

December 12, 2019

Mr. Colin Davis  
U.S. Bureau of Reclamation  
South-Central California Area Office  
1243 N Street  
Fresno, CA 93721

RE: Comments on Draft Environmental Assessment Cross-Valley Contractors Interim  
Renewal Contracts (Draft EA-19-0441)--An abuse of discretion and failure to comply with federal law.

Dear Mr. Davis,

The undersigned respectfully submit the following comments regarding the above referenced Draft Environmental Assessment (DEA) 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.

Federal law and regulation *'require at least thirty (30) calendar days before making the decision on whether, and if so how, to proceed with a proposed action, the Responsible Official must make the EA and preliminary FONSI available for review and comment to the interested federal agencies, state and local governments, federally-recognized Indian tribes and the affected public. The Responsible Official must respond to any substantive comments received and finalize the EA and FONSI before making a decision on the proposed action.'*<sup>2</sup> Failure to provide these essential documents for public review prevents comment and does not comply with the disclosure and transparency required by the National Environmental Policy Act. We note that no draft FONSI was included for review during the public comment period for these interim contracts.

**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

<sup>1</sup> [https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=41281](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=41281)

Draft EA for Cross Valley interim water service contracts & the last Cross Valley contractors' draft interim contracts posted on the USBR.gov site is for 2016:

[https://www.usbr.gov/mp/cvpia/3404c/lt\\_contracts/2016-int-cts/index.html](https://www.usbr.gov/mp/cvpia/3404c/lt_contracts/2016-int-cts/index.html)

<sup>2</sup> 40 CFR § 6.203 - Public participation.

Valley Water Project Contracts.<sup>3</sup> 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 four counties—Fresno, Tulare, Kings, and Kern with source water impacts from Trinity, Sacramento, Placer, San Joaquin, Merced, and Stanislaus counties, just to name a few, this “new” DEA proclaims that renewal of up to 128,300 acre feet of exports from the Delta will have minor impacts to biological resources (DEA @pdf pg 32).<sup>2</sup> Without analysis or data, the DEA asserts that these eight interim renewal contracts and proposed Article 5 exchanges will not have no more than a “minor” impacts to the environment.<sup>4</sup> Further, it is claimed, there is no need for consultation the National Marine and Fishery Service and cites the CVP/SWP Coordinated Operations consultation (@ pg 42).<sup>5</sup>

We understand, according the DEA, @pdf pg 42 that “*Reclamation will consult with USFWS on the Proposed Action. This EA will not be finalized until consultation is complete.*” Some of the Cross Valley and Article 5 Exchange service areas include designated critical habitat for federally listed species. As denoted in the DEA (@pdf pg 25), Critical habitat exists in the affected environment for the following species: Buena Vista Lake shrew, California condor, California tiger salamander, Hoover’s spurge, San Joaquin Valley Orcutt grass, succulent owl’s-clover, vernal pool fairy shrimp, and vernal pool tadpole shrimp. The proposed actions could 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.<sup>6</sup>

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 @pdf pg 14] No analysis or data 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.

<sup>3</sup> 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.

<sup>4</sup> “Up to 128,300 acre-feet (AF) per year (AF/y) of the Cross Valley Contractors’ contractual CVP water supply from the Delta would be allowed to be transferred under the exchange arrangements for Friant Division CVP supplies and other sources (other sources of water include rivers, streams, creeks, previously banked surface water, and State Water Project [SWP] water). The Cross Valley Contractors and potential exchange partners (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 pg 13]. All of the Cross Valley Contractors are currently on their seventeenth interim renewal contract. The Proposed Action would be their eighteenth. The Proposed Action also includes Reclamation’s transfer approvals associated with the Cross Valley Contractors exchange arrangements with individually proposed exchange partners for the same time period as the interim renewal contracts for up to the full Cross Valley Contractors’ CVP contract supply (up to 128,300 AF/y). In addition, the Proposed Action would include the continued transfers associated with the historical exchanges between the Cross Valley Contractors and Arvin-Edison Water Storage District (Arvin-Edison). [DEA @pdf pg 17].

<sup>5</sup> DEA @pdf pg 42: “Reclamation has determined that there would be no effects to species and critical habitats for the Proposed Action under the jurisdiction of NMFS that have not already been addressed.”

