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Re: Comments EA-17-021, FONSI-15-023A & Renewal of Six Interim Contracts for Westlands, Santa Clara et. al.¹

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

Reclamation has prepared an EA² to support renewal of six interim renewal contracts for the period March 1, 2018 through February 29, 2020. Under these contracts, Westlands Water District is the largest beneficiary at 1,192,948 acre-feet (AF) per year of water and Santa Clara Valley Water District (Santa Clara) would continue to receive up to 6,260 AF, all from the San Francisco-Sacramento-San Joaquin River Delta Estuary, and ultimately the Sacramento, American and Trinity rivers.³ The USBR Project Action (Project) proposes to deliver CVP water for agricultural and municipal and industrial (M&I) purposes within Westlands and Santa Clara's identified CVP service area boundaries, including more than 308,000 acres of drainage impaired lands known to have soils with large quantities of selenium and salt pollutants that are mobilized when irrigated.⁴

¹ <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=60958> & https://www.usbr.gov/mp/cvpia/3404c/lt_contracts/2018-int-cts/index.html

² https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=30703 EA-17-021

³ https://www.usbr.gov/mp/cvpia/3404c/lt_contracts/2018-int-cts/index.html

⁴ http://www2.co.fresno.ca.us/0110a/questys_Agenda/MG195674/AS195675/AS195692/AI195749/DO196339/25.PDF See USBR SDFRE Feasibility Report pg IV: Westlands (298,000acres) and 10,000 acres in Broadview Water District.

New Interim Water Contracts Should not be Issued: Reclamation has Excluded the Public from Essential Biological Impact Analysis and has Not Complied with Required Mitigation and Monitoring Measures Necessary to Protect Endangered Species.

Reclamation requested comments on the proposed Project by January 16, 2018. Filing a Freedom of Information Act Request on December 28, 2017, PCL et. al. sought copies of the Biological Assessment and any consultation correspondence between Reclamation and Fish and Wildlife Service.⁵ The consultation history and Biological Assessment are essential documents needed to inform the public and these groups and their members as to the significant impacts to species whose existence is hanging in the balance due to drought conditions over much of the last decade, combined with impacts from pollutants discharged to ground and surface waters resulting from continued irrigation of hundreds of thousands of acres of contaminated soils within these districts. These pollutants are transported by irrigation to groundwater and surface water supplies, resulting in concentrations that are lethal to fish and wildlife and pose a hazard to public health. Unfortunately, the FOIA request for information from USFWS by January 16th was denied and then the 20-day FOIA deadline for response (January 23, 2018) was not met and the needed biological impact information was not provided. As a result, the undersigned cannot determine whether Reclamation and Fish and Wildlife Service have complied with the Endangered Species Act and associated federal laws. Waiting further for a response to the December 28, 2017 FOIA request would only hamper public comment from our members. Please include these comments in the record.

We urge that, until there is compliance and the public has an opportunity to review and comment, the proposed interim contracts for water service should not be issued. Renewal without completion of the public process and without addressing environmental degradation resulting from contract issuance would violate the federal regulations and statutes. Despite over a decade of commenting on these serial interim contract renewal proposals, Reclamation has consistently failed to notify many of the undersigned of the environmental analysis and contract renewal.

Reclamation and the Water Districts Have Failed to Comply with Biological Opinions (BiOps), Reasonable and Prudent Alternatives, and Required Monitoring.

Monitoring that is essential to determining compliance has been haphazard, not implemented, or arbitrarily waived. The EA cites compliance with previous Biological Assessments as an indication of compliance but provides no data or information to document the required adherence to these documents.

A. Biological Opinion Monitoring Shortfalls⁶:

1. The EA, does not provide a current Biological Assessment, nor consultation with USFWS, but instead references the 2016-2018 BiOp in which Reclamation makes specified promises and yet provides no evidence or monitoring to support the assertions that they have indeed complied:

Reclamation will continue to adhere to the conservation measures from previous IRC consultations, specifically to ensure that project water is not used in a manner that adversely affects listed, proposed or candidate species. The Service considers the scope of this conservation measure to include the assurance that project water will not be used

⁵ FOIA Correspondence 12-28-17 from Pacific Advocates on behalf of the Planning and Conservation League, Sierra Club of California, the Institute for Fishery Resources and the Southern California Water Alliance FOIA FNS-2018-00402 .

