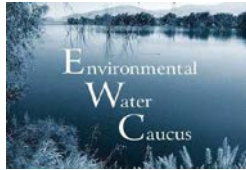


# **Appendix A: Comment Letter and Reclamation's Response to Comments**



**CA Save Our Streams Council**



March 2, 2018

Rain L. Emerson, M.S.  
Environmental Compliance Branch Chief  
Bureau of Reclamation, South-Central California Area Office  
1243 N Street, Fresno, CA 93721

**Re: Comments on the Draft Environmental Assessment Reclamation Approvals Associated with Harris Farms' and Shows Family Farms' Multiyear Banking and Transfer Program EA-18-004 & FONSI-18-004**

Dear Ms Emerson:

Thank you for extending the one week comment period provided to the public to comment on draft EA-18-004 and the Findings of No Significant Impact for the proposed nine-year transfer of 15,000 acre feet annually from the Harris Farms' and Shows Family Farms to various locations throughout the Central Valley Project service areas, including Westlands Water District and other San Luis Unit contractors along with the State Water Project service areas (Semitropic Water Storage District, Kern Water Bank and others). The DEA shows that USBR consulted with Department of Water Resources, Kern County Water Agency, Harris Farms, Inc., Shows Family Farms, LP, San Luis Water District, Semitropic Water Storage District and Westlands Water District. USBR did not, however, consult with any non-profit public interest groups or with fish and wildlife agencies, including the California Department of Fish and

Coalition-1



Coalition-1  
cont.

Wildlife, U.S. Fish and Wildlife Service, and the National Marine and Fisheries Service, nor any of the national or state wildlife refuge managers or biologists (DEA@ 23).

**Summary Comments:**

The draft EA and FONSI are not adequate and do not contain sufficient information to fully assess environmental impacts that should be avoided in order to adequately protect the environment. The description of the project, which is at the heart of a NEPA review, must be accurate. This project instead relies upon vague generalities and general maps that obscure the actual project and its impacts. Reasonable alternatives that could reduce the environmental impacts of the project have not been considered.

With no data or analysis, USBR declares there are no impacts and, thus, no need to address environmental impacts and cumulative impacts. These include, but are not limited to, water quality impacts, air quality impacts, fish and wildlife impacts and endangered species impacts despite the fact that the transfers are likely to have impacts on all of these. Additionally, no compliance with the California Environmental Quality Act could be located.

The draft EA should be withdrawn and a complete EIS-EIR needs to be completed and re-circulated to the public before a finding of no significant impact can be made. The cursory information provided makes it impossible to determine the cumulative impacts of transferring roughly 135,000 acre feet over a nine year period that includes roughly 72 water districts or entities covering the CVP project, SWP, Cross Valley, Kern, Friant, California Aqueduct, and various groundwater banking operations—including Semitropic and the Kern Water Bank. For example, little or no detail is provided as to where the water is going within Westlands Water District properties owned by the Harris Farms, Inc or Show Family Farms, LP (DEA@2). Reportedly the Harris operations within Westlands alone constituent one of largest single operations estimated at roughly 20,000 acres. The lands associated with the proposed action are not identified. There is merely a statement that the Harris and Show farms want operational flexibility without any disclosure of why or where the water supplies are needed and why this water needs to be transferred hundreds of miles to accommodate these undefined needs.

**No Alternatives Are Analyzed Other Than Comparing the Project to Itself.**

No alternatives analysis is performed other than to compare the project with itself. The No Action Alternative assumes the transfers would happen on a case-by-case basis (DEA@19). No other alternatives are considered. Impacts are arbitrarily brushed aside regarding the areas considered for exchange, groundwater extraction, or potential impacts from pumped in degraded water as the result of these exchanges. With no data or analysis, the DEA suggests that there would be no direct or indirect impacts to biological resources, nor any cumulative impacts (DEA @19).

Specifically, there is no analysis of the various methods of water transfer from the Delta and its destinations to include alternatives that would minimize impacts of exports or discharges to and from these facilities. The DEA simply determines without analysis or data that there are no impacts and thus there can be no cumulative impacts. This is arbitrary, stretches credibility, and lacks intellectual integrity. For example, mention is made of groundwater withdrawals creating subsidence, and clearly there is subsidence in all the areas both from where the water originates and supposedly where it is going, but the public is left in the dark regarding the specifics of the proposed action because there are no times, locations and or analysis of crops proposed to be watered, dewatered, or where groundwater substitution could take place with these transfers. Location of where the transfers are going is important because placement of this water on the contaminated soils within Westlands will likely cause discharge of contaminants into groundwater and to downstream users, including drinking water supplies and wildlife

↑ Coalition-4 cont. refuges. The rising levels of arsenic in the California Aqueduct due to exchanges with Semitropic WSD are also ignored. Data from DWR indicate these pump-ins are causing arsenic levels to approach violation of drinking water standards. Pump-ins from the San Luis unit also show levels that impact fish and wildlife and endangered species, such as, the Buena Vista Lake Shrew (BVLS) in Kings and Kern Counties.

Coalition-5 The DEA brushes aside impacts to the areas from where the water is taken, where it is delivered, where land is fallowed, and contract assignments as not needing analysis to reach an informed decision regarding environmental impacts (DEA @ pg 9). No analysis or data regarding impacts to air quality, visual resources, recreation resources, and global climate change are provided, and all are deemed by fiat to not be significant or necessary to analyze.

Coalition-6 Impacts to existing rivers and waterways is ignored, despite the fact under current conditions diverting these water supplies may exacerbate violations of water quality standards that are currently not being met, temperatures that are being exceeded and lethal to endangered fisheries, pulse flows that are not being provided, and species that are facing deteriorating habitat and extirpation under the current exports and diversions. Furthermore, Reclamation's absurdly limited range of alternatives in the DEA are also defective because there is no "needs analysis" and past approaches to such "needs analysis" have failed to adequately address alternative needs for the water, including environmental needs for restoration of the Delta and the San Joaquin River.

**Compliance with the Migratory Bird Treaty Act and Fish and Wildlife Coordination Act Are Assumed with no Justification.**

Coalition-7 Without analysis or data, the DEA determines there will be no impact to the environment, no effect to endangered species, and that there is full compliance with the Migratory Bird Treaty Act and the Fish and Wildlife Coordination Act. There is no evidence to support this conclusion. No consultation with the United States Fish and Wildlife Service has been initiated despite the presence of endangered species such as the giant garter snake, mountain plover, delta smelt, Sacramento splittail, and vernal pool species found in locations of the proposed pumping, extraction and discharge. All impacts to endangered species and migratory birds are summarily dismissed without data, surveys or analysis. The Bureau of Reclamation does not provide the basis for the determination that there is no need for further consultation regarding critical habitat, impacts to threatened and endangered species, or a need to provide any data to support the conclusions in the document.