<sup>6</sup> NRDC v. Rodgers, No. S-88-1658 LKK, Order at 19-20 (May 31, 1995).

## 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, besides the proposed action, was the no action alternative. The no action alternative is briefly discussed and dismissed out of hand (DEA @ pdf pgs 15-16]. The DEA incorrectly assumes that Reclamation is bound by law to renew these contracts. Reduction of contract water quantities due to delivery constraints on the CVP system was eliminated from the analysis of the eight IRCs. The DEA proposes to renew full contract quantities for a period of 2 years. These contract quantities are justified by outdated, inaccurate data, and bias that renders the Water Needs Assessment (WNA) insufficient in addressing shortcomings identified by the 9<sup>th</sup> Circuit Court<sup>7</sup>. Further, the 9<sup>th</sup> Circuit Court ruled in their July 25, 2016 Amended Memorandum that “*Reclamation’s decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study... On remand, the district court shall direct Reclamation consider such an alternative in any future EA for an interim contract renewal.*”<sup>8</sup>

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:

*“The eight interim renewal contracts contain provisions that allow for adjustments resulting from court decisions, new laws, and from changes in regulatory requirements imposed through re-consultations. Accordingly, to the extent that additional restrictions are imposed on CVP operations to protect threatened or endangered species, those restrictions would be implemented in the administration of the eight interim renewal contracts considered in this EA, to the extent allowed by law. As a result, by their express terms the interim renewal contracts analyzed herein would conform to any applicable requirements imposed under the federal ESA or other applicable environmental laws.” [DEA @pdf pg 17]*

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 Cross Valley 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 and CVPIA water obligations including water for fisheries restoration and

<sup>7</sup> See Appendix B and C of the Draft EA, Central Valley Project (CVP) Water Needs Assessments (WNA) Purpose and Methodology, and Westlands WD WNA.

<sup>8</sup> See: <https://cdn.ca9.uscourts.gov/datastore/memoranda/2016/07/25/14-15514.pdf>

improvement as established in CVPIA Sections 3406 b(2) and b(3) and for refuge water management needs as established in 3406(d).<sup>9</sup>

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

The DEA assumed that “Reclamation would continue to comply with commitments made or requirements imposed by applicable environmental documents, such as existing biological opinions including any obligations imposed on Reclamation resulting from re-consultations.” [pdf pg 17] 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.<sup>10</sup>

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.<sup>11</sup>

<sup>9</sup> <https://www.usbr.gov/mp/cvpia/docs/public-law-102-575.pdf>

<sup>10</sup> <https://www.animallaw.info/case/natural-resources-defense-council-v-rodgers>

<sup>11</sup> “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

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 @ pdf pg 31 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. 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 reinstate consultation as appropriate on 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.

The USFWS in their consultation of Cross Valley interim contract renewals in 2014, noted that Reclamation had approved a number of CVP water contract assignments without notifying the USFWS. As is noted in the consultation (@ pg 3)<sup>12</sup>:

*The CVPIA BiOp included a commitment regarding coordination with the Service on CVP Water Assignments. As is noted on page 2-40 of the CVPIA BiOp, "Reclamation will provide information related to proposed new water assignments of Project water to the Service's SFWO Endangered Species Division prior to execution of the assignment." And further on page 2-70,*

*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.”*

<sup>12</sup> See [http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc\\_ID=8831](http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=8831)

*item I. 8., stipulating that Reclamation will establish a process that will provide necessary information to the Service's SFWO Endangered Species Division in situations where a determination of "no affect" has been made, sufficiently in advance, to enable the Service's review.*

*Since the last round of CVC IRCs, Reclamation has executed CVP contract assignments for TriValley Water District (WD), Kern Tulare WD, and Hills Valley Irrigation District (ID) from Friant Division contractors. The Service was notified by Reclamation regarding the Kern Tulare WD contract assignment and the Service provided comments to Reclamation on the Draft EA for that water assignment on October 11, 2011. The Friant BiOp identified over 3,000 acres of land within Kern-Tulare Water District with moderate to high habitat value to listed species. The Service commented that it would be helpful to know what the current disposition of those land use types are in the district, and whether this water would be used on any of these lands that were not in cultivation at the time the Friant BiOp was completed. No mapping data was provided to the Service for the Kern Tulare WD water assignment.*