⁶ https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=28029 BiOp 2016-2018

in whole or in part to facilitate the conversion of existing natural habitat to agricultural or other purposes. This determination is essential to add support to the conclusions made regarding the overall effects of the proposed action.

2. Further, Reclamation commits to compliance with the CVPIA BiOps, the 2008 and 2009 BiOps on the Coordinated Operations of the CVP and SWP, the San Luis Drainage Feature Re-Evaluation EIS and BiOp, and the Grasslands Bypass Project 2010-2019 BiOp⁷:

Reclamation will continue to implement in a timely manner relevant environmental commitments, conservation measures, and terms and conditions from other biological opinions...

3. Finally, the BiOps included the assumption that Reclamation compliance *with other CVP-related, non-CVPIA actions benefiting fish, wildlife, and associated habitats and related to effects of IRCs, will continue, with at least current funding levels, including:*
 - a. the Central Valley Habitat Monitoring Program's Comprehensive Mapping Effort;*
 - b. implementation of the Central Valley Habitat Monitoring Program's Land Use Monitoring and Reporting; and,*
 - c. CVP Conservation Program and CVPIA B(1)(other) Habitat Restoration Program.*

The Project, tiered to the CVPIA PEIS and Biological Opinion, required comprehensive mapping every 5 years along with the land use monitoring and reporting, but this was not provided. There is no evidence that Reclamation complied with this condition. Without this required mapping and monitoring the impacts to Federally-listed species such as the giant garter snake, San Joaquin woolly threads, California Least Tern, San Joaquin kit fox, blunt-nosed leopard lizard and critical habitat impacts to the Buena Vista Lake Ornate Shrew cannot be accurately assessed and determined.

B. Inconsistencies with Applicable Biological Opinions:

1. The previous BiOps by USFWS have consistently been based upon the assumption that CVP water contract amounts and deliveries will meet the conditions of the 2008 & 2009 OCAP biological opinions. And yet, Reclamation admits in the EA that they refuse to analyze Contract Service Areas (1.4.1), Water Transfers and Exchanges (1.4.2), Contract Assignments (1.4.3), Purpose of Water Use (1.4.5), and Drainage (1.4.6). This is an arbitrary and illegal exclusion of consideration of impacts to endangered species and biological resources. This is especially concerning given that the biological opinions governing these contract renewals stated clearly:

For the purposes of this consultation on these IRCs, we assume that any drainage service implemented in the SLU will be consistent with the project description and assumptions in the San Luis Drainage Feature Re-evaluation (SLDFR) BiOp (Service File 06-F-0027). Any drainage management implemented in a manner not considered in the SLDFR BiOp will need to undergo separate section 7 or section 10 consultation pursuant to the Act.

The water demand discussion in the EA instead assumes implementation of the 2015 drainage settlement,⁸ which has not undergone a NEPA analysis nor does it with the federal or state endangered

⁷ These commitments include implementation of the CVPIA and Continued Operations and Maintenance of the CVP (November 21, 2000, Service File No., 98-F-0124), and the Grassland Bypass Project 2010-2019 (Service File No., 09-F-1036). See https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=28029

⁸ <https://www.usbr.gov/mp/docs/Notice-of-Filing-Settlement-Agreement-AS-FILED-with-attachment-091615.pdf>

species act protections--a violation of civil laws.⁹ The demand study assumes 100,000 acres in Westlands will be retired by 2051. A review of the lands listed in the 2015 Settlement¹⁰, however, show that currently all but roughly 3,000 acres have already been retired. Accurate mapping and monitoring required under existing BiOps and CVPIA mitigation measures would have clearly documented that much of these 'retired' lands have been sold or leased for solar or utility uses.¹¹ In addition, the EA assumes a reduction in full contract quantity to 895,000 AF being applied in 2051. The drainage settlement, however, does not say that it's going to take 30+ years for the minimal land retirement to be implemented and the contract quantity to be reduced. If such is the case the Project needs to analyze and disclose this impact.

