



August 12, 2021

Ms. Sarah Perrin  
U.S. Bureau of Reclamation  
[sperrin@usbr.gov](mailto:sperrin@usbr.gov)  
Via electronic mail

Re: Draft Environmental Assessment, Transfer of Central Valley Project Water from Oakdale Irrigation District and South San Joaquin Irrigation District to San Luis & Delta-Mendota Water Authority, CGB-EA-2021-044

Dear Ms. Perrin:

The California Sportfishing Protection Alliance, California Water Impact Network, and AquAlliance (hereinafter, CSPA et al.) comment on the Draft Environmental Assessment (DEA) for the 2021 transfer of 100,000 acre-feet of water from Oakdale Irrigation District and South San Joaquin Irrigation District (collectively, “Districts”) to San Luis & Delta-Mendota Water Authority (SLDMWA).

The DEA fails to analyze the policy or contractual change embedded in the decision by the Bureau of Reclamation (“Reclamation”) to allow the Districts to transfer water in the Districts’ “conservation account” in New Melones Reservoir pursuant to clause 4 of the 1988 Agreement and Stipulation between the Districts and Reclamation on the operation of New Melones Reservoir (“1988 Agreement”); this change will have long-term significant impacts on the environment. The DEA also fails to identify significant environmental impacts more specific to the proposed action.

Therefore, the DEA is legally inadequate. Reclamation should not issue a final environmental assessment. Instead, Reclamation should issue a draft environmental impact statement (EIS) for the proposed action and a separate draft EIS for the change to the implementation of the 1988 Agreement. CSPA et al. also recommend that the Districts withdraw the proposed transfer, that Reclamation rescind its (unlawful) decision to allow and facilitate transfer of water from the Districts’ conservation account in New Melones, and that Reclamation hold in storage for water year 2022 the water that the Districts propose to transfer under the proposed action.

## **I. Reclamation must issue a draft EIS for the change in its implementation of the 1988 Agreement.**

On June 22, 2021, Ernest Conant, Regional Director of the Bureau of Reclamation (hereinafter, Reclamation) sent a letter to Tim O’Laughlin, counsel to the Districts, regarding the proposed transfer by the Districts of 100,000 acre-feet of water sourced in New Melones Reservoir to SLDMWA. More specifically, Mr. Conant advised Mr. O’Laughlin that Reclamation viewed the Districts’ “conservation account” in New Melones Reservoir, the proposed source of the water, was available to the Districts only for diversion at Goodwin Reservoir for in-District use. Mr. Conant stated:

However, with respect to the Districts’ 2021 transfer proposal to use up to 100,000 acre feet out of the Districts’ conservation account under the 1988 Agreement, Reclamation cannot support such a transfer. The 1988 Agreement contemplates diversion by the Districts only at Goodwin Dam in satisfaction of the Districts’ irrigation rights and use of the conservation account only in drought years on District lands. It does not currently provide for any circumstance for releases by the Districts, nor quantify any reasonable transferrable amount under California law. In addition, Reclamation supports transfers only to the extent such transfers pose no harm to the CVP [Central Valley Project]. Reclamation remains concerned that the Districts’ proposed transfer could injure the rights of the CVP.

As demonstrated by the DEA, Reclamation has apparently changed its position on the transfer of water in the conservation account. However, Reclamation has not performed an analysis of this change under the National Environmental Policy Act (NEPA). Allowing the Districts to transfer water held in the conservation account is clearly a change in Reclamation’s implementation of the 1988 Agreement. This is shown by the fact that Reclamation opposed such transfer as recently as June 22, 2021, as cited above. This change has the potential to significantly reduce the ability of Reclamation to meet its environmental obligations in the Stanislaus River, the lower San Joaquin River, and the Delta, both in 2022 and in future years. Reclamation must perform a NEPA analysis of its *de facto* change in its application of the 1988 Agreement. Absent such analysis, the DEA fails the requirement of NEPA to analyze significant environmental effects of the change in the implementation of the 1988 Agreement embedded in the proposed action, which is also a cumulative effect of the proposed action with an immediate causal connection to the proposed action.

Reclamation should issue a draft EIS for its change in the implementation of the 1988 Agreement prior to, or at minimum concurrent with, a draft EIS for the proposed action.

## **II. The DEA fails to disclose significant environmental impacts of the proposed action.**

The DEA does not evaluate impacts of the Districts’ proposed transfer in the context of overall storage in the Central Valley Project (CVP) and the State Water Project (SWP).