*The Service has no record of being notified for the remaining 3 water assignments involving Tri-Valley WD and Hills Valley ID.*

- 1. An assignment of 400 acre-feet of Exeter ID's CVP Friant Division Class 1 water to Tri-Valley WD.*
- 2. An assignment of 250 acre-feet of Lewis Creek WD's CVP Friant Division Class 1 water to Hills Valley ID.*
- 3. An assignment of 1,000 acre-feet of Porterville ID's CVP Friant Division Class 1 water to Hills Valley ID.*

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. Continued operation of the CVP and SWP is likely to jeopardize the continued existence of endangered species in the Delta, and stormwater runoff and subsurface agricultural drainage from GBP and nearby CVP-irrigated lands contaminates the San Joaquin River and hence the Delta with selenium and other toxic constituents. See testimony from Restore the Delta on Salinity and Selenium Science and Modeling for the Bay/Delta Estuary.<sup>13</sup>

Reclamation goes on to determine in the DEA without analysis or information that the “*Effects to Delta species and critical habitats, such as the Delta smelt, salmonids, and green sturgeon which are the result of CVP operations, are addressed in the CVP/SWP Coordinated Operations consultation. As*

<sup>13</sup> Testimony on Recent Salinity and Selenium Science and Modeling for the Bay/Delta Estuary Submitted by Tim Stroshane Senior Research Associate California Water Impact Network (CWIN) August 17, 2012 [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/RestoretheDelta/part2/RTD\\_161.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/RestoretheDelta/part2/RTD_161.pdf)



*such, Reclamation has determined that there would be no effects to species and critical habitats for the Proposed Action under the jurisdiction of NMFS that have not already been addressed.” [DEA @pdf pg 42]* This claim is not supported by fact. The 2019 Biological Opinions identified in the document has been challenged in court<sup>14</sup>, and 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. This fails to consider violations of temperature, salinity and flow requirements of D-1641. There have been repeated violations of the Clean Water Act standards<sup>15</sup> and Endangered Species Act requirements under the Reasonable and Prudent Alternatives. CVP operations and the exports of water pursuant to this interim contract have consistently violated the Coordinated Operation Act of 1986 requiring adherence to Delta Water Quality Standards contained in D-1485 and subsequent water quality standards. [Also see Exhibit C]

### **Land Use Effects of the Interim Water Service Contract have not been Adequately Addressed in the Draft EA**

The DEA (@pdf pg 18) includes an environmental protection measure for biological resources, “No CVP water would be applied to native lands or land untilled for three consecutive years or more without additional environmental analysis and approval.” Yet, no land use data analysis is provided in the DEA to ensure compliance with this measure. The DEA also does not identify a mechanism that Reclamation would use to confirm compliance with this measure. Lastly, the DEA fails to identify what the consequences of non-compliance would be.

Reclamation goes on to determine in the DEA without analysis or information that the “*Under the Proposed Action, only minor indirect impacts would occur to biological resources. The species detailed in the Affected Environment may be subject to minor impacts due to routine farming activities. Critical habitat and other native lands would not be affected due to restrictions on land use, or because in some cases, the critical habitat lies outside the Proposed Action area.*” [@ pdf pg 32]

Although the DEA professes, “*The Proposed Action would meet environmental commitments in existence as a result of existing biological opinions, including those for the CVPIA*”, none of the monitoring or mapping required in the Biological Opinion on Long Term Contract renewal of Friant and Cross Valley Unit Contracts January 19, 2001, File Number 1-1-01-F-0027 (Friant BO) is provided in this DEA. It is critically important to understand and evaluate the effectiveness and effects of the 20 years of water deliveries that have occurred. USFWS. See pages 2-31 to 2-32 of Friant BO:

<sup>14</sup> See: <http://www.courthousenews.com/wp-content/uploads/2019/12/Bay-Delta-Complaint.pdf>

<sup>15</sup> Of particular note, the SWRCB, referencing WR Order 90-05, stated in WR 92-02 at page 9: *The State Water Board also has advised the USBR that decisions on water deliveries are subject to the availability of water, and that water should not be considered available for delivery if it is needed as carryover to maintain an adequate cold water pool for the fishery.* SWRCB warned against USBR decisions to maximize water deliveries in the initial years of a drought and failing to maintain sufficient carryover storage to protect fisheries and public trust resources.