**Environmental Impacts and Cumulative Impacts Are Dismissed Without Data or Analysis**

Coalition-8 According to the DEA, a broad geographic area is assumed to be part of the proposed action and transfer of water supplies. The proposed project apparently includes all of the lands of Harris Farms, Inc. (Harris) and Show Family Farms, LP (Show) in various water districts in the San Joaquin Valley, although not specifically identified in the DEA. The project geography includes the following districts within the Central Valley Project (CVP) place-of-use: San Luis Water District (San Luis), Semitropic Water Storage District (Semitropic), and Westlands Water District (Westlands) (Figure 1; DEA @ 1).

Reclamation proposes to provide long-term approvals--9 years or more for this transfer that may include transfers of CVP water supplies from Friant Division CVP contractors and/or South-of-Delta CVP contractors to Semitropic banking partners (DEA @ 1).

Coalition-9 ↓ According to the DEA, "*The affected environment includes all conveyance facilities and transferring and receiving districts located in the CVP place-of-use (Figures 1 and 2).*" (DEA @ 19) The DEA suggests, but without providing clear maps of the lands in question or the areas impacted, that "*Areas within the*

Coalition-9  
cont.

↑ Action area that may be susceptible to subsidence include sections of the California Aqueduct within Westlands (Farr et al. 2017) (DEA@19-20). The suggestion without analysis or data is that somehow these transfers will remedy subsidence even though they can include groundwater substitutions from other areas,.

Coalition-10

The DEA (DEA @3-5) provides an extensive list of CVP water supplies that may be transferred, exchanged, and/or banked under the Proposed Action. These include: Friant Division CVP, Section 215 water (unstorable flood flows from Millerton), San Joaquin River Restoration Program Unreleased Restoration Flows (collectively, “Friant CVP water”), and South of the Delta Exports and San Joaquin River Restoration Program water and Cross Valley water supplies. The DEA provides no data or analysis of the impact of these transfers, exchanges, or banking projects. Without detail or descriptions, the DEA assumes no impacts.

Coalition-11

The DEA lists a table of Environmental Protection Measures in Table 2, but does not provide any monitoring, baseline data, or the required mapping to document, for example, what lands are currently untilled or native lands to ensure that these measures will actually mitigate the proposed actions. There is no map of "fallowed, untilled or native lands" in the proposed service areas or geographical confines of the proposed action. Thus, it is impossible to determine as the DEA claims, "*The water would not be used to place untilled or native lands into production, or to convert lands that have been fallowed or untilled for three or more years.*" Equally, without any information as to when and where the proposed transfers will take place, it is impossible to determine that the proposed actions "*cannot alter the flow regime of natural waterways or natural watercourses such as rivers, streams, creeks, ponds, pools.*" (DEA@7)

Coalition-12

Equally the DEA fails to provide the required USBR Comprehensive Mapping Commitment from the CVPIA Biological Opinion that would assist the public in determining whether the mitigation measures listed are actually enforced. In the CVPIA Programmatic biological opinion, dated November 2000 (Service File No. 98-F-0124), Reclamation and the Service committed to develop a Comprehensive Mapping Program to identify remaining natural habitats and cropping patterns within CVP Service Areas, and identify any changes within those habitats that have occurred from 1993 to 1999, and then every 5 years thereafter (pages 2-62 and 2-63). Reclamation completed a mapping assessment of habitat changes from 1993 to 1999 and 2005. No recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation since 2005 could be located. No such updated maps are provided in the DEA. Since at least 2013, USFWS has requested that this required Reclamation comprehensive mapping effort be updated with current imagery and compared with the previous mapping efforts to update the environmental baseline and to verify assumptions by Reclamation that the IRCs do not result in land use changes that would affect federally listed species.<sup>1</sup>

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

Coalition-13

Without analysis or data, the DEA proclaims that these water transfers will not have an impact on endangered species. Thus, it is claimed, there is no need for consultation with either the United States Fish and Wildlife Service or the National Marine and Fishery Service.

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<sup>1</sup> For example see February 7, 2013 to USBR From Thomas Leeman, Chief, San Joaquin Valley Division, Endangered Species Program, Fish and Wildlife, Sacramento F' and Wildlife Office, Sacramento, California Consultation on the Interim Renewal of Water Service Contracts for the Cities of Avenal, Coalinga, Huron, and the California Department of Fish and Game, 2013-2015. Similar USFWS consultation requests have been made thru 2017.

Coalition-13  
cont.

↑ The DEA indicates that specific threatened or endangered species are present but little or no data is provided to support the conclusion of no effect. Reclamation confirmed that no consultation sought for this transfer. (email from Rain Emerson 2-22-18) These threatened or endangered species include, but are not limited to, Western snowy plover, Southwestern willow flycatcher, Marbled murrelet, Least Bell's vireo, California least tern, Vernal pool fairy shrimp, Vernal pool tadpole shrimp, Steelhead, Northern California DPS5, Delta smelt, Buena Vista Lake ornate shrew, Giant kangaroo rat, Fresno kangaroo rat, San Joaquin kit fox, and Giant garter snake.

Coalition-14

In the San Joaquin River and Delta estuary, from both of which waters can be diverted or transferred under the proposed action, water quality standards are not being met, temperatures are being exceeded, pulse flows are not being provided, and species are in fact facing deteriorating habitat and extirpation. And yet, the DEA fails to consider any alternatives whereby these impacts to the San Joaquin River and Delta estuary could be mitigated. Reclamation's absurdly limited range of alternatives in the DEA is defective because the approach to the "needs analysis" fails to adequately address alternative needs for the water, such as for restoration of the flows essential to endangered species in the Delta Estuary and the San Joaquin River.

USBR has not met the existing conditions and measures contained in the Biological Opinions governing these various transfers. The Bureau's reliance on existing USFWS opinions in this circumstance does not discharge its section 7(a)(2) procedural obligation to consult with the USFWS, or its substantive obligation to ensure that its action would not jeopardize or cause adverse modification to the critical habitat of threatened or endangered species.