No basis is provided for this new conclusion in the Project EA. The 2006 SLDFR BiOp was based upon at a minimum retiring roughly 200,000 acres of drainage impaired acreage within Westlands. This was a reduction from the roughly 300,000 acres documented in the SLDFR FEIS. Reducing the retired acres in the Westlands' service area to 100,000 acres of already retired lands and extending the date for compliance to 2051, substantially understates the extent of contamination problems and overstates the acreage suitable for irrigation, thus falsely supporting extra water contract deliveries. There is no basis in current law for this assumption.

Non-Compliance with San Luis Drainage Feature Re-Evaluation(SLDFRE), FWCA and BiOp: The arbitrary reduction in impaired acreage and associated conclusions in the Project EA are inconsistent with the SLDFRE ROD and Biological Opinions, all of which govern the Project unless and until they are changed.¹² There are no data or information provided in the EA to show compliance. In fact, recent monitoring data for the Project indicate selenium levels in discharges to Mud Slough and the San Joaquin River in excess of the required 10 µg/L. Furthermore, proposed treatment demonstrations have not worked.

....Reclamation indicated that the project is predicated on the successful compliance with the 10 µg/L waterborne selenium concentration following pre-treatment. Further, it was agreed that the effluent would be treated to oxidize the selenium to selenate. These thresholds form the basis for the underlying risk assessments, and this agreement is therefore a critical project element. The Service's understanding of this agreement is that failure to meet this objective will necessitate future FWCA, National Environmental Policy Act, and ESA consultation.(See pg. iv)¹³

In addition, Reclamation was required under the SLDFRE FWCA and BiOp to..."include mandates and directives as provided under the Central Valley Project Improvement Act, CALFED, the ESA, the Clean Water Act, and the MBTA. As an example, retiring drainage impaired lands in the SLU should reduce water demand such that unmet environmental needs, including refuge level 4 water supplies, could be met through water made available via land retirement."

This has not been done.

⁹ <http://www.digitaljournal.com/news/environment/op-ed-advocates-claim-a-secret-pact-has-occurred-with-california-water/article/437847> and by reference 6-24-15 Letter from Friends of the River to Justice Re " Draft Proposed Settlement terms in *Firebaugh Canal Water District and Central California Irrigation District v. United States of America and Westlands Water District* CV-F-88-634-LJO/DLB and CV-F-91-048-LJO/DLB Violate Civil Laws of the United States."

¹⁰ *Ibid.* #7 see the attachment list of APNs for properties listed for retirement.

¹¹ <http://web.energyvacuity.com/REProject.aspx?id=16887> Westlands' Growing Solar Operations and Utility Developments & <http://wwd.ca.gov/resource-management/land-management/>

¹² FEIS, Also see Appendix M part 3 & 4: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=61

¹³ *Ibid.* @ pg iv.

Compliance with the San Luis Drainage Feature Re-evaluation EIS (@ pg 25) required and assumed that current GBP drainwater discharges to the San Joaquin River would stop by 2009. The discharges have not stopped and in fact will continue past 2019 when the current Use Agreement for the San Luis Drain ends. However, the Project EA is silent regarding the impact of continuing to import water to irrigate these contaminated west side soils, collect the resulting agricultural waste water, and discharge it to the San Joaquin River and Delta Estuary via Mud Slough. This occurs most directly from irrigated lands within the GBP boundary, but also includes increased transport of contaminated groundwater and runoff from areas of Westlands that are upgradient of the GBP.

Migratory Bird Treaty Act (MBTA)

Federal courts have recently affirmed that Federal agencies are subject to prohibitions outlined in the MBTA, including restrictions on “take” of migratory birds.

