to the methodology for the updated Water Needs Assessments was also described in Section 2.3 of DEA-15-023A.

As described above in Response to Volker-4 and as shown in Response to Volker-5, the updated Water Needs Assessment supports Reclamation’s determination

that Westlands has the capability to put their maximum contract amount to beneficial use (i.e., any surplus falls within Reclamation's 10% criteria for considering whether or not support for a reduced contract quantity alternative is warranted as described in Appendix C in DEA-15-023A).

Furthermore, the analysis of the No Action alternative addresses a worst case scenario (i.e. no contract and therefore zero CVP water supply for Westlands). Any impacts from a reduced contract quantity alternative would fall between a No Action alternative (i.e. zero CVP water supply) and a maximum contract quantity alternative (i.e. the Proposed Action).

See also Responses to Volker-2 through Volker-7.

Volker-9 Reclamation prepared DEA-15-023A consistent with NEPA regulations, guidance from the Council on Environmental Quality (CEQ), and the Department of the Interior's NEPA regulations. In accordance with NEPA, an EA is initially prepared to determine if there are significant impacts on the human environment from carrying out the Proposed Action. Reclamation has followed applicable procedures in the preparation of DEA-15-023A which includes the required components of an EA as described in the CEQ's NEPA regulations (40 CFR 1508.9): discussion of the need for the proposal, alternatives as required, environmental impacts of the proposed action and alternatives, and listing of agencies and persons consulted.

DEA-15-023A included detailed analysis of a Proposed Action (execution of two year interim renewal contracts) and a non-contract renewal No Action Alternative, as well as consideration of detailed analysis of a reduced contract alternative, consistent with NEPA and as required by the Ninth Circuit Court Order (Case: 14-15514, 07/25/2016 regarding D.C. No. 1:12-cv-01303-LJO-MJS).

Although an EA is not required by NEPA to be released for public review, Reclamation did so with regard to the Interim Renewal Contracts in order to be open and transparent, gather public input, and to further inform decision making.

DEA-15-023A has been updated to transparently and specifically incorporate both potential adverse and beneficial effects of the non-contract renewal No Action alternative. See also Responses to Volker-2 through Volker-8.

Volker-10 The commenter is incorrect that "the EA improperly limits the study area to the Contractors' service areas". DEA-15-023A tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing six interim water service contracts. The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No Action Alternative were evaluated in the PEIS. In addition, the PEIS analyzed the region-wide and cumulative impacts

of the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion are discussed in the PEIS.

As described in Section 1.2 of DEA-15-023A, the purpose of the Proposed Action is to execute six interim renewal contracts in order to extend the term of the contractors' existing interim renewal contracts for two years, beginning March 1, 2016 and ending February 28, 2018. Execution of these six interim renewal contracts is needed to continue delivery of CVP water to these contractors, and to further implement CVPIA Section 3404(c), until their new long-term renewal contract can be executed.

Additionally, on January 11, 2016, Reclamation issued a ROD (Reclamation 2016) addressing the environmental effects of implementing reasonable and prudent alternatives (RPAs) affecting the CVP/State Water Project (SWP) long-term operations (LTO). As the proposed execution of interim renewal contracts is administrative in nature and does not affect the operations of the CVP or SWP, EA-15-023A only covers the site specific environmental analysis of issuing the proposed interim renewal contracts over a two year period.

Further, the Ninth Circuit found that the Plaintiff's contention "that the EA's geographic scope was improperly limited to the delivery areas and should have considered the effects, including cumulative effects, of interim contract renewal on the California River Delta, the source of the water, and on the Delta's fish and other wildlife...**lacks merit** because the EA was tiered off of the PEIS, which addressed Central Valley Project-wide effects of long term contract renewal" and further "In light of Reclamation's obligation to conduct a more comprehensive analysis in the PEIS, **it would be impractical to require the agency to trace the incremental effects of each two-year water service contract on the Delta and all Central Valley Project waters**" (Case: 14-15514, 07/25/2016, pg 10, emphasis added).

Volker-11 Comment noted. This comment consists of conclusory summary statements of the comments that are set forth in more detail in the remainder of the letter. Please see specific responses below.

Volker-12 Reclamation disagrees with the commenter's assertion that DEA-15-023A must now address "...site specific impacts to listed species and habitat, both at the point of delivery and at the points of diversion (i.e., the original source) and rediversion (e.g., from storage reservoirs)..."