*“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]*

In February 2014 the USFWS determined in a consultation on Cross Valley interim contract renewals that Reclamation and Cross Valley interim contractors had failed to abide by monitoring and mapping required and concluded that without consistent land use classification, loss of habitat cannot be reliably tracked. The CVPIA BO included a Comprehensive Mapping and Land Use Monitoring and Reporting Program to test and track, for the purpose of validating over the life of the project, the assumptions made in the CVPIA BO that the baselines of the species in Appendix B are stable or increasing:<sup>16</sup>

*“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 then every 5 years thereafter. The Service is unaware of any recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation since 2005. Habitat maps provided by Reclamation in the BE for this consultation for Article 5 Exchange contractors date back to 2003. The land use data in those maps was not classified the same as previous datasets for the Comprehensive Mapping Program and varies by County with regard to the date. Additional habitat maps for the CVC contractors provided by Reclamation via e-mail on December 18, 2013 came from various data sources from 2008 and 2010, and the land use classifications are also, not the same as previous datasets for the Comprehensive Mapping Program. Without consistent land use classification, loss of habitat cannot be reliably tracked. No information was provided by Reclamation on habitat trends for listed species (e.g., comparing current extent of listed species habitats with prior datasets).*

The Service referred Reclamation to the language regarding the Comprehensive Mapping Program on page 2-64 of the CVPIA BO:

*“Reclamation and the Service will use the best scientific and commercial information available, in conjunction with data from aerial photograph analysis to monitor trends in the environmental*

<sup>16</sup> USFWS ESA consultation on Cross Valley Interim Contracts, 2014-2016, Appendix G of the Final EA available here: [https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=16785](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=16785)



*baseline for listed species. It is the ultimate goal of Interior to assure that listed species are being recovered. For any species affected by the CVP that are continuing to decline, the Service and Reclamation will immediately assess critical needs for the species and determine whether it is appropriate to expand the Conservation Program or implement other conservation measures. Any native habitat converted to agricultural or municipal/industrial use within the water service area without prior biological surveys, as required by Reclamation prior to the delivery of Reclamation water, will be evaluated to determine what mitigation measures will be required."*

The Service identified a number of information needs for future Cross Valley interim contracts (@ pg 8-9). It appears that none of these information needs have been met for these interim contract renewals in the current DEA:

"In order to facilitate future consultations on CVC IRCs or long term contract renewals (whichever comes first) the Service asks that the following be included with Reclamation's materials provided for initiation of those consultations under the Act:"

#### Applicant Status or Change to Contract Language

Article 3(e) of the IRC contracts for the CVC IRCs includes the following language with respect to consultation under the Act:

"The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement." Because the contract includes language relevant to the Contractors' compliance with the Act in their use of the CVP water authorized by these IRCs, the Service recommends that prior to the next IRC or Long Term Contract Renewal, Reclamation will complete one of the following:

- ensure Applicant status from the Contractors involved, or,
- amend the language in Article 3(e) of the CVP contract to include, "the Contractor shall notify the Service prior to delivery of Project Water to undeveloped land to verify compliance with the Endangered Species Act."

#### Comprehensive Mapping Commitment from CVPIA BiOp

Prior to the next IRC or long term contract renewal, whichever comes first, the comprehensive mapping effort from the CVPIA BiOp should be updated in coordination with the Service, using current imagery and compared with the previous habitat mapping efforts of the CVP POU completed by Reclamation. This mapping effort is necessary to update the environmental baseline and to verify assumptions by Reclamation that these IRCs do not result in land use changes that would affect federally-listed species or critical habitat. As denoted on page 2-64 of the CVPIA BiOp, for any species affected by the CVP that are continuing to decline (i.e., additional habitat loss is identified), the Service and Reclamation will immediately assess critical needs for the species and determine whether it is appropriate to expand the Conservation Program or implement other conservation measures.

#### 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:

- Summary of recent water deliveries and Article 5 Exchanges for the contractors under consideration in this consultation.

- 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.).

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

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. Reclamation has failed to consult or complete consultation on numerous actions specifically authorized by the contracts, renewals, exchanges and transfers [sales].