The MBTA prohibits the intentional or unintentional takings of migratory birds except under specific authorized and permitted activities. On January 10, 2001, Executive Order 13286 was signed by the President of the United States. The order requires Federal agencies to incorporate migratory bird conservation measures into their agency activities. Furthermore, the order stipulates that Federal agencies are required to develop a Memorandum of Understanding (MOU) with the USFWS outlining how the agency will promote conservation of migratory birds. No MOU could be located for the Project in the EA. This lack of compliance is further compounded by monitoring reports that documented a deformed embryo in 2008 at the drainage treatment site dubbed the SJRIP. Additional elevated levels of selenium have also been reported in the eggs of migratory birds.¹⁴ Recently, biological monitoring has been curtailed and this lack of monitoring further confounds enforcement.¹⁵ Recent 2016 biological data¹⁶ from the SJRIP 2016 wildlife monitoring report indicate, “ that the average egg-selenium concentration for killdeer shorebirds on the project site was 20.7 parts per million (ppm), which “continues[s] to be above selenium levels associated with a high probability of reproductive effects, including reduced hatchability... One killdeer egg on the project site had an alarmingly high selenium concentration of 54 ppm, and the biological monitoring report indicates that selenium concentrations in bird eggs on the project site are increasing over time.”¹⁷ The selenium concentrations found in bird eggs on SJRIP lands are concerning and clearly indicate that modern drainage management efforts continue to pose substantial

¹⁴ Results of the 2008 wildlife monitoring program for the San Joaquin River Water Quality Improvement Project were released in a July, 2009 report. As described on page 10 of the July, 2009, wildlife monitoring report, part of the normal monitoring protocol implemented by H.T. Harvey & Associates (hereafter H.T. Harvey) The narrative description of the condition of the embryo in question can be found on page 22 of the July, 2009, wildlife monitoring report. Also note that this embryo is identified in Table 4 on page 25 of the July, 2009, report as ID Number 04, Field Number S-03, from an egg collected May 23rd, 2008, and containing 74.6 ppm Se dw. The embryo was estimated to be at an incubation stage (age) of 17 days when the egg was collected. Joseph Skorupa confirmed in an email dated 7-9-15: *I can confirm that the types of embryo deformities illustrated in photos 04 and 04A thru 04D are quite typical of what I have observed and documented in my own research examining black-necked stilt embryos from eggs containing similar concentrations of selenium. At egg exposures as high as 70-80 ppm Se dw, black-necked stilt embryos have about an 80% probability of being deformed based on 16 randomly sampled eggs in that exposure range that I have compiled records for (13 of the 16 eggs contained deformed embryos) during about the last 25 years.*

¹⁵ See https://www.waterboards.ca.gov/rwqcb5/board_decisions/tentative_orders/1408/19_grasslandbypass_proj/9_gp_wdr_cwin_com.pdf & <http://calsport.org/news/wp-content/uploads/2013/12/Coalition-Letter-on-GBP-ESA-Violations-Monitoring-Reductions-LTR.Corrected-.pdf>

¹⁶ <http://www.sfei.org/projects/grassland-bypass-project#sthash.yKvX5pXT.dpbs>

¹⁷ *Ibid.* See the HT Harvey 2016 SJRIP Wildlife Monitoring Report.

dangers to migratory birds and other wildlife. No mitigation or compliance with this take under the Migratory Bird Treaty Act is addressed in the Project.

Failure to Comply with the Central Valley Project Improvement Act Mandates.

The more than 20 years of perpetual renewals of the interim contracts without completing the NEPA EIS requirement established by Congress is contrary to 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 also violates Reclamation’s duties to comply with NEPA. Reclamation’s commitment to renew the contracts before environmental review takes place renders that review a meaningless charade. By way of example, each of the new “interim two year” contracts contains language that basically perpetually renews the contracts: “This Contract shall be effective from March 1, 2018, and shall remain in effect through February 28, 2020, **and thereafter will be renewed as described in Article 2 of IRI if a long-term renewal contract has not been executed with an effective commencement date of March 1, 2020.**” [Emphasis added] Pre-deciding an action precludes meaningful analysis and weighing of project alternatives. Moreover, compliance with other environmental laws such as the ESA, CESA, CEQA, MBTA and the Fish and Wildlife Coordination Act is likewise rendered meaningless because approval of the action is preordained. Some of the undersigned have already commented on the failure of the EA to sufficiently analyze the full range of alternatives.

