

CA Save Our Streams Council



April 19, 2018

Brenda Burman (91-00000)
Commissioner of Reclamation
1849 C Street NW
Washington DC 20240-0001

Michael Jackson,
Area Manager, SCC-100 South-Central Office
1243 N. Street
Fresno CA 93727

David Murillo
Mid-Pacific Regional Director
Federal Office Building MP-100
2800 Cottage Way Sacramento CA 95825

Paul Souza
Pacific Southwest Region
Regional Director USFWS
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

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

April 19, 2018

Re: Comments regarding draft environmental documents for Delta-Mendota Canal Groundwater Pump-in Program revised design constraints EA-18-007 and FONSI-18-007

Dear Commissioner, Reclamation and U.S. Fish and Wildlife Service:

Thank you for the opportunity to comment. The ten days provided to review these and related ground water pump-in projects for non-project CVP water discharged into the Delta Mendota Canal (DMC) and, by exchange, the California San Luis Canal (SLC) was extremely brief, especially given that notice was not provided except to the select contractors and water districts involved with the proposed discharges of groundwater. The undersigned have repeatedly requested notification of these proposed projects and yet Reclamation has consistently avoided public notification.

We find that the discharges of contaminated groundwater into the waters of State and Nation violate the Clean Water Act and State of California Porter Cologne laws designed to protect the beneficial uses of these waters. Incredibly, this federal action also provides an incentive to further overdraft groundwater basins where subsidence is already occurring from over pumping. This action defies common sense. While some may argue a small percentage of ground water discharges and increased pumping are acceptable, there are a growing number of these incremental extractions and discharges that are taking a cumulative toll on public resources. This federal action allows specific individual landowners to evade pollution control laws by passing polluted water downstream where other uses bear the costs.

Summary Comments:

1. Of the two alternatives presented, we support the no action alternative. Until groundwater sustainability plans pursuant to the State Groundwater Management Act (SGMA) are adopted no additional groundwater pumping from these over-drafted basins should be permitted by Reclamation.
 - a. The DEA clearly indicates that, compared to “no action”, the proposed alternative will increase risk of subsidence and degradation of DMC and SLC water quality.
 - b. Proposed management actions to mitigate these risks are unproven and past operation of the Pump-In program has demonstrated both subsidence effects and water-quality impacts.
 - c. As EPA commented in 2010 on a similar pump-in project, MCL Drinking water standards do not fully protect all the beneficial uses of the canal and *would be subject to NPDES permitting requirements pursuant to the federal Clean Water Act.*¹
2. A full range of alternatives should be evaluated—not just “no action” and “proposed”. In particular, we urge analysis of an alternative that reduces CVP water exports and groundwater overdraft along with long-term water demand by simply meeting the following conditions that have already been established by law and regulatory decisions:
 - a. The Record of Decision for an in-valley disposal option signed by Bureau of Reclamation (Reclamation) in March 2007² required reducing irrigation of 200,000 acres of toxic soils on the West Side of the Southern San Joaquin Valley where selenium, salt, boron and other contaminants are known to be mobilized into the groundwater with irrigation;

¹ EPA Comment letter to WWD April 4, 2010 RE: Notice of Preparation of an Environmental Impact Report (EIR) for the Conveyance of Nonproject Groundwater from the Canalside Project using the California Aqueduct April 4, 2010 from David Smith, Manager NPDES Permits Office (WTR-5) to Russ Freeman, Westlands Water District.

² https://www.usbr.gov/mp/mp150/envdocs/San_Luis_Drainage_Feature_Re-evaluation_ROD.pdf

- b. Public Law 86-488-[June 3, 1960]³ Section one limits CVP water deliveries to just 500,000 acres in total for the entire San Luis Unit, excluding an extra 200,000 acres in Westlands Water District that increases demand and toxic runoff to groundwater and surface water.

This alternative, which we refer to as the “regional solution” alternative, would eliminate the need for a pump-in program by combining the requirements of existing law and regulations with the forthcoming SGMA plan.