The list of EA’s (@pdf pgs 9-10) from 1994 to 2017, 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 2019 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, Article 5 Exchanges were incorporated into the EA for the Cross Valley interim contracts 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 12] 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 DEA, 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.<sup>17</sup>

Still other impacts 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 water quality of refuge water supplies in the San Joaquin Valley which can affect habitat for a variety of listed species. Further, as part of the Grassland Bypass Project, Reclamation has continued to authorize use of the San Luis Drain to discharge drainage and stormwater to Mud Slough (North) and the San Joaquin River, and ultimately to the San Francisco Bay-Delta and each of these 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

<sup>17</sup> 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](http://www.usbr.gov/mp/PA/water/docs/CVP_Water_Transfer_Program_Fact_Sheet.pdf)

numerous listed species (including the Buena Vista lake ornate shrew, giant garter snake, Sacramento winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and green sturgeon). These discharges also contaminate, and adversely modify, critical habitat for several of these species.<sup>18</sup> The undersigned organizations have long-standing interests in the GBP because contaminants in agricultural drainage discharges have profound effects to the environment, including effects to downstream waterways, aquatic life, and migratory birds. We hereby include our previous comments on the GBP EIR/EIS and Basin Plan Amendment by reference.<sup>19</sup>

The San Francisco Bay and Delta ecosystem is at risk due to environmental degradation, including impacts from elevated levels of selenium. Waterways in the North Bay and Delta including Carquinez Straits, Suisun Marsh, and Sacramento San Joaquin Delta are listed as impaired for selenium on the 303(d) list (being addressed by a USEPA approved TMDL).<sup>20</sup> Sources of selenium contamination include agricultural drainage from irrigation of drainage impaired lands in the CVP on the west-side of the San Joaquin Valley and effluent discharges from oil refineries (Linares et al 2015; Presser and Luoma 2010). At risk species include federally listed as threatened or endangered, green sturgeon, Chinook salmon, steelhead trout, delta smelt, Sacramento splittail and the California Ridgway's rail, as well as many migratory bird species that use the estuary as a wintering ground, including greater and lesser scaup, and white-winged, surf, and black scoters. At the State of the Estuary Conference in 2019, Dr. Rachel Johnson of NOAA Fisheries gave a presentation that included discussion of high numbers of spinal deformities in Sacramento splittail observed in the Delta. These kinds of deformities are consistent with selenium toxicity effects.<sup>21</sup>

<sup>18</sup> 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

<https://www.fws.gov/sacramento/es/Critical-Habitat/Vernal-Pool/>

CA Tiger Salamander in 2005 <https://www.fws.gov/sacramento/es/Critical-Habitat/CA-Tiger-Salamander/>

Along with other critical habitat designated in CV counties that impact the Buena Vista Lake Shrew <https://www.govinfo.gov/link/fr/78/14245?link-type=pdf>

<sup>19</sup> These comments are as follows: Coalition comments of environmental, fishing, and environmental justice organizations opposed U.S. EPA's proposed federal water quality criteria for selenium applicable to California. March 28, 2019. Available at <http://calsport.org/news/wp-content/uploads/PCL-et.-al-Cmt-Letter-EPA-CaSelenium-Criteria-Doc-No.-EPA-HQOW-2018-00....pdf>; Comments of the Pacific Coast Federation of Fishermen's Associations Requesting Denial of Proposed Waste Discharge Requirements for Surface Water Discharges from the Grassland Bypass Project, Stephan C. Volker. June 22, 2015. Available at [https://www.waterboards.ca.gov/centralvalley/water\\_issues/grassland\\_bypass/wdrs\\_development\\_archive/2015may/2015\\_05\\_gbp\\_com\\_pcffa.pdf](https://www.waterboards.ca.gov/centralvalley/water_issues/grassland_bypass/wdrs_development_archive/2015may/2015_05_gbp_com_pcffa.pdf); Re: Land Retirement Benefits to Grasslands Bypass Project and Draft Waste Discharge Requirements, Coalition Letter to CVRWQCB Follow-up on Grasslands WDR. September 8, 2014. Available at <http://calsport.org/news/wp-content/uploads/Coalition-response-letter-toLongley-re-gbp-land-retirement.pdf>; Coalition Comments Re Draft Waste Discharge Requirements for the Grassland Bypass Project. June 30, 2014. Available at <http://calsport.org/news/wp-content/uploads/Finalcoalition-comments-on-Draft-GBP-WDR-6.30.14.pdf>.