As described in Response to Volker-10, DEA-15-023A tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing these six interim water service contracts. The CVPIA PEIS analyzed the region-wide and cumulative impacts of implementing the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim

contracts is an on-going action and the current conditions of that diversion, including potential impacts to listed and non-listed species related to the amount of water available for contract deliveries CVP-wide, were analyzed in the CVPIA PEIS.

As the proposed execution of interim renewal contracts is administrative in nature and does not affect the operations of the CVP or SWP, DEA-15-023A covers the site specific environmental analysis of issuing the proposed interim renewal contracts over a two year period.

Volker-13 The comment is incorrect that the DEA-15-023A “fails to address the potential impacts to listed anadromous fish and fish habitat from contaminated drainage caused or exacerbated by the proposed action”.

The proposed Interim Renewal Contracts for Westlands will provide CVP water to irrigate arable lands within that district. Westlands was prohibited from using the San Luis Drain in 1986, and currently does not have an outlet for drainage. It should be noted that Westlands is **not** part of the Grassland Bypass Project. Subsurface drainage water generated within Westlands does **not** flow into the Grasslands wetlands, San Luis Drain, or lower San Joaquin River. As stated in Section 1.4.6 of DEA-15-023A, “the EA acknowledges ongoing trends associated with the continued application of irrigation water and production of drainage related to that water. It does not analyze the effects of Reclamation’s providing agricultural drainage service to the San Luis Unit. The provision of drainage service is a separate federal action that has been considered in a separate environmental document, the *San Luis Drainage Feature Re-Evaluation Final Environmental Impact Statement* [SLDFR FEIS] (Reclamation 2005h). The SLDFR FEIS evaluated seven Action alternatives in addition to the No Action alternative for implementing drainage service within the San Luis Unit. The ROD for the SLDFR-FEIS was signed March 9, 2007 (2007 ROD). The actions considered in this EA would not alter or affect the analysis or conclusions in the SLDFR FEIS or 2007 ROD”.

It should also be noted that the environmental monitoring program for the Grassland Bypass Project has confirmed that the concentration of selenium in the lower San Joaquin River below the Merced River remains well below the 5 ppb four-day average specified in the Basin Plan. Reclamation data for CVP water pumped from the Delta at the Jones Pumping Plant clearly shows that the concentration of selenium in this water is below 0.4 ppb. DWR data confirms that most of the water pumped through the Jones Pumping Plant originates in the San Joaquin River.

The Ninth Circuit found that “Impacts on salmonids and green sturgeon, as well as cumulative impacts related to drainage and selenium, were more appropriately addressed in the PEIS and the San Luis Drainage Feature Re- Evaluation Final

EIS, rather than the EA for interim contract renewal” (Case: 14-15514, 07/25/2016, pg 10).

Volker-14 Reclamation reviewed all special-status species that may be present within the Proposed Action area (summarized in Table 4 and described in Section 3.3.1 in DEA-15-023A). Potential impacts, including cumulative impacts, to special-status species were considered along with the environmental baseline to determine overall effects to the species. Based on specific species biology and habitat requirements, many species were determined to be absent from the Action area and would therefore not be impacted by the Proposed Action (see Table 4 in DEA-15-023A). However, as described in Section 3.3 of DEA-15-023A, there are some special-status species that may be affected by the Proposed Action, and as required by section 7(a)(2) of the Endangered Species Act (ESA), Reclamation consulted with the U.S. Fish and Wildlife Service (USFWS) on the Proposed Action. Reclamation’s determination of impacts related to the Proposed Action are based on the short-term nature of the Proposed Action (a two year contract term), delivery of existing contract quantities through existing facilities for use within existing contract service area boundaries for existing purposes, and specific environmental commitments included in Table 2 of DEA-15-023A and the biological opinion issued by the USFWS for the Proposed Action (Appendix B in the DEA-15-023A). The USFWS determined that the likelihood of least tern and giant garter snake being present within the Proposed Action area was low and provided incidental take coverage accordingly (see page 19 and 23 in the Biological Opinion included as Appendix B in DEA-15-023A). Pursuant to the terms and conditions of the Biological Opinion, Reclamation quantifies the wetted areas of the San Luis Drain within and adjacent to Westlands. No least tern individuals or nests or giant garter snakes were found during any of the years surveyed since 2014.

Reclamation finds that the impacts analysis included in DEA-15-023A, is sufficient and does not preclude the public or decision makers from making an informed decision related to the Proposed Action.