Just as Reclamation’s environmental analysis failed to consider the impacts of the proposed action upon the water source, these interim contracts will perpetuate these impacts without sufficient analysis and mitigation of the impacts to the areas being dewatered—the American, Trinity, and Sacramento rivers, and the Delta. Limiting the study area and analysis to the lands receiving the water deliveries precludes meaningful analysis of the impacts to the watersheds where the water is being diverted and extracted. Reclamation’s decision to enter into a contract to deliver water *by taking it from these watersheds and water sources* has significant impacts on fish and wildlife. These cumulative impacts will be compounded by this ever- renewing “interim” contract for water diversion and delivery. Reclamation’s deficient review of the watershed's most impacted by the water diversions renders unlawful Reclamation’s proposal to execute these flawed contracts.

Another fundamental flaw is Reclamation’s reliance on the outdated and unrealistic quantity terms of the old 1940’s and 1950’s CVP contracts that exaggerate water supplies and fail to consider the environmental impacts of continuing to irrigate toxic soils that poison lands and waters downstream while deforming migratory birds and other wildlife. Reducing these inflated quantities to reflect these factors is also clearly required by the reasonable and beneficial use requirements of federal and state law. Therefore, Reclamation’s decision to roll over all previous maximum water quantity terms, regardless of

Reclamation's ability to provide such water quantities, and then by contract to obligate the federal government to such renewals, is a fundamental policy mistake and an illegal agency action.

The defects in the quantity terms are part of a larger problem in that the contracts fail to make adequate provision for environmental protection and mitigation required to restore fish and wildlife impacted by these water diversions and extractions that have left source areas with lethal temperatures, poor water quality, and insufficient water to serve area of origin and public trust needs. The interim contracts fail to ensure existing standards under the ESA, CVPIA, Clean Water Act, and state water law will be met and implemented as part of these new contract commitments. Specifically, the export contracts have not considered the potential impacts to the Delta, the San Joaquin River, Sacramento River, American River and Trinity River. Reclamation's failure to provide for adequate environmental protection in the contracts or even to adequately consider and evaluate the environmental impacts of the proposed contracts, means that the Bureau cannot legally execute the proposed contracts.

In addition, the CVPIA (section 3406[a][2]) amends the Central Valley Project Authorizations Act of 1937 to include equal consideration for agricultural, domestic, and fish and wildlife enhancement. In the SLDFR EIS and BiOp, USFWS assumed some portion of surplus water made available from any future reassessments of district water needs analyses by Reclamation would be used for fish and wildlife enhancement. The serial renewal of these "interim" water contracts has failed to comply with CVPIA mandates including:

The CVPIA(Section 3404(c)(2)), which states, with emphasis added:

Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.

We recognize the first sentence refers to long-term contracts and that, technically, the Project is an interim contract. However, when short-term interim contracts are serially renewed for decades they become similar to long-term contracts. In addition, the second sentence emphasized above is broader and carries an administration mandate that the Secretary has failed to administer. Section 3404(c)(1)'s modification mandate--"Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title"-- is supplemented by 3404(c)(2)'s administration mandate.

One might incorrectly conclude that the highlighted administration mandate in 3404(c)(2) is redundant to the modification provision of 3404(c)(1). But those provisions actually accomplish two different objectives, and the rules of statutory construction require that laws be interpreted to give substance and meaning to all parts of a law. The first says the Secretary has to make the amendments and the second is a mandate to administer the amendments. The Secretary has no discretion to give a pass to the contractors on enforcement. By law the interim contracts 'shall be modified to comply with existing law', as required by 3404(c)(1) and the Secretary is also required to fulfill the enforcement/administration mandate in 3404(c)(2). The interim renewal of these contracts fails on both counts and should not be renewed. Reclamation has no legal obligation to renew the contracts.