The Bureau has failed to consult and conclude consultation with the USFWS on several listed species. In fact, there is no evidence from the documents listed in the DEA that the Bureau has consulted on these operations and impacts from the proposed transfers and exchanges. Simply listing the species present and declaring there is no impact is not sufficient.

Coalition-15

In addition, typical operation and maintenance operations impacting endangered species are not mentioned or considered and these activities are not considered in the cited Biological Opinions. For example, among the maintenance activities not considered by the USFWS and NMFS in the Friant Biological Opinions are periodic applications of toxic pesticides to channels, gates, weirs, levees, and other water delivery facilities. See generally *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526, 528-29 (9th Cir. 2001). These pollutants may, in some circumstances, reach stretches of the San Joaquin River and/or the San Francisco Bay-Delta that provide habitat for winter-run Chinook salmon, spring-run Chinook salmon, Central Valley steelhead, Delta smelt, and Sacramento splittail. See generally USFWS & NMFS Biological Opinion for the California Toxics Rule (March 24, 2000) (file no. 1-1-98-F-21). Specifically, Reclamation is required to provide: "An update of the SCCAO O&M Plan every two to five years." Additionally "*Reclamation and the Service will meet every five years to review the effectiveness of avoidance and minimization measures, ...and reinitiate consultation as appropriate for newly listed species and designated critical habitat.*" [BO @ pg.7] No such plan is provided in the DEA, nor has one been developed to the best of the signees knowledge. Within 2 years of the issuance of the BO, Reclamation "shall develop a final Integrated Pest Management Plan." (BO @ pg 98) No such plan is provided in the DEA, nor has one been developed to the best of the signees knowledge. Annually "*Reclamation must provide the Service with reports to describe the progress of implementation of all the commitments in the Conservation Measures and Terms and Conditions sections of this biological and conference opinion. The first report is due January 31, the first year after the issuance of this biological and conference opinion, and bi-annually thereafter.*" [BO @pg 99] No such report information is provided in the DEA nor has one been developed to the best of the signees knowledge.

Coalition-16 Many changes have occurred since the adopted biological assessments in the DEA's referenced EAs and these must be considered in the DEA. For example, with regard to the Friant Division, many of the listings occurred after the BO was issued: "However, transfers and/or exchanges involving Friant Division or CV contractors were not addressed by the LTCR Opinion. In addition, the LTCR Opinion did not address some of the species and critical habitats covered in this EA, because their listings/designations occurred after the BO was issued. These species and critical habitats are: the vernal pool fairy shrimp, the vernal pool tadpole shrimp, all critical habitats for vernal pool species, and critical habitat for the California tiger salamander."<sup>2</sup>

Coalition-17 Routine maintenance operations have not been considered by the DEA or in previous USFWS's biological opinions. For example, the discharge of selenium-contaminated water from check drains and sumps along the Delta Mendota Canal ("DMC") are necessitated by DMC operations which, in turn, result in large part from the Bureau's decision to deliver water to the CV contractors from the Delta so that the Bureau can continue to divert San Joaquin River water to the Friant and CV contractors. See generally NRDC v. Rodgers, No. S- 88-1658 LKK, Order at 19-20 (May 31, 1995) (holding that the Friant Dam diversions affect the entire Bay-Delta system and have "required the export of Delta water through the Delta-Mendota Canal").

Nor have the impacts from operational changes. For example it is likely when the exchanges are added to the Article 55 provision in the SWP contracts, it could result in DWR pumping more frequently and conveying the 15,000 acre feet of water under the proposed project. The impacts are not discussed or analyzed. The DEA also fails to consider recent violations of temperature, salinity and flow requirements of D-1641.<sup>3</sup>

Coalition-18 Still another impact not addressed in the DEA, as well as for various other serial contract renewals, are the cumulative impacts from Delta exports to the Westside of the San Joaquin Valley from the Delta Mendota Canal, San Luis Unit and Cross Valley Contractors. For example, exchanges, transfers [water sales], and diversions impact DMC receiving waters, into which the check drains and sumps discharge. This water ultimately flows into habitat for a variety of listed species, including the Mendota Wildlife Area and, in some circumstances, through the Mendota Pool, down the San Joaquin River, and ultimately to the San Francisco Bay-Delta. All of these waters are impaired by selenium. Monitoring data on these discharges indicates that the drains and sumps discharge mass loadings and concentrations of selenium that could reasonably be expected to contribute to the jeopardy of numerous listed species (including the giant garter snake, Sacramento winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, Delta smelt, and Sacramento splittail). These discharges also contaminate, and adversely modify, critical habitat for several of these species. No information is provided that indicates

<sup>2</sup> See [http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc\\_ID=8831](http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=8831) Also not considered in the DEA are impacts from the proposed transfers and the CrossValley contracts to Critical Habitat designated since the Friant Biological Opinion and not considered in this DEA: Vernal Pools [http://www.fws.gov/sacramento/es/critical-habitat/Vernal-Pool/es\\_critical-habitat-maps\\_vernal-pool.htm](http://www.fws.gov/sacramento/es/critical-habitat/Vernal-Pool/es_critical-habitat-maps_vernal-pool.htm) CA Tiger Salamander in 2005 <http://www.gpo.gov/fdsys/pkg/FR-2005-08-23/pdf/05-16234.pdf> [http://www.fws.gov/sacramento/es/critical-habitat/CA-Tiger-Salamander/es\\_critical-habitat-maps\\_ca-tiger-salamander.htm](http://www.fws.gov/sacramento/es/critical-habitat/CA-Tiger-Salamander/es_critical-habitat-maps_ca-tiger-salamander.htm) Along with other critical habitats.

<sup>3</sup> Sacramento River Chinook salmon spawning this year [2013] are threatened by the relaxation of water temperature standards on the upper Sacramento River combined with the violations of water quality standards in the Delta, the result of the over-allocation of scarce water supplies and diverting too much water in a dry year. [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/decision\\_1641/consERVE/docs/05292013swrcb.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/consERVE/docs/05292013swrcb.pdf) [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/decision\\_1641/consERVE/docs/05242013swrcb.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/decision_1641/consERVE/docs/05242013swrcb.pdf)

↑ the Bureau has consulted on these operations impacted by the proposed contracts, exchanges, exports, and water deliveries. This is important information to analyze because irrigating these soils on the west side of the San Joaquin Valley results in contamination of surface waters and can cause irreparable harm to fish and wildlife even at low levels of contamination.