CVP storage and SWP storage are at or approaching record lows. Because New Melones has relatively more storage than other CVP reservoirs in August 2021, Reclamation is relying on

New Melones in part to meet Delta outflow and water quality requirements and to maintain salinity control, pursuant to CVP water rights permits. If water year 2022 is dry or critically dry, conditions are likely to be unprecedented. Reclamation will need to again rely on storage in New Melones to meet its environmental and water quality commitments. It will not be able to count on storage in other CVP reservoirs. The bottom line is that the 100,000 acre-feet that the Districts propose to remove from New Melones under their proposed transfer will be an additional 100,000 acre-feet of water that will not be available to Reclamation to meet Delta outflow and water quality requirements and salinity requirements in water year 2022. The DEA does not disclose these impacts.

The effects of the transfer will cascade to every cold water fishery downstream of every CVP and SWP dam throughout the Central Valley. The loss of New Melones storage will further strain the ability of Reclamation and DWR to meet protective water temperatures for these fisheries. The effects of the transfer will also require release of water from gravely depleted storage in these dams to meet Delta water quality and outflow requirements and associated fisheries. These effects will occur in 2021 and even more extremely in 2022 if 2022 is dry or critically dry.

Reclamation must also consider the cumulative impacts of the reduction of New Melones storage as a result of the proposed action in combination with the proposed transfer of 180,000 acre-feet of water from Shasta Reservoir to recipients south of the Delta, scheduled to occur in October and November 2021. The DEA acknowledges that there is a cumulative effect, but does not disclose the nature of that effect: the transfer from Shasta will further reduce total CVP storage upstream of the Delta, and further reduce the ability of Reclamation to meet its environmental obligations under Water Rights Decision 1641 (D-1641) in 2021 and 2022.

The DEA states, regarding the transfer from the Sacramento River Settlement Contractors, “At the time of deliveries, the transfer release schedule would depend on the availability of Delta export capacity and would be in compliance with regulatory requirements, including but not limited to the 2019 BiOp (USFWS 2019 and NOAA Fisheries 2019).” (DEA, p. 3-10). This statement regarding coverage by the BiOps is unfounded regarding the Settlement Contractors’ transfer and regarding the Districts’ proposed transfer as well. Reclamation is not meeting the CVP’s requirements today, and is likely to be unable to meet them until at least well into water year 2022. Reclamation is operating under a State Water Board June 1, 2021 Order in response to Reclamation’s temporary urgency change petition. This Order has moved compliance points for Delta water quality upstream from key compliance points stated in D-1641. (See State Water Board (Jun. 1, 2021), Order Conditionally Approving a Petition For Temporary Urgency Changes to License and Permit Terms and Conditions Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions, [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/tucp/docs/2021/20210601\\_swb\\_tuco.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/docs/2021/20210601_swb_tuco.pdf)). In addition, Reclamation is constrained from exporting water from its Jones pumping plant in the Delta beyond what is required to meet demands of San Joaquin Settlement Contractors and health and safety purposes. However, the Districts’ proposed transfer would not be subject to such constraints. *Id.* at p. 15-16. Thus, the Districts’ transfer has the effect of avoiding the minimal protections of the June 1 Order regarding exports of CVP water. Under the Board’s June 1, 2021 Order and its exemption of protections for water

transfers, the Biological Opinions are not protecting steelhead and Delta smelt. The DEA does not disclose this impact.

The DEA acknowledges that juvenile Delta smelt will be present in the Delta “east of Antioch” at the time of the proposed action. (DEA, p. 3-6). Increased pumping at the Delta pumps due to the proposed action, at times of outflows less than those minimally required under D-1641 (pursuant to the June 1, 2021 Order), increases the likelihood of entrainment of juvenile Delta smelt into the area of the pumps or into areas such as Franks Tract where Delta smelt are highly subject to predation. The DEA does not disclose this impact, but rather dismisses it, stating that the proposed action “would not appreciably alter existing habitat conditions.” *Id.* A draft EIS should correct this statement.

### **III. Conclusion**

In summary, the DEA does not disclose significant impacts on the environment from the change in Reclamation’s implementation of the 1988 Agreement. Reclamation should issue a draft environmental impact statement that discloses such impacts and analyzes potential mitigations for these impacts.

In addition, the DEA does not disclose significant impacts on the environment from the proposed transfer. Reclamation should issue a draft environmental impact statement that discloses the impacts of the proposed action and analyzes potential mitigations for these impacts.


In the alternative, and preferably, Reclamation should not allow the Districts to transfer water from the conservation account pursuant to the 1988 Agreement, either in the instant case or in the future, and the Districts should withdraw their proposed water transfer.

Respectfully submitted,



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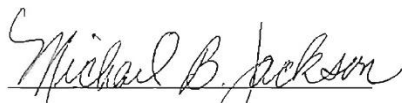
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