The Project renewal contract deliveries have several components with potential adverse effects on listed species (e.g., effects from agricultural drainage management and disposal, and changes to land use and cropping patterns, etc.).The effects of agricultural drainage management are assumed to have been

addressed in other consultations, however, compliance is shoddy at best.¹⁸ The EA provided no data to show that Reclamation has in fact complied with the reasonable and prudent alternatives designed to protect endangered species such as the giant garter snake, salmon, steelhead and the San Joaquin Kit fox.

Expanded Service Areas for Exported Water within Westlands without Legal Justification and Compliance with San Luis Act P.L. 86-488.

P.L. 86-488 clearly establishes that Reclamation is limited to 'furnishing water for irrigation to 500,000 acres of land in Merced, Fresno, and Kings County. The current Project, proposes to irrigate roughly 600,000 acres in Westlands Water District alone. The Project does not provide the legal justification for this expanded service area outside of the Congressional authorization. In addition the EA is equally silent on the requirement to provide mitigation required for the expanded CVP service area. The Final EIR for Consolidated and Conformed Place of Use (CPOU) for the CVP (SWRCB, 1999) identified and analyzed impacts associated with CVP deliveries to encroachment lands (lands within the boundaries of CVP water contractor service areas that have already received CVP water, but are located outside the authorized CVP Place of Use). Of the 45,390 acres of encroachment lands that served CVP water for agricultural purposes, the following encroachment was identified in the SLU:

Westlands WD: 1,611 acres of valley-foothill riparian/fresh emergent wetland
 6,653 acres of annual grassland
 22,343 acres of alkali scrub

The Final EIR for CPOU (from page 2-91) stated,

“Reclamation shall be required to develop a schedule for feasible implementation and monitoring of mitigation or restoration actions subject to approval of the SWRCB. In addition, the SWRCB will also compare each mitigation or restoration project’s environmental/habitat benefits with a set of criteria to be developed jointly by Reclamation and the USFWS, that will assign environmental/habitat target values that need to be restored or mitigated for, pursuant to the approval of the petition to change the CPOU focusing primarily on listed species habitats lost on encroachment lands as identified in Table 2-36 found on page 2-79.” Despite changes in the CPOU, there is no data provided to document the required mitigation acres have been identified, acquired and enforced.

¹⁸ In 2006 Reclamation completed an Environmental Impact Statement (EIS) and Record of Decision (ROD) under the National Environmental Policy Act (NEPA), and the Service completed a Biological Opinion (Service File No. 2006-F-0027) and a Fish and Wildlife Coordination Act Report in accordance with the provisions of section 2(b) of the Fish and Wildlife Coordination Act (48 stat. 401, as amended; 16 U.S.C. 661, et seq.) on San Luis Drainage Feature Re-evaluation (SLDFR). The purpose of the SLDFR project was to meet Reclamation's obligations under the Federal San Luis Unit Act of June 3, 1960, Public Law 86-488, 74 Stat. 156, Section 5, to provide drainage service to drainage-impacted lands within the San Luis Unit (including drainage impacted lands within WWD).

On December 18, 2009, the Service issued a Biological Opinion to Reclamation on the continued agricultural drainage management and disposal called the Grassland Bypass Project (GBP), involving seven agricultural water districts downslope of WWD (Service File No. 2009- F-1036). The Service concluded that the GBP is likely to adversely affect, but is not likely to jeopardize the continued existence of the giant garter snake and the San Joaquin kit fox, and not likely to adversely affect the Delta smelt (including Critical Habitat). The 2009 Biological Opinion provided reasonable and prudent measures and terms and conditions to implement those measures.

Cumulative Impacts to Endangered Species of Related Activities in the Action Area Are Ignored and Monitoring to Ensure Compliance is Inadequate, Leading to Ongoing Export of Selenium Contamination Beyond the Project Area.