Coalition-18  
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### **Failure to Analyze Impacts From Increased Imports to Westlands and Westside Irrigators.**

The SLDFRE March 16, 2006 Biological Opinion<sup>4</sup> by the U.S. Fish and Wildlife Service concluded that the In-Valley/Water Needs Land Retirement Alternative would likely have adverse effects to San Joaquin kit fox, giant garter snake, and California least tern and authorized incidental take of those three species. The BO and Fish and Wildlife Coordination Act report was based on the assumption that no discharges of selenium and other contaminants from the San Luis Drain to the San Joaquin River would continue past 2010. These contaminants continue to be discharged from the areas proposed under this DEA. No analysis is provided regarding the impact of importing more water supplies and the resultant contamination of ground and surface water as a result of irrigating these toxic soils. Recent monitoring reports show very high levels of selenium concentrations both in discharges to the slough that connects with the San Joaquin River and to the proposed treatment area that also discharges to the federal San Luis Drain and the San Joaquin River (ultimately bio-accumulating in the Delta Estuary). The impacts from transferring even more water supplies to these lands is not analyzed.

One of the primary methods proposed by Westlands for disposing of high-selenium drainage water is to irrigate designated areas of salt tolerant crops with drainage water, as has been tested since 2002 as part of the San Joaquin River Quality Improvement Project (SJRIP). The 2015 Wildlife Monitoring Report for the SJRIP, however, documents unacceptably high levels of selenium in avian eggs in both the project area and the mitigation area: "Nearly all analyzed eggs contained at least partially elevated selenium concentrations. The geometric mean egg- selenium concentrations on the project site in 2015 were 18.7 parts per million (ppm) for killdeer and 7.5 ppm for red-winged blackbirds. The geometric mean selenium concentration of recurvirostrid eggs from the mitigation site was 11.9 ppm." An environmental setting in which avian eggs exceed 5 ppm Se is an environment outside the evolutionary history of most species of birds. Selenium levels in the project area (drainage water irrigation) and the mitigation area exceed this level of concern.

Furthermore, all of the risk-assessing for the SJRIP is being projected from lethal endpoints only, i.e., how many avian embryos we expect are being killed. However, we know that sub-lethal effects can occur well before lethal effects occur and can be quite harmful to organism "fitness". We know almost nothing about sub-lethal effects of selenium on birds, but we do know that at Kesterson Reservoir the majority of avian losses occurred after, not before, eggs hatched (mediated primarily by the effects of selenium depressing chick growth rates). This has also been documented in studies of captive birds, and via radio telemetry studies of hatchlings at Tulare Basin evaporation ponds. At SJRIP there have been no studies of post-hatch status of nestlings of breeding birds. There have been no studies of what effect, if any, the heavy Se tissue burden birds leave the SJRIP with have on over-winter survivorship or avian longevity. Ignoring sub-lethal effects is akin to observing a human population and tallying the rate of heart attacks while ignoring cancer and then drawing conclusions about overall risk in that human environment.

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<sup>4</sup>BO can be found at this link, under FEIS, Appendix M part 3 and 4: [https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=61](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=61)

Coalition-19



↑ Also, the issue of scale is critical but has not been addressed. At the scale of an individual project, like the relatively small SJRIP project areas, it very well may be plausible that the numbers of individual animals subject to adverse effects from selenium exposure would not be demographically important for species of breeding birds that are very abundant (like killdeer and blackbirds); but it is very possible that an aggregation of many such projects (i.e., scaling up) would result in cumulative effects that would be demographically important, even for very abundant species of breeding birds. Also, scaling-up almost certainly would lead to impacts on species that are federally or state-listed as threatened or endangered. A species of immediate concern in this regard is the tricolored blackbird. Tricolored blackbirds have recently appeared in the SJRIP bird count results and they commonly breed in agricultural crops similar to those grown at SJRIP.

Coalition-19  
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Finally, the SJRIP monitoring reports have provided information on another sort of "landscape" issue that needs closer examination and that is the universally elevated levels of avian egg selenium in the broader environment surrounding the SJRIP site (in general) and at the SJRIP mitigation site(s) specifically. We need to understand what is going on at the landscape level that has resulted in such widespread selenium contamination of seemingly the entire Panoche Irrigation District (based on "reference" eggs collected over the years), in addition to the project site. This suggests that within-district management of drainage water has widespread systemic flaws that need to be addressed and that cumulative effects to birds already need to be more rigorously assessed. It also raises the question of whether there is any mitigation value to be obtained off-site. When the project site is averaging 22.7 ppm Se in shorebird eggs and the mitigation site is averaging 17.9 ppm Se in shorebirds eggs (albeit, different species of shorebirds), as it did for 2016 monitoring, it seems that very little, if any, mitigation value is actually accruing.

### **Failure to Analyze Reduced Flows to the Sacramento-San Joaquin River Delta Estuary**

Excess water exports from the Delta have led to over 52 species being listed as threatened or endangered. The evidence before the Bureau and the Services demonstrates that these diversions from the Delta to the Cross Valley contractors may appreciably reduce the likelihood of survival and recovery of at least three listed species under NMFS jurisdiction (Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead) and at least two listed species of fish under USFWS jurisdiction (the Delta smelt and Sacramento splittail). The evidence also demonstrates that these Delta diversions adversely modify the critical habitat for these species. The specific cumulative impacts of these serial contract renewals and the specific impacts from the proposed transfers have not been analyzed, nor have the required monitoring data and mapping required under existing biological opinions been provided. The Bureau has failed to consult or complete consultation on numerous actions specifically authorized by the contracts, renewals, and these particular exchanges and transfers [sales]. As with this DEA, environmental impacts are disregarded without supporting data or analysis.

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

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

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

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

The DEA fails (except in a simplified and generalized listing) to disclose the size and complexity of the proposed transfers, exchanges or sales that involve vast tracks of lands and then brushes aside any analysis of endangered species.

As noted above in several specific instances, none of the required monitoring or mapping is provided in this DEA. It is critically important to understand and evaluate the effectiveness and effects of the 20 years of water diversions that have occurred. In February 2013 USFWS determined in a consultation within a similar service area that the Bureau and interim contractors had failed to abide by monitoring and mapping required and concluded that changes were necessary to the water contracts to test assumptions and impacts from previous diversions and deliveries.<sup>5</sup>

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

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

The present DEA, without analysis or the required mapping information, determines that the proposed Action would not affect any Federally listed or proposed species or any critical habitat.