Volker-15 As described on page 17 of the August 1, 2016 CEQ memorandum entitled *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews* (included as Exhibit 1 to the April 6, 2017 Volker comment letter; **however, it should be noted that this guidance was withdrawn by CEQ on April 5, 2017 pursuant to Executive Order 13783**), the guidance “is intended to help Federal agencies ensure their analysis of potential GHG emissions and effects of climate change in an EA or EIS is commensurate with the extent of the effects of the proposed action.”

The Intergovernmental Panel on Climate Change (IPCC) recently concluded that “warming of the climate system is unequivocal” and “most of the observed increase in globally average temperatures since the mid-20th century is very

likely due to the observed increase in anthropogenic greenhouse gas concentration” (IPCC 2007). Without additional meteorological monitoring systems, it is difficult to determine the spatial and temporal variability and change of climatic conditions, but increasing concentrations of greenhouse gases are anticipated to accelerate the rate of climate change.

The National Academy of Sciences has indicated there are uncertainties regarding how climate change may affect different regions. Global climate model predictions indicate that increases in temperature will not be equally distributed, but are likely to be accentuated at higher latitudes (IPCC 2007). Increases in temperatures would increase water vapor in the atmosphere and reduce soil moisture, increasing generalized drought conditions, while at the same time enhancing heavy storm events. Although large-scale spatial shifts in precipitation distribution may occur, these changes are more uncertain and difficult to predict.

Commensurate with the extent of the Proposed Action (a two-year contract period) and using a “temporal scope that is grounded in the concept of reasonable foreseeability”, Reclamation reviewed the potential effects of the Proposed Action (a two year contract renewal period) on global climate change and the potential impacts of global climate change on the Proposed Action. Climate change is incremental and the consequences of climate change occurs over the long-term. During the limited, short-term period, of the proposed two year interim renewal contracts, there will not be any significant, measurable environmental changes to the CVP due to climate change.

Long-term considerations about the effects of and impacts on climate change are considered in the EA. In addition to what was already presented in DEA-15-023A, Reclamation has revised the EA to include the information derived from published documents that reference analysis by the IPCC and the National Academy of Sciences (BLM 2012, p 3.1-10).

Volker-16 Reclamation disagrees with the commenter’s assertion that DEA-15-023A “contains no substantive analysis of cumulative impacts”.

As described in Response to Volker-10, DEA-15-023A tiers off the CVPIA PEIS to evaluate potential site-specific environmental impacts of renewing these six interim water service contracts. The CVPIA PEIS analyzed the region-wide and **cumulative impacts** of implementing the CVPIA including the renewal of CVP water service contracts. The diversion of water for delivery under the interim contracts is an on-going action and the current conditions of that diversion were analyzed in the CVPIA PEIS.

Further, the Ninth Circuit found that the Plaintiff’s contention “that the EA’s geographic scope was improperly limited to the delivery areas and should have considered the effects, **including cumulative effects**, of interim contract renewal on the California River Delta, the source of the water, and on the Delta’s fish and



other wildlife...**lacks merit** because the EA was tiered off of the PEIS, which addressed Central Valley Project-wide effects of long term contract renewal” (Case: 14-15514, 07/25/2016, pg 10, emphasis added).

Volker-17 Reclamation disagrees that DEA-15-023A “improperly relies upon compliance with the Endangered Species Act to satisfy compliance with NEPA”. As part of its NEPA process, Reclamation discloses compliance with ESA as well as other regulatory requirements (e.g., Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, National Historic Preservation Act, Clean Water Act etc.) applicable to a particular proposed action.

See also Response to Volker-14.

Volker-18 Reclamation disagrees that NEPA “forbids” agencies from “satisfying its informational obligations by incorporating outside documents into an EA”. Incorporation by reference is allowed in EAs, and was done appropriately here.

Reclamation followed the same process for incorporating outside documents in and EIS pursuant to 40 C.F.R. section 1508.21. There are no prohibitions in the regulations of doing this for EAs.

Volker-19 The commenter claims an EIS is required. However, Reclamation disagrees because there is no evidence that the Proposed Action will cause any significant effect on the quality of the human environment. See Responses to all previous comments.

Reclamation finds that the impacts analysis included in DEA-15-023A, including additional language added to Final EA-15-023A to clarify the analysis included in the draft is sufficient and does not preclude the public or decision makers from making an informed decision related to the Proposed Action.