The Project failed to consider cumulative impacts from changes to land use, transfers, and groundwater pump-ins within the “action area.” In accordance with 50 CFR 402.02, the action area includes all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. No data are provided to assess the following several types of potential impacts to the environment:

1. Impacts to CVP and SWP water supply canals used to deliver the water to the districts (the San Luis and Delta-Mendota Canals), and the resultant impact from irrigating these toxic soils.

After the water is applied to the agricultural lands within Westlands and the other San Luis Unit districts, the irrigation results in polluted water containing a composition of compounds introduced from its use, some of which is directed to the Grassland Bypass Project and associated channels, the San Joaquin River Water Quality Improvement Project, or other programs and components included in the term ‘Grasslands Bypass Project’ to reuse, retain, or treat the drainage water. Thus, all of these areas and impacts must be included in the action area. Ultimately, the water exported from the San Francisco Sacramento-San Joaquin River Estuary for irrigation of Project lands results in agricultural waste-drainage water that is directed into the federal San Luis Drain and then Mud Slough North, from which it is discharged into the San Joaquin River. The agricultural waste-drainage water discharged from the San Luis Drain has been shown to contain and introduce toxic levels of selenium to downstream areas even after treatment and reuse (Reclamation, 2016a), due to the extreme toxicity of selenium (Hamilton 2004). Areas that may be directly or indirectly impacted by the Project include the San Luis Drain and all natural waterways down to, and including, the Delta. By name, these natural waterways include Mud Slough North starting from the discharge point, the main stem of the San Joaquin River receiving water from this action, down to the southern Delta, including Old River and Middle River, and the southern Delta, ending where the Delta joins with the San Francisco Bay. Selenium contaminants are known to accumulate in the food chain and impact salmon, steelhead, sturgeon and other aquatic food chain resources. NMFS recommended in 2000 and 2010 a limited 2-year extension to assess the viability of treatment plans due to impact and take of endangered species:

The potential effects of the WY 2010 Interim Flows on selenium levels at Hills Ferry and downstream are currently under review. The high levels observed in the San Joaquin River at Hills Ferry from August 2009 to January 2010 are a cause for concern....Changing the water quality objective from a 5 ug/L 4-day average to a 15 ug/L monthly mean could allow significant elevation(s) in selenium levels that could cause take of listed anadromous species in the lower San Joaquin River Basin and Delta...NMFS, therefore, supports extending the Basin Plan Amendment compliance date for meeting selenium objectives in Mud Slough and the San Joaquin River from the confluence with the Merced to Mud Slough for an interim period of two years...¹⁹

Reclamation has instead reduced the monitoring for selenium in the San Joaquin River, Mud Slough and to the confluence with the Merced to Mud Slough and in the south Grasslands wetland supply channels.

¹⁹ Howard Brown, Acting Supervisor, Central Valley Office NOAA, September 22, 2010 letter to SWRCB Re Comment Letter--San Joaquin River Selenium Control Plan Basin Plan Amendment ARN 151422SWR2001SA5967.

2. **Impacts from the groundwater pump-in projects to the Delta Mendota pool from Widren Water District²⁰ and Westlands Water District²¹.** Pump-in projects refer to the practice of pumping groundwater from wells into receiving waters, such as the Delta Mendota Pool and the California Aqueduct, in order to lower the water table. This practice will likely increase if more irrigation water is supplied to areas like Westlands. Monitoring for this and other pump-in projects is limited and has not been subject to public review. No data is provided in the Project EA as to selenium contamination levels or cumulative impact from these pump-in discharges to receiving waters. Additionally another pump-in project for the San Joaquin Exchange Contractor's transfer program that expired in 2015 and was recently re-authorized by Reclamation for an additional 25 years. And there is yet, another 25 year groundwater pump in and exchange transfer program that was authorized in 2008.²² These additional project approvals of more federal contractor discharges, have the potential to cumulatively impact endangered species such as the giant garter snake and California Least Tern that rely the habitat created by ground water seepage into wetland channels and also reproductive impacts from selenium contamination that accumulates in the water, food chain and food sources.