3. Regardless of which alternative is implemented, monitoring of compliance needs to be more comprehensive, designed and managed by a third party, and there must be full and timely disclosure of data to the public. For example:
 - a. Selenium aquatic contaminant levels require intensive monitoring to ensure the accumulation of selenium in the plant and aquatic does not harm the beneficial uses of receiving waters that serve as critical habitat for endangered species, food sources for fish and wildlife and essential water for National and State wildlife preserves.
 - b. Protocols for biological and water-quality monitoring need to ensure sufficient frequency and duration to capture impacts and data analysis should be conducted by an independent third party and published to ensure that mitigation and monitoring actually is conducted and is publicly available.

Expanded Comments on Specific Issues

1. Insufficient data is provided on proposed mitigation measures to conclude that groundwater discharges will not cause environmental impacts or impact the beneficial uses of water.

The mitigation proposed, while an improvement, is not sufficient to conclude there would be no significant impacts. Following are some of the points of concern:

- a. No biological monitoring is required to ensure there is no take of endangered species or reproductive failure from the discharge of pollutants, especially selenium and mercury, in concentrations known to impact reproduction and predation. It is essential to account for the bioaccumulation of these contaminants through the food chain, which can lead to reproductive failure, teratogenic effects and death.
- b. Over half the wells identified in the DEA as part of the proposed program demonstrate even with the limited monitoring provided that they cannot discharge because of excessive concentrations of salt, boron or selenium. Many of the other wells are close to being excluded, indicating that improved data on the program wells would likely show a much higher rate of disqualification. Put another way, the mitigation strategy proposed will likely not avoid periodic sustained conditions that violate the water-quality standards stated for the program. Research shows spikes in selenium have lasting impact because of the magnification in the food chain.
- c. This proposed federal action would result in a cumulative total of 50,000 AF per year of groundwater introduced into the DMC and would allow use and storage in federal facilities including exports from the Bay-Delta and transfers to Westlands Water District and other districts

³ <https://www.gpo.gov/fdsys/pkg/STATUTE-74/pdf/STATUTE-74-Pg156.pdf> San Luis Act 1960 PL 86-488

south of the Delta.⁴ The DEA readily admits, *it is likely that groundwater levels would continue to decline resulting in increased rates of subsidence until SGMA is fully implemented.* DEA@pg16

- d. The 41 points of groundwater discharge into the Delta Mendota Canal along with 1) the various other pump-ins in the same groundwater basin,⁵ 2) similar pump-ins to the California Aqueduct⁶, and 3) other water transfers and resultant exchange programs have not been analyzed collectively as the complex and regional-scale effect on the environment that they are. Taken together, even the existing limited monitoring shows a decline in water quality, with levels of arsenic exceeding drinking water standards and levels of selenium accumulating at levels known to cause reproductive failure, teratogenic effects and death as it magnifies throughout the food chain.
- e. Part of this pump-in program, Panoche's sale of pump-in water to Westlands along with the approval by Reclamation of ground water pump-ins to the California Aqueduct are compounding water quality problems and subsidence structural problems.⁷ In addition, Westlands was allowed to pump from the Delta Mendota basin area into lateral 7 where discharges to the SLC were found to exceed Arsenic MCL levels in 2013.⁸ No selenium

https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=11953 Exchange Agreements and/or Warren Act Contracts for Conveyance of Groundwater in the Delta-Mendota Canal – Contract Years 2013 through 2023 (March 1, 2013 – February 29, 2024) Final EA 12-061 January 2013

https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=25677 7- day public notice for comment May 2016, Additional Points of Delivery for Panoche Water District's NonProject Groundwater to Westlands Water District FONSI-16-009

https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=12132 Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014–2038

https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=17127 Westlands Water District Warren Act Contract for Groundwater Pumping into the Coalinga Canal FONSI-13-042 May 2016

https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=21022 Westlands Water District Groundwater Warren Act Contract EA-15-001 March 2015