### **Cumulative Impacts Are Not Disclosed or Analyzed from Over a Decade of “Interim” Contract Renewals in Addition to the Proposed Transfers and Exchanges.**

<sup>5</sup> USFWS Correspondence FR: Thomas Leeman to USBR, David Hyatt Re: Consultation on the Interim Renewal of Water Service Contracts for the Cities of Avenal, Coalinga, Huron and California Department of Fish and Game 2013-2015. February 7, 2013.

↑ The list of EA's from 1994 to 2015, none of which include adequate environmental or biological review, document how USBR has thwarted the law and Congressional intent to disclose the impacts from these discretionary water deliveries and diversions from the Delta, surrounding watersheds, and site specific impacts. This failure to disclose environmental impacts has been further compounded by the litany of EA's from 2005 to 2018 for exchanges and transfers [water sales] that are related, but have been put forward in a segmented, piece-meal fashion that precludes analysis of impacts of the project as a whole.

Coalition-22  
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As presented in the DEA, the exchanges and transfers [water sales] and associated biological and environmental impacts provide insufficient data and information to support the conclusion that there are no impacts. Furthermore, the failure disclose in a straightforward manner specifically where the water has been used and how much was used and which of those transfers [sales of water] or exchanges will continue does not provide sufficient information on the necessary site-specific review that NEPA requires.

### **Recent Court Cases Compound the DEA's Failure To Analyze the Impacts and Compounds Impacts from the Proposed Transfers on the giant garter snake. <sup>6</sup>**

A recent federal court ruling<sup>7</sup> found that the ten year Reclamation Impact Statement/Environmental Impact Report ("FEIS/R") violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, the Central Valley Project Improvement Act ("CVPIA"), Public Law 102-575, and the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000 *et seq.* and that FWS's approval of the Project's Final Biological Opinion ("BiOp") and Incidental Take Statement ("ITS") violated the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.* Specifically, the court held that the FEIS/R for these transfers, which would be likely compounded by the proposed federal action to transfer more water south of the Delta:

1. Failed to adequately analyze cumulative biological impacts due to reduced delta outflow
2. Failed to address that mitigation measure GW-1 improperly deferred mitigation because the required monitoring is unenforceable and it provides no performance standards and fails to adequately mitigate for land subsidence. Specifically the NEPA analysis was held inadequate because it failed to evaluate the effectiveness of GW-1
3. Failed to adequately account for changed hydrologic conditions resulting from climate change in the NEPA analysis.
4. Depended on an invalid USFWS' BiOp for giant garter snake ("GGS") because it relies on flawed conservation measures
5. Failed to address GGS impacts and mitigation.

The DEA brushes aside impacts to the GGS relying on these flawed environmental documents to assert no environmental and failing to analyze the impacts of these and other transfers.

### **Conclusion**

↓ The DEA fails to comply with the fundamental tenant of NEPA by not accurately describing the physical and biological changes to the environment that will result from the project and does not evaluate a range

<sup>6</sup> <http://www.aqualliance.net/solutions/litigation/significant-legal-win-for-north-state-10-year-water-transfer-program-failed-analysis-and-disclosure/>

<sup>7</sup> [http://www.aqualliance.net/wp-content/uploads/2018/02/AquAlliance10YearMSJ\\_Order021518.pdf](http://www.aqualliance.net/wp-content/uploads/2018/02/AquAlliance10YearMSJ_Order021518.pdf)

Coalition-23

Coalition-24

↑ of alternatives. Instead a vague project description and a series of grossly inadequate partial Environmental Assessments are substituted. The scientific information and the facts on the ground, required federal statutes, federal planning documents, biological opinions, and required terms under existing biological opinions do not support the facts alleged for this project and the choices made. A full range of project alternatives is absent and not analyzed. We adopt by reference previous comments made with regard to transfers, contract renewals and/or water exchanges related to the geographical areas, districts or farming operations covered by this DEA. These past comments, provided over a period years, document a pattern and practice by Reclamation of failing to comply with NEPA, the ESA, and Reclamation law:

1. Environmental Advocate Letter 2-6-18 Re 6 Interim Renewal Contracts & EA 17-021 & FONSI-15-023A.2.
2. PCL et. al. Letter 1-12-18 Re Interim Contract Renewal 2018-2020 & NEPA Compliance EA-17-021 & FONSI 15-023A.
3. PCFFA et. al. 2-2-18 Comments of PCFFA, SFCBOA, IFR and NCRA on 16 Central Valley Project Interim Renewal Contracts for Cross Valley Canal, Delta Division and American River Division.
4. WWD Interim Contract Renewal Comment Letter to Rain Emerson, 2014-2016, PCL et. al (17 NGOs) 1-14-14.
5. Cross Valley Interim Contract Renewal Letter 9-26-13 Re EA-12-018 & FONSI-12-048
6. Arvin Edison--Metropolitan Water District Transfer AEWSA Comment Letter 12-21-13, DEA 13-026 & FONSI 13-026.
7. Grassland Bypass Project Revised Monitoring Plan Comments (PCL et. al. [11 NGOS] to Stacy Brown USBR 4-22-13.
8. PCL et. al. (15 NGOs) Opposition to Reduced Grassland Bypass Monitoring to Michael C. S. Eacock (Chris) & GBP Oversight Committee 8-11-11.


Thank you for the opportunity to provide comment.



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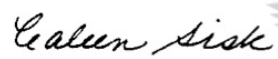
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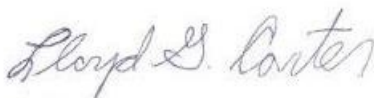


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## Response to Coalition Comment Letter dated March 2, 2018

Coalition-1 The commenter is correct that the Bureau of Reclamation (Reclamation) consulted with the following participating parties involved in the Proposed Action (as described in Section 4.2 of Environmental Assessment [EA]-18-004): Department of Water Resources, Kern County Water Agency, Harris Farms, Inc., Shows Family Farms, LP, San Luis Water District, Semitropic Water Storage District (Semitropic), and Westlands Water District regarding the Proposed Action. Reclamation did not consult with fish and wildlife agencies as consultation pursuant to Endangered Species Act was not needed for the Proposed Action.

Although an EA is not required by the National Environmental Policy Act (NEPA) to be released for public review, Reclamation did so with regard to the Proposed Action in order to be open and transparent, gather public input, and to further inform decision making.

Coalition-2 The commenter inaccurately asserts that EA-18-004 does “not contain sufficient information to fully assess environmental impacts that should be avoided in order to adequately protect the environment” and that the Proposed Action is “likely to have impacts” on the following resources: “water quality impacts, air quality impacts, fish and wildlife impacts and endangered species.” No supporting information or examples were provided to support the assertions made in the comment.