3. **Impacts from Westlands Water District's pump-in of groundwater to the California Aqueduct.²³** This is a 5-year pilot project under a 25-year authorization whereby Westlands is allowed to pump-in up to 30,000 acre feet a year under specified conditions, required that the ground water being pumped into the aqueduct is not contaminated with selenium and other contaminants beyond MCL drinking water standards. Unfortunately, the drinking water standard for selenium is not protective of fish and wildlife and these waters are the sole source of water feeding the critical habitat for the Buena Vista Lake Ornate Shrew. The monitoring required (only monthly) and the discharge limits do no protect of designated beneficial uses. It is doubtful selenium spikes will be caught with such limited monitoring. No NPDES permit for discharge of this water into the California Aqueduct was required and the Project provides no analysis regarding the impact from spreading selenium contamination throughout the aqueduct where it can accumulate and impact fish and wildlife, as well as humans who ingest fish from the canal. Ribbons of selenium contaminated water flowing through the western San Joaquin Valley also will likely result in takings of migratory birds, and yet there is no monitoring, analysis, or compliance with the Migratory Bird Treaty Act provided in the Project.

Conclusion

The Project falls short of protecting beneficial uses and of evaluating, disclosing, regulating and monitoring the impacts of the proposed water exports and the resulting pollution discharge. Reclamation needs to ensure the protection of the quality of the Nations' waters and adherence to non-degradation

²⁰ https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=30446 In 2017 Reclamation sanctioned the Discharge of 1,000 acre feet of shallow groundwater from Widren Water District into the Delta Mendota Canal for export to south of the Delta use including Westlands.

²¹ https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=11472 November 2012 Reclamation sanctioned a ten year pump-in project to convey 50,000 acre feet of groundwater to Westlands and other south of the Delta users with a monitoring program that is suppose to report constituents of concern including monitoring for Selenium. No data or reports have been provided to the public.

²² https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=9086. SJEC 150,000 AF transfer program 2014 Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2014-2038 EIS/EIR & https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=3037 25 year 2008 SJEC Pump-in Project.

²³ Environmental Comments on the Draft Environmental Assessment Westlands Water District Groundwater Warren Act Contract EA-15-001 & FONSI-15-001. March 26, 2015 to Bruce Lawrence, Bureau of Reclamation See also https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=21023

requirements of surface waters including the San Joaquin River along with endangered and threatened species including salmon, steelhead, sturgeon, other aquatic species and migratory birds that are likely adversely impacted.

The Project is not consistent with federal and state law and fails to implement required federal and state mitigation requirements contained in the FEIR/EIS, USFWS Reasonable and Prudent measures required in USFWS's Biological Opinion and the USBR governing 3rd Use Agreement. The failure of the Project to adhere to these required mitigation measures and monitoring requirements renders protection of beneficial uses of sloughs, wetlands, river and the Bay-Delta estuary at risk from extensive contamination and leaves the costs of cleanup and remedies upon the public.

In our view, Reclamation has displayed a staggering:

- Lack of public disclosure and consideration of public comment across an extended period of serial renewals of interim water contracts.
- Disregard for meeting commitments made in previous renewals and related projects.
- Disregard for considering impacts of water contract renewals on endangered species and water quality beyond the physical boundary of the Project.
- Disregard for legal requirements of the Endangered Species Act, Migratory Bird Treaty Act, Central Valley Project Improvement Act, the National Environmental Policy Act, and other federal requirements.

For these and other reasons presented above we recommend nonrenewal of the interim contract as proposed. Reclamation must prepare a full EIS that evaluates a full range of alternatives to the proposed action, including reduced contract delivery alternatives. Reclamation must also reinitiate consultation under the Endangered Species Act with the U.S. Fish and Wildlife Service, and pursuant to section 7(d) of the Act, must avoid any irreversible or irretrievable commitment to resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent measures developed during this consultation. Thank you for considering our comments, please submit these for the record.



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