

*CA Save Our Streams Council*



December 20, 2019

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Re: Comments on draft Agreement between US Bureau of Reclamation and San Luis & Delta Mendota Water Authority Operations and Maintenance Activities

The undersigned organizations submit the following comments on the draft Agreement between the US Bureau of Reclamation (Reclamation) and the San Luis & Delta Mendota Water Authority (WA) to Transfer the Operation, Maintenance and Replacement and Certain Financial

and Administrative Activities Related to the San Luis and Delta-Mendota Canals, C.W. Bill Jones Pumping Plant, Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant, O’Neill Pumping/Generating Plant, San Luis Drain and Associated Works (Agreement). The Agreement was made available for 15-day public comment on December 5, 2019. No NEPA was provided at this link, just the draft contract dated Dec 4, 2019.<sup>1</sup>

No notice of Categorical Exclusion was provided on the implementation of the Agreement. The 2019 Categorical Exclusion Checklists (CECs) for the South-Central California Area Office (SCCAO) was posted on November 27, 2019.<sup>2</sup> Included in this listing of CECs completed by the SCCAO in 2019 was a CEC for the implementation of the Agreement.<sup>3</sup> As denoted in the summary of the SCCAO’s 2019 CECs, “A CEC excludes certain categories of Federal actions from further NEPA documentation because these categories of actions have been determined in a public process to have no significant affect on the environment nor do they involve unresolved conflicts concerning alternative uses of available resources.” Reclamation has failed to provide the CEC for this Agreement for public review or comment, and we contend there was no “public process” on the CEC for the Agreement. The undersigned have participated in contract renewals and operations of the CVP for over a decade and arbitrarily notice of such a public process was not provided.

The Agreement is presumably a renewal of the existing O&M Agreement between Reclamation and the WA. The Agreement references Cooperative Agreement No. 3-FC-20-10820 (Coop Agreement) dated September 30, 1992, and as modified on October 7, 1993 (see Agreement Recital d @ pdf pg 5). Further the Agreement references Contract No. 8-07-20-X0354 (Transfer Agreement) between the Parties for a term of twenty-five (25) years, effective March 1, 1998, as amended 37 February 18, 2003 and ending in 2023 (see Agreement Recital e @ pdf pg 5). No reasoning is provided to justify early renewal of the proposed Agreement or the truncated 15-day public comment period with no notification of National Environmental Policy Act (NEPA) for implementation of this action. Further, neither the Coop Agreement nor the Transfer Agreement are provided with the review of the proposed Agreement, making it impossible to compare the terms of the existing Agreements with the proposed Agreement or assess the impacts of any changes in the proposed Agreement. The proposed Agreement includes the San Luis Drain and Kesterson Reservoir (see Agreement @ pdf pg 41-42). It is unclear if the current version of the Agreement included those Reclamation-owned facilities. The indemnification articles, Section 7(c) and portions of Section 8 all were in flux at the last noticed public negotiation session. The final version of the proposed contract has not been made available in time to meet this truncated public review comment period. Once again, this makes a mockery of required public participation, notification and review. Not making the final documents available, effectively thwarts public review and comment and violates federal regulation and law.

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<sup>1</sup> <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=68783>

<sup>2</sup> [https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=36741](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=36741)

<sup>3</sup> [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=41362](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41362)

The Agreement references 7 exhibits (A-G, Agreement @ pdf pg 2), yet none of these exhibits are included with the Agreement for public review. Further, the Agreement references a Use Agreement for the San Luis Drain (Terms of Agreement 28 (b) @ pdf pg 41), but no Use Agreement for the San Luis Drain is included with the Agreement. Failure to provide these essential documents for such a truncated public review period prevents the public the opportunity to comment and does not comply with the disclosure and transparency required under NEPA. It is impossible to fully assess the impacts of the implementation of this Agreement without the disclosure of these Exhibits:

Exhibit A: List of Project Works

Exhibit B: Settlement Contractors

Exhibit C: List of Obligations to Convey and Distribute Water In and From the Project Works

Exhibit D: Baseline OM&R Activities for the San Luis Drain

Exhibit E: Performance Work Statement – Kesterson Reservoir

Exhibit F: Sustainable Operation and Maintenance

Exhibit G: Inspection Reports

The CEC for the Agreement references several biological opinions pertinent to the Agreement (CEC @ pg 1): the U.S. Fish and Wildlife Service’s 2005 Biological Opinion (2005 O&M BiOp) for Reclamation’s SCCAO’s Operations and Maintenance Program, and three Biological Opinions which cover the construction (U.S. Fish and Wildlife Service) and operation (U.S. Fish and Wildlife Service and National Marine Fisheries Service) of the Delta-Mendota Canal /California Aqueduct Intertie of which a Record of Decision was signed by Reclamation on December 28, 2009. None of these biological opinions are included with the draft Agreement for public review making it impossible to fully assess the impacts of the implementation of this Agreement. Further, the Agreement references integrated pest management (IPM) (Terms of Agreement 32 (d) @ pdf pg 43) and references a Department of Interior Manual, Part 517 Integrated Pest Management Policy and Part 609 Weed Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999. No reference to an updated IPM plan considering effects to federally listed species requirements from the 2005 O&M BiOp is given in the Agreement. The Agreement should be updated to reflect non-discretionary requirements of relevant biological opinions and those opinions should be added as Exhibits to the Agreement.

Finally, the Agreement includes an automatic renewal of the Agreement for successive periods not to exceed 35 years (Term of Agreement 2 (a) @ pdf pg 10). Subject to modification acceptable to the Contracting Officer of Reclamation and the WA, *“the Authority shall have the option to renew this Agreement for successive periods not to exceed thirty-five (35) years each by providing written notice of such to the Contracting Officer not more than one (1) year, but not less than six (6) months, prior to the end of the then-current term, unless by mutual agreement to renew sooner.”* We see no justification for this automatic right of renewal without sufficient public and environmental review.

We conclude that the proposed Agreement should not be finalized until an additional comment period is provided of at least 60 days (consistent with review periods allotted for Reclamation contract renewals specified here: [https://www.usbr.gov/mp/cvpia/3404c/lt\\_contracts/index.html](https://www.usbr.gov/mp/cvpia/3404c/lt_contracts/index.html)). Further the current Cooperative Agreement and Transfer Agreement, and the supporting Exhibits and biological opinions should be included with the Agreement for public review. Given that the existing Agreements do not expire until 2023, there should be ample time to allow for such a public disclosure and review.

Thank you for considering our comments. Please make sure the undersigned are notified of any future actions related to this Agreement.



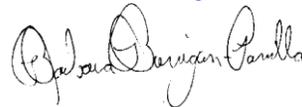
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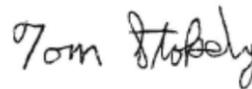
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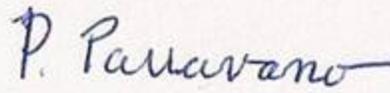
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