As described in Section 2.2, Reclamation’s Proposed Action involves annual approval of “a series of transfers of up to 15,000 AF per year of available CVP water supplies over a 9-year period. Transfers of CVP water would be from CVP contractors to Harris and Shows either for direct agricultural use on their lands located within Westlands, San Luis, and Semitropic or for banking in Semitropic and/or the Kern Water Bank for later use on their lands within those same districts.” Types of available CVP water, potential participating CVP contractors, and conveyance mechanisms for CVP water are clearly identified in Section 2.2. The effects, including cumulative effects, of the Proposed Action are analyzed in Section 3.

The commenter further states that “no compliance with the California Environmental Quality Act could be located”. The document being commented on is an EA prepared in compliance with NEPA. As a Federal agency, Reclamation is not required to comply with the California Environmental Quality Act.

The commenter also asserts that “The draft EA should be withdrawn and a complete EIS-EIR needs to be completed and re-circulated to the public before a finding of no significant impact can be made.” Pursuant to NEPA regulations (40 CFR 1508.9), an EA is a concise public document used to determine whether to

prepare a Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS). If it can be determined that a proposed action will not significantly impact the human environment, then a FONSI is issued. By definition, a FONSI **cannot** be issued following release of an EIS as it has already been determined that a proposed action would have, or could have, a significant impact on the human environment.

Reclamation reviewed potential impacts in EA-18-004 and as noted above, released the draft EA for public review in order to further inform decision making. No significant impacts have been identified that would require preparation of an EIS.

Coalition-3 Reclamation disagrees that EA-18-004 compares the “project with itself” and that the No Action Alternative “assumes the transfers would happen on a case-by-case basis”. As described in Section 2.1 of the EA, under the No Action Alternative, “Reclamation would not approve a series of transfers of up to 15,000 acre-feet (AF) per year of available CVP water supplies over a 9-year period. Instead, Harris and Shows would need to request separate approvals from Reclamation as each water management action opportunity becomes available.” This does not assume a transfer would occur under the No Action Alternative only that it may as an “opportunity becomes available”. Any transfer that requires Reclamation approval under the No Action Alternative will require separate compliance with NEPA and other applicable environmental laws.

Reclamation also disagrees that impacts “are arbitrarily brushed aside regarding the areas considered for exchange, groundwater extraction, or potential impacts from pumped in degraded water as the result of these exchanges.” See Response to Coalition-2.

Coalition-4 The commenter asserts that “there is no analysis of the various methods of water transfer from the Delta and its destinations to include alternatives that would minimize impacts of exports or discharges to and from these facilities.” As described previously, these are transfers of available allocated CVP water supplies from willing sellers that are already located south of the Delta. This is water already diverted through the Delta consistent with Reclamation’s water rights permits and does not change operation of the Delta.

The commenter also asserts that the “DEA simply determines without analysis or data that there are no impacts and thus there can be no cumulative impacts.” As described previously, effects of the Proposed Action, including cumulative impacts, are addressed in Section 3 of EA-18-004. See also Response to Coalition-2.

The comment asserts that “rising levels of arsenic in the California Aqueduct due to exchanges with Semitropic WSD are also ignored. Data from DWR indicate these pump-ins are causing arsenic levels to approach violation of drinking water

standards.” and that “Pump-ins from the San Luis unit also show levels that impact fish and wildlife and endangered species, such as, the Buena Vista Lake Shrew (BVLS) in Kings and Kern Counties.”

It is well documented that high concentrations of arsenic occur in groundwater in Kern County, including Semitropic. It is unclear what “DWR data” is being referred to in the comment, but it is assumed that this is a reference to reports posted by DWR regarding water quality in the California Aqueduct. The DWR reports document volume and water quality impacts of the DWR’s program to convey Kern County groundwater in the California Aqueduct at Check 41. The same reports do not identify any arsenic problems attributable to the conveyance of water from the San Luis Unit, as measured at Check 21. All introduction of water from the San Luis Unit under a previously approved pump-in program was in accordance with California regulations and Reclamation’s water quality requirements. Further, under the Proposed Action, any water returned from banking facilities under the Proposed Action is required to meet Reclamation’s then-current water quality standards and monitoring which conform with federal and state drinking water standards, including those for arsenic. Clarifying language has been added to EA-18-004.

Coalition-5 The commenter asserts that EA-18-004 “brushes aside impacts to the areas from where the water is taken, where it is delivered, where land is fallowed, and contract assignments as not needing analysis to reach an informed decision regarding environmental impacts” and that “No analysis or data regarding impacts to air quality, visual resources, recreation resources, and global climate change are provided, and all are deemed by fiat to not be significant or necessary to analyze.”

See Response to Coalition-2.

Coalition-6 It is unclear but it appears that this comment is referring to overall CVP operations in the Delta as well as recent interim contract renewals that have undergone updated Water Needs Analysis. The Proposed Action analyzed in EA-18-004 does not involve operation of the CVP or interim contract renewals but transfers of available allocated CVP water already located south of the Delta. See also Responses to Coalition-2 and Coalition-3.

Coalition-7 Reclamation disagrees that the EA “Without analysis or data...determines there will be no impact to the environment, no effect to endangered species, and that there is full compliance with the Migratory Bird Treaty Act and the Fish and Wildlife Coordination Act.”

EA-18-004 clearly documents Reclamation’s compliance with the federal Endangered Species Act (ESA) and the Migratory Bird Treaty Act (MBTA) as summarized in Table 4. The Proposed Action involves the transfer of existing CVP water supplies already diverted south of the Delta for existing agricultural purposes through existing infrastructure. As there would be no effect to listed



species or their critical habitat and no take of migratory birds as a result of the Proposed Action, consultation is not required.

The Fish and Wildlife Coordination Act (FWCA) requires that Reclamation consult with fish and wildlife agencies (federal and state) on all water development projects that could affect biological resources. Since there would be no construction and water would move in existing facilities, FWCA does not apply and consultation is unnecessary.

Coalition-8 The comment is a general summary of the Proposed Action described in Section 2.2 of EA-18-004. As no specific comment about the analysis in EA-18-004 is made, no response is required and no changes to the EA have been made.

Coalition-9 The commenter quotes page 19-20 of EA-18-004 (Affected Environment for Water Resources) that discloses that “Areas within the Action area that may be susceptible to subsidence include sections of the California Aqueduct within Westlands” and then asserts that Reclamation is suggesting by this disclosure that “these transfers will remedy subsidence even though they can include groundwater substitutions from other areas.”