<sup>20</sup> [https://www.waterboards.ca.gov/water\\_issues/programs/tmdl/2014\\_16state\\_ir\\_reports/category4a\\_report.shtml](https://www.waterboards.ca.gov/water_issues/programs/tmdl/2014_16state_ir_reports/category4a_report.shtml)

<sup>21</sup> <https://mavensnotebook.com/2019/12/05/state-of-estuary-standing-too-close-to-the-elephant-addressing-scales-in-restoration-and-fisheries-conservation/>

## **Conclusion**

We conclude that continuing to renew interim water supply contracts, as presently proposed by Reclamation would violate NEPA, the Administrative Procedures Act, Central Valley Project Improvement Act, Endangered Species Act and other federal statutes. We urge Reclamation not to renew the interim contracts unless and until there is full compliance with laws and Congressional directives. Only a full EIS that comprehensively assesses the far-ranging and complex direct and secondary effects of irrigation can illuminate the total environmental impact of contract renewal. Responsible decision making requires guidance from this EIS and adherence to established legal requirements.

Thank you for the opportunity to comment.

**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 14-06-200-8237AIR13; 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.**

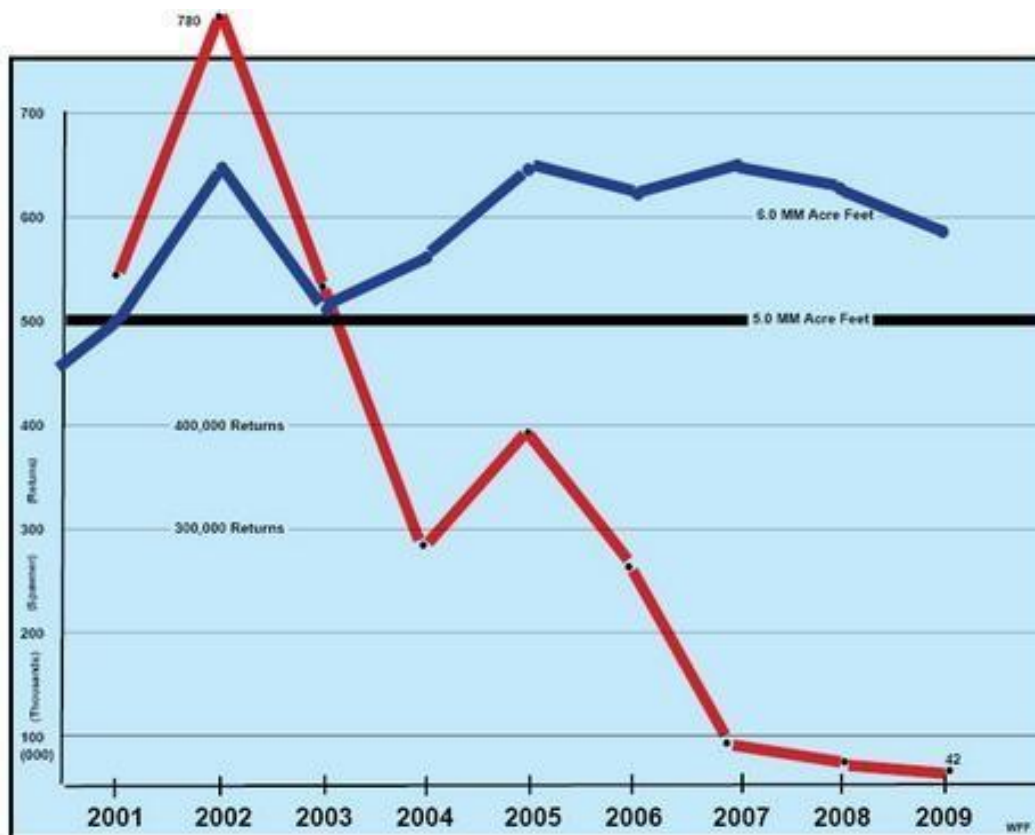
- 14. 11-15-2011 “Full Environmental Impact Statement Needed for San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche Drainage District [FONSI-10-030]” To Donald Glaser from 13 Conservation, Fishery and Community Organizations.**
- 15. 11-16-2011 Notice Inviting Public Comment 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-11011 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 B: Cross Valley Acreage considered in the Friant Biological Opinion. 01-F-0027 Table 4.1 of Friant Biop-Land Use By District.