⁵ [Ibid.](#)@ 4

⁵ [Ibid.](#)@ 4

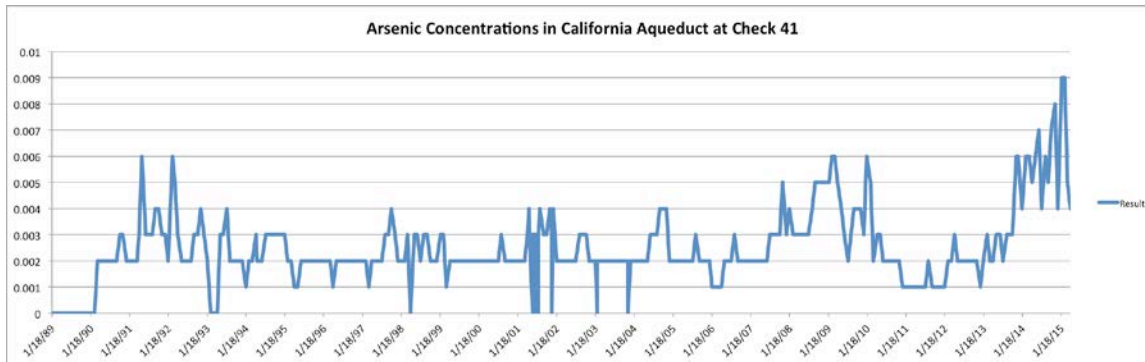
⁶ <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2015.pdf?la=en&hash=DF0AAD3515C7170683E17A4D5893207B66D44130>

⁷ <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2015.pdf?la=en&hash=DF0AAD3515C7170683E17A4D5893207B66D44130>

⁸ <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2013.pdf?la=en&hash=95BF5CC147098F8D4208E93D831FDB3E5D849459>

monitoring was conducted. Again in 2015 data show that Arsenic MCL levels were exceeded.⁹

- f. Attached for reference are the State Water Project Contractors' comments from April 2015 regarding water quality and subsidence concerns with the Westlands' pump-in projects. Even the monthly monitoring of selenium for Westlands' discharge of groundwater into the California Aqueduct is already showing cumulative impacts on downstream users and beneficial uses. Equally, structural impacts to the canal and municipal facilities are occurring. Who will pay for these damages resulting from USBR's permit to discharge this groundwater into the waters of the State and Nation are not disclosed?
- g. Arsenic concentrations in the California Aqueduct, downstream of where groundwater has been pumped into the SLC canal, increased markedly in 2015 and approached the Maximum Contaminant Level for drinking water of 0.010 mg/L. According to DWR Arsenic exceeded MCL levels at Check 29 and 27 in 2015.



2. Discharging Selenium into the California Aqueduct and Delta Mendota Canal even at 2 ppb is likely not protective of downstream beneficial uses.

Since 2002, under the Clean Water Act, Section 303, and the Endangered Species Act, the United States Environmental Protection Agency (EPA) has been required to adopt acute and chronic aquatic life criteria for Selenium, taking into account the bioaccumulation of this contaminant as it magnifies throughout the food chain often causing reproductive failure, teratogenic effects and death. The terms and conditions also included reevaluating and revising selenium criteria for the protection of semi-aquatic wildlife. The recently released peer reviewed United States Geological Survey (USGS) study, also part of the terms and conditions, models the fate and transport of selenium in the San Francisco Bay-Delta Estuary and as

⁹ <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2015.pdf?la=en&hash=DF0AAD3515C7170683E17A4D5893207B66D44130> Arsenic exceeds MCL levels at checkpoint 29 and 27

agreed, the report will serve as the basis for revised water quality criteria for the protection of wildlife species.¹⁰

3. Without Data or Analysis the following potential impacts are dismissed:

- a. Compliance with the Migratory Bird Treaty Act and Fish and Wildlife Coordination Act
- b. Compliance with the Endangered Species Act (16 U.S.C. § 1531 *et seq.*)
- c. Cumulative Impacts of associated transfers and exchanges.