The Proposed Action involves the potential transfer, exchange, and/or banking of available CVP **surface** water supplies. No groundwater substitutions are contemplated as part of the Proposed Action. In addition, as noted in Section 3.3.2, “the Proposed Action would allow for better water management by helping to alleviate the need to pump additional groundwater” within the respective districts receiving the surface water transfers, which “could have a beneficial impact to those areas where there is subsidence issues” such as Westlands near the California Aqueduct. At no point does Reclamation suggest that the Proposed Action would “remedy” subsidence.

Coalition-10 Reclamation disagrees that “The DEA provides no data or analysis of the impact of these transfers, exchanges, or banking projects” or that “Without detail or descriptions, the DEA assumes no impacts.”

See Responses to Coalition-2 through Coalition-9.

Coalition-11 The commenter refers to the biological commitments included in Table 2 that Reclamation has included as requirements in the Proposed Action but asserts that there is no baseline information or “required mapping” available to determine if the commitments would “mitigate” the “proposed actions”.

It is not clear, but it is assumed that the “required mapping” in the comment is a reference to the mapping commitment from the Central Valley Project Improvement Act (CVPIA) Biological Opinion (FWS File No. 98-F-0124). Reclamation has provided the required mapping to the U.S. Fish and Wildlife Service pursuant to that commitment. This mapping is used by Reclamation to

review potential effects to listed species. Potential effects are summarized in Table 4 of EA-18-004.

Additionally, as there are no significant impacts from the Proposed Action, no mitigation is required or needed.

- Coalition-12 The commenter asserts that Reclamation is not in compliance with the Central Valley Project Improvement Act (CVPIA) Biological Opinion (FWS File No. 98-F-0124) since “No recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation since 2005 could be located” and “No such updated maps are provided in the DEA”.

See Response to Coalition-11.

- Coalition-13 The commenter asserts that Reclamation has failed “to comply with the Endangered Species Act”.

See Response to Coalition-7. As Reclamation has determined that there would be no effect to listed species, consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service is not required.

- Coalition-14 The commenter conflates the Proposed Action analyzed in EA-18-004 with operation of the CVP and SWP at the Delta and suggests that “fails to consider any alternatives whereby these impacts to the San Joaquin River and Delta estuary could be mitigated”. As mentioned previously, the proposed transfers and/or exchanges consist of CVP water already located south of the Delta and would not change Delta operations. Alternatives that address CVP operations and potential impacts to the Delta are being addressed in separate environmental review.

- Coalition-15 The commenter asserts that Reclamation “has not met the existing conditions and measures contained in the Biological Opinions governing these various transfers” and that the “The Bureau’s reliance on existing USFWS opinions in this circumstance does not discharge its section 7(a)(2) procedural obligation to consult with the USFWS, or its substantive obligation to ensure that its action would not jeopardize or cause adverse modification to the critical habitat of threatened or endangered species.”

Reclamation has met its section 7(a)(2) obligations for the Proposed Action. See Responses to Coalition-7 and Coalition-13.

- Coalition-16 The commenter asserts that “Many changes have occurred since the adopted biological assessments in the DEA's referenced EAs and these must be considered in the DEA” and quotes from the Friant Division long-term contract biological opinion. See Response to Coalition-15.

Coalition-17 The commenter asserts that “Routine maintenance operations have not been considered by the DEA or in previous USFWS’s biological opinions”, references discharge of selenium-contaminated water from check drains along the Delta-Mendota Canal and NRDC v. Rodgers, No. S- 88-1658 LKK, Order at 19-20 (May 31, 1995), and that “The DEA also fails to consider recent violations of temperature, salinity and flow requirements of D-1641.”

The Proposed Action does not involve operation or maintenance of the CVP nor maintenance of various CVP facilities. As described previously and in EA-18-004, the Proposed Action consists of transfers, exchanges, and/or banking of up to 15,000 AF per year of available CVP water supplies located south of the Delta over a 9-year period for existing agricultural purposes.

See also Response to Coalition-14.

Coalition-18 The commenter asserts that the EA does not address “cumulative impacts from Delta exports to the Westside of the San Joaquin Valley from the Delta Mendota Canal, San Luis Unit and Cross Valley Contractors” and that “All of these waters are impaired by selenium” that “contribute to the jeopardy of numerous listed species” and “contaminate, and adversely modify, critical habitat for several of these species”.

Reclamation is addressing selenium contamination in drainage water through the Grasslands Bypass Project and the San Luis Drainage Feature Re-evaluation, both of which have undergone separate NEPA and ESA compliance.

It should 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.

Further, as shown in Figure 1, monthly average selenium concentrations between January 2012 and November 2017 in the Delta-Mendota Canal have predominately remained below the 2 ppb criteria for selenium. Variations in selenium concentration between January 2012 and May 2015, including the one monthly average exceedance in January 2013, was attributable to the introduction of shallow groundwater water from the Firebaugh Sumps. Since discontinuation of the Firebaugh Sumps in May 2015, selenium concentrations have predominately remained below the detectable limit of 0.4 ppb. Variations above 0.4 ppb but below 1 ppb were due to storm events that introduce naturally occurring selenium through storm flows that enter the Delta-Mendota Canal.

Similar exceedances occurred in winter 2017 when no flow passed the terminus into the Mendota Pool.