Table 4.1 Acreage of Land Uses, by District, in Friant and Cross-Valley Divisions

District (Cross-Valley in Italic)	LOWER HABITAT VALUE/CONVERTED AREAS										VARIABLE VALUE-SUBSTANTIAL TO LOW										MODERATE TO HIGH HABITAT VALUE										District Total			
	Residential	Commercial	Industrial	Urbanized	Misc Other Built	Landscaped	Crop/Pasture	Feedlot	R.O.W.s	Unimproved	Orchard/Vineyard	New ag.	Mixed, Pasture/Transitional	Fallow	Rangeland	Deciduous Forest	Evergreen Forest	Forested Wetland	Nonforested Wetland	Sandy Areas	Water	60.00												
ALPACHA I.D.	11	0	0	0	58	0	0	7,129	16	84	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11,776		
Alpach + Alach Island	0	0	0	0	0	0	0	7	0	4	0	0	0	0	0	91	3,447	0	0	0	36	0	0	0	0	0	0	0	0	0	0	34		
ARVIN-EDISON W.D.	540	289	1,348	2,817	874	286	80,254	249	770	0	0	0	0	52,871	0	0	2,052	8,190	0	0	0	0	0	0	0	0	0	0	0	0	0	1,234	132,456	
ATWELL ISLAND W.D.	0	0	0	0	0	0	4,469	0	0	0	0	0	0	0	0	0	0	2,895	0	0	0	0	0	0	0	0	0	0	0	0	0	6		
CHOWCHILLA W.D.	868	364	273	772	60	51	44,728	1,232	423	0	0	0	0	27,289	0	0	0	2,895	0	0	0	13	36	0	0	0	0	0	0	0	0	7,214		
CITY OF LINDSAY W.S.A. (both Divisions)	0	222	96	455	0	0	0	0	0	0	0	0	0	0	0	4,289	4,944	68	0	0	82	0	0	0	0	0	0	0	0	0	230	86,570		
City of Lindsay - Lindmore	0	3	0	203	22	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	504		
City of Lindsay - Lindmore + Lindsay-Strathmore	0	0	0	1	0	0	0	0	0	0	0	0	0	182	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	410			
City of Lindsay + Lindsay-Strathmore	0	24	37	123	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2			
CITY OF ORANGE COVE	0	143	21	546	46	0	0	0	0	0	0	0	0	97	0	0	0	19	0	0	0	0	0	0	0	0	0	0	0	0	367			
City of Orange Cove + Orange Cove I.D.	0	0	0	9	0	0	0	0	0	0	0	0	0	121	0	0	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0.2	915		
CITY OF VISALIA	0	2,569	0	8,760	653	539	2,781	2	202	0	0	0	0	1,901	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	43		
City of Visalia + Tulare	0	16	0	37	4	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	45	0	0	0	0	0	0	0	0	0	17,226			
DELANO-EARLMART I.D.	0	54	198	699	46	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	89			
EXETER I.D.	0	138	23	1,309	37	0	0	0	0	0	0	0	0	30,463	0	0	209	444	0	0	0	0	0	0	0	0	0	0	0	0	0	625	56,483	
Exeter + Lewis Creek W.D.	0	0	0	0	0	0	0	0	0	0	0	0	0	21	0	0	44	316	8	0	0	0	0	0	0	0	0	0	0	0	15	15,121		
FRESNO CO WATERWORKS #18	0	0	0	170	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	30		
FRESNO CO WATERWORKS #34	0	0	0	223	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	262		
FRESNO I.D.	7,354	9,887	2,310	41,878	6,085	869	47,178	1,317	1,088	36	116,302	0	21	1,240	10,873	93	0	0	882	296	0	0	0	0	0	0	0	0	0	0	0	0	1,501	
GARFIELD W.D.	174	0	0	0	0	0	0	253	0	0	2	1,141	0	0	0	0	0	0	0	0	72	0	0	0	0	0	0	0	0	0	0	1,105	247,659	
GRAVELLY FORD W.D.	2	0	0	11	0	0	0	1,358	0	0	0	6,426	0	0	0	128	500	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,810		
HIDDEN LAKES ESTATES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8,425		
HILLS VALLEY I.D.	0	0	0	0	0	0	0	294	39	0	0	3,093	0	0	0	0	0	154	0	0	0	0	0	0	0	0	0	0	0	0	0	154		
INTERNATIONAL W.D.	0.4	0	0	0	0	0	0	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4,549		