4. Recent Court Cases Compound the DEA's Failure To Analyze the Impacts from the Proposed Groundwater Pump-ins & Transfers on endangered species such as the giant garter snake and Buena Vista Ornate Shrew.¹¹

A recent federal court ruling¹² 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 compounded by the proposed federal action to allow substituted exports from the San Francisco Bay and Sacramento-San Joaquin River estuary as a credit for the pumped in groundwater 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.

Conclusion

The proposed action, while taking some unproven measures to remedy the growing subsidence exacerbated by these groundwater pump-in permitted actions, falls short of halting the damage to federal, state and local facilities from excessive groundwater extraction. Further, the approval of these discharges degrades water quality for downstream users and beneficial uses of the receiving waters. Without adequate monitoring of either water quality or biological effects, sweeping statements about compliance with the Endangered Species Act and Migratory Bird Treaty Act are made without corroborating evidence

¹⁰ <http://www.epa.gov/region9/water/ctr/>

¹¹ <http://www.aqualliance.net/solutions/litigation/significant-legal-win-for-north-state-10-year-water-transfer-program-failed-analysis-and-disclosure/>

¹² http://www.aqualliance.net/wp-content/uploads/2018/02/AquAlliance10YearMSJ_Order021518.pdf

or data. Relying on MCL standards evades protections and monitoring necessary to protect downstream uses along with aquatic resources, fish and wildlife and the Pacific Flyway.

The DEA should evaluate a full range of alternatives, at the very least to include a third alternative that incorporates the features of the Record of Decision for an in-valley disposal option signed by Bureau of Reclamation (Reclamation) in March 2007 and limits deliveries to the San Luis Unit and Westlands as stated in Public Law 86-488-[June 3, 1960]. Of the two alternatives evaluated, the no action alternative is clearly superior for minimizing water-quality impacts and subsidence, while also not encouraging continued irrigation of marginal land and toxic soils. Finally, whatever action is taken requires improved monitoring, public disclosure of data, and third-party analysis of results.

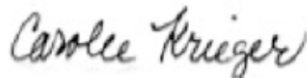
Thank you for the opportunity to provide comment.



Jonas Minton
Senior Water Policy Advisor
[Planning and Conservation League](#)
jminton@pcl.org



Noah Oppenheim
Executive Director
[Pacific Coast Federation of Fishermen's Asso.](#)
noah@ifrfish.org



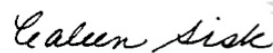
Carolee Krieger
Executive Director
California Water Impact Network
caroleekrieger7@gmail.com



Barbara Barrigan-Parrilla
Executive Director
Restore the Delta
Barbara@restorethedelta.org



Conner Everts
Executive Director
Southern California Watershed Alliance
[Environmental Water Caucus](#)
connere@gmail.com



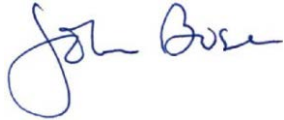
Caleen Sisk
Chief and Spiritual Leader of the
[Winnemem Wintu Tribe](#)
caleenwintu@gmail.com



Bill Jennings
Chairman Executive Director
California Sportfishing Protection
deltakeep@me.com



Barbara Vlamis,
Executive Director
AquAlliance
barbarav@aqualliance.net



John Buse
Senior Counsel
Center for Biological Diversity
jbuse@biologicaldiversity.org



Eric Wesselman
Executive Director
Friends of the River
Eric@friendsoftheriver.org

Frank Egger
President
North Coast Rivers Alliance
fegger@pacbell.net



Larry Collins
President
Crab Boat Owners Association
papaduck8@gmail.com



Lloyd G. Carter
President, Board of Directors
California Save Our Streams Council
lcarter0i@comcast.net



Adam Keats
Senior Attorney
Center for Food Safety
akeats@centerforfoodsafety.org

Attachment: State Water Project Contractors comment letter April 10, 2015 to Mr. Ben Lawrence
U.S. Bureau of Reclamation from SWC Terry L. Erlewine General Manager