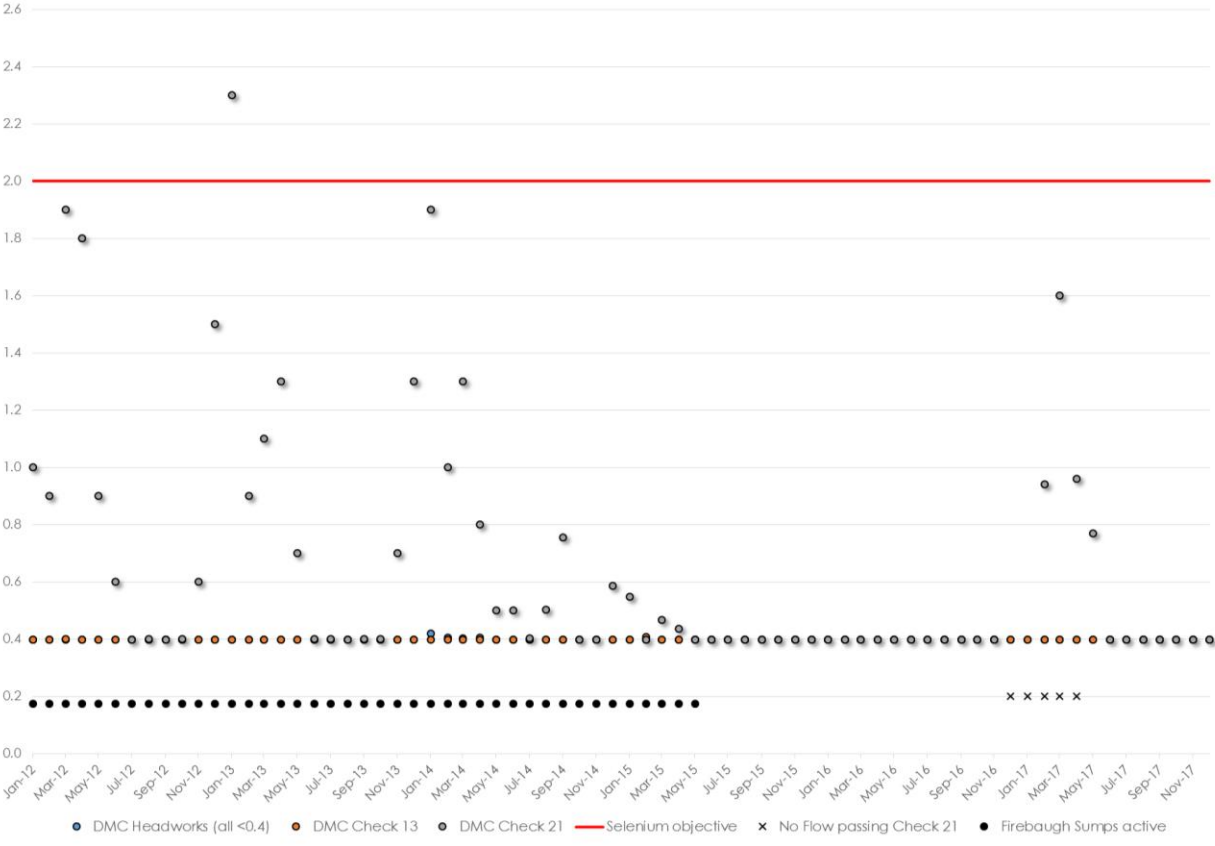


Figure 1. Selenium Concentration, monthly average (ppb)

Coalition-19 The commenter inaccurately describes the Proposed Action in EA-18-004 as “increased exports to Westlands and Westside Drainers”. As described in Section 1.2 of EA-18-004, “Harris and Shows need to maximize available water supplies due to fluctuating hydrological years in order to have a reliable water supply to sustain existing agricultural operations. The proposed multi-year banking and transfer program would allow banking of available water supplies during wet hydrological years, such as this one, for use during dry years, such as the recent severe drought experienced throughout California. The purpose of the Proposed Action is to provide Harris and Shows with operational flexibility and facilitate better management of available water supplies to meet existing water supply needs.” Transferred, exchanged, and or banked CVP water under the program cannot exceed existing contractual amounts for the recipient water districts where Harris and Shows farm.

In addition, the commenter inaccurately refers to Westlands as a participant in the San Joaquin River Improvement Project (SJRIP). Westlands does not participate in the SJRIP or the Grasslands Bypass Project. Westlands was prohibited from using the San Luis Drain in 1986, and currently does not have an outlet for

drainage. Subsurface drainage water generated within Westlands does not flow into the Grasslands wetlands, San Luis Drain, or lower San Joaquin River. See also Response to Coalition-18.

Coalition-20 The commenter asserts that the EA failed “to analyze Reduced Flows to the Sacramento-San Joaquin River Delta Estuary”.

As noted in previous responses above, the Proposed Action does not involve operation or maintenance of the CVP. As described previously and in EA-18-004, the Proposed Action consists of transfers, exchanges, and/or banking of up to 15,000 AF per year of available CVP water supplies already located south of the Delta. This would not change flows in the Delta. See also Response to Coalition-14.

Coalition-21 The commenter reiterates the previous comment that Reclamation has failed to provide comprehensive mapping pursuant to the CVPIA Biological Opinion. See Response to Coalition-11.

Coalition-22 The commenter asserts that “Cumulative Impacts Are Not Disclosed or Analyzed from Over a Decade of “Interim” Contract Renewals in Addition to the Proposed Transfers and Exchanges”. The Proposed Action does not involve interim or long-term contract renewals, all of which have undergone or will undergo separate environmental compliance. Reclamation has addressed cumulative impacts of the Proposed Action in Section 3 of EA-18-004.

Coalition-23 The comment asserts that a recent court order (*AquAlliance v. U.S. Bureau of Reclamation*, Case 1:15-cv-00754-LJO-BAM, filed 2/15/2018) on a separate and unrelated project that involves transfers of water from north of the Delta to south of the Delta somehow “compound[s] the DEA’s failure to analyze the impacts... from the Proposed Transfers on the giant garter snake”

Reclamation addressed impacts to listed species from the Proposed Action in Section 3.1.2 of EA-18-004. See Response to Coalition-7. In addition, to clarify, the recent court decision regarding the 10 year transfer EIS/EIR was found to be inadequate on a very narrow range of NEPA and CEQA issues, and provided no opinion on whether CVPIA was violated because that was not a focus of the law suit. As mentioned by the commenter, the cumulative effects relating to reductions to Delta Outflow was inadequate under CEQA because the document did not describe why the flows hadn’t changed, not that there were cumulative effects to biology, and the effects of climate change on the project were inexcusably dismissed, though climate change analysis for CEQA was adequate. As for mitigation measure GW-1, the court found that the mitigation measure was adequate in almost all regards except that effects of subsidence were framed as effects to infrastructure, and no mitigation was described for potential effects to the groundwater basin itself (though the monitoring was sufficient) and thus the effectiveness of the measure to reduce subsidence was not well enough discussed

per NEPA. Regarding the giant garter snake, the court did not find that the conservation measures were missing or inadequate, rather that the description of important habitat was impermissibly vague, and the CEQA claim on mitigation for giant garter snake was impermissible because conservation measures had no other purpose than to mitigate impacts and should have been treated as such for a CEQA significance determination.

All of these issues will be addressed on remand in a supplemental EIS/EIR, and these effects were all from north of the Delta and are inconsequential to these proposed transfers that are completely south of the Delta.

Coalition-24 The comment is a general conclusory comment that summarizes specific comments provided previously in the comment letter. Responses to the comments are addressed above.