IVANHOE I.D.	0	0	4	41	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	722		
KERN-TULARE W.D.	0	0	1	2	0	0	0	4,732	0	87	0	13,843	0	0	0	0	0	221	0	0	0	0	0	0	0	0	0	0	0	0	15	10,960		
LEWIS CREEK W.D.	0	0	0	66	0	0	0	338	0	0	0	10,581	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	43	21,559	
Lewis Creek + Lindmore	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,248		
Lewis Creek + Lindsay-Strathmore	0	0	0	1	0	0	0	1	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5		
LINDMORE I.D.	0	22	0	341	1	0	0	7,212	66	53	0	18,665	0	0	41	506	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12		
Lindmore + Lindsay-Strathmore	0	0	0	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	31	27,009	
Lindmore + Lower Tulare River	0	0	0	0	0	0	0	13	0.5	0	0	125	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	144		
LINDSAY-STRATHMORE I.D.	0	8	7	801	26	29	380	0	0	0	12,897	0	0	0	0	0	1,459	0	18	0	0	0	0	0	0	0	0	0	0	0	0	0	38	
LOWER TULARE RIVER I.D. (both Divisions)	0	136	0	828	202	0	0	79,807	3,868	559	0	9,382	0	0	717	4,276	210	0	0	1,415	0	0	0	0	0	0	0	0	0	0	0	0	166	15,594
Lower Tulare River + Pixley	0	0	0	0	0	0	0	30	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	34		
Lower Tulare River + Porterville	0	1	0	3	0	0	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	29		
MADERA I.D.	684	659	864	5,941	1,033	418	16,255	480	796	0	92,812	0	0	4,836	6,097	133	0	10	68	0	0	0	0	0	0	0	0	0	0	0	0	0	402	130,555
ORANGE COVE I.D.	0	32	0	117	2	0	0	1,212	15	0	0	29,019	0	0	0	81	1,297	25	0	0	1	0	0	0	0	0	0	0	0	0	0	0	329	28,180
PIXLEY I.D.	281	0	0	245	141	35	46,889	803	487	0	6,902	0	0	0	140	11,421	0	0	0	0	80	0	0	0	0	0	0	0	0	0	0	0	286	99,718
Pixley + Saucillo	0	0	0	0	0	0	0	76	0	0	0	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	84	
PORTERVILLE I.D.	0	26	0	1,156	22	0	8,107	129	0	0	6,582	0	0	83	0	799	0	0	0	22	51	0	0	0	0	0	0	0	0	0	0	0	16,976	
RAG GULCH W.D.	0	0	0	28	0	0	875	0	7	0	4,811	0	0	0	74	17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	13	5,925	
Rag Gulch + Delano-Earlmart	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	9	14	
Rag Gulch + Kern-Tulare	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	45	
SAUCILLO I.D. (both Divisions)	0	0	14	52	0	0	0	5	0	1	0	36	0	0	0	0	158	0	0	0	0	0	0	0	0	0	0	0	0	0	0	146	19,776	
SHAFER-WASCO I.D.	213	338	473	1,765	485	232	18,538	29	270	0	16,150	0	0	0	44	371	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	36,919	
SMALLWOOD VINEYARDS	0	0	0	0	0	0	0	0	0	0	140	0	0	0	0	11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15		
SOUTHERN SAN JOAQUIN MUD	186	679	1,109	2,498	610	216	14,376	245	663	0	35,867	34	0	0	545	3,478	0	0	18	501	0	0	0	0	0	0	0	0	0	0	0	0	645	61,476
Southern San Joaquin + Delano-Earlmart	0	0	0	1	0	0	6	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	16	
STONE CORRAL I.D. (both Divisions)	0	0	0	19	0	0	0	1,291	0	0	4,964	0	0	0	0	0	494	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	61	6,869
STRATHMORE P.U.I.D.	0	67	0																															



**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 (<0.3% 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.