

CA Save Our Streams Council



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September 26, 2013

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

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

Dear Ms Healer,

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

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

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

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

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

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

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

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

Failure to Consider a Full Range of Alternatives

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to comment.



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

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

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



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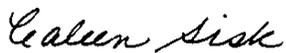
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Exhibit A: Documented Public Interest & Comments Incorporated by Reference [All Documents can be found in the record of earlier contract renewals, earlier NEPA processes and in some cases on the BOR website.]

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

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

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

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

Exhibit C:

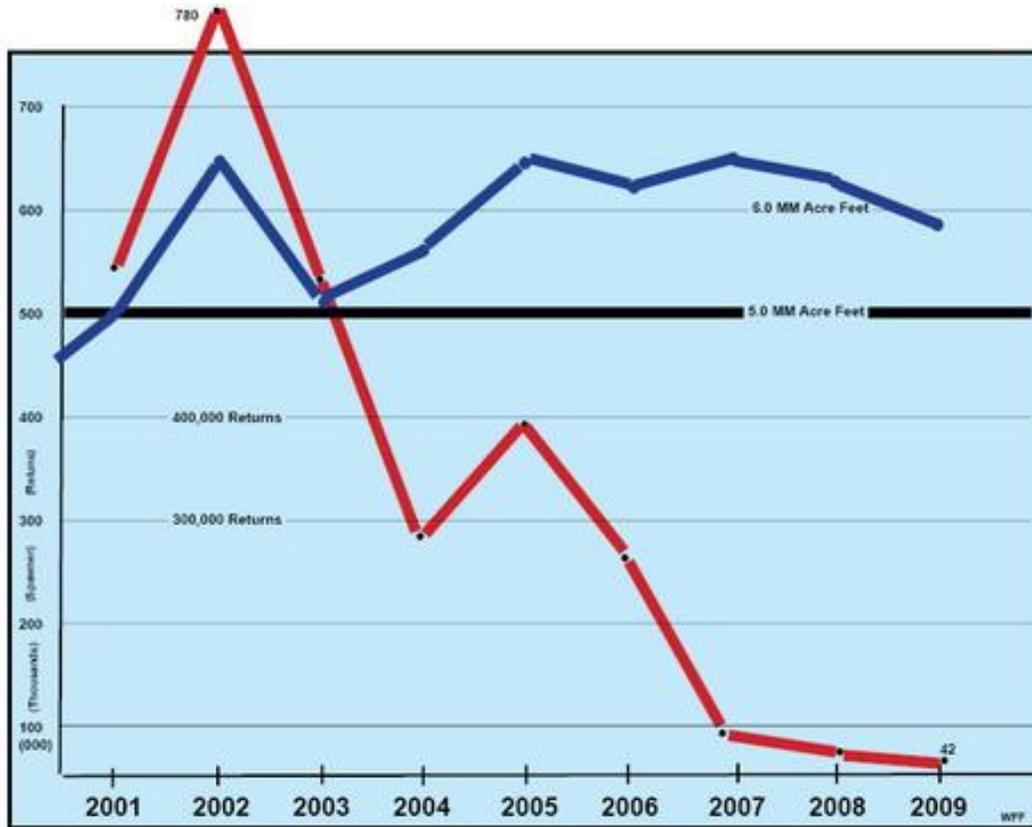


Figure 1. *Pumping increased and salmon crashed* <http://water4fish.org/>

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

Report Documents Record Delta Water Exports and Massive Fish Kills

Carnage in the Pumps

by DAN BACHER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CWIN, Winnemem Wintu Tribe and GGSA respond to report

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

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

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

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

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

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

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

Bay Institute report documents carnage in the pumps

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

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

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

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

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

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

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

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