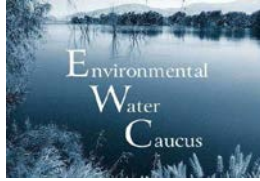




AQUALLIANCE
DEFENDING NORTHERN CALIFORNIA WATERS



CA Save Our Streams Council



April 27, 2020

Ernest Conant,
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2800 Cottage Way
Sacramento CA 95825-1898

Erma Leal
Repayment Specialist - SCCAO-445
Dept. of Interior | Bureau of Reclamation
Interior Region 10 - California - Great Basin
South-Central California Area Office

Via email and Regular Mail

Re: Comments on WIIN Act Final Conversion Contract (“Final Modified Contract”) between the U.S. Bureau of Reclamation (Reclamation) and Westlands Water District (Westlands): Fails to Comply with Reclamation policy and Federal and State Laws.

Dear Mr. Conant and Ms Leal;

Our organizations are providing comments on the Final Modified Contract, although this Contract still has not been released to the public. We previously submitted comments to Reclamation on the WIIN Act Draft Conversion Contracts between Reclamation and Westlands on January 6 and 7, 2020 (incorporated by reference).¹ The Draft Repayment Contracts,

¹ <http://calsport.org/news/wp-content/uploads/1-7-20-O-cmts-Reclamation-Westlands-k.pdf>

however, were actually draft templates with none of the critical exhibits, such that comments were necessarily incomplete. The following is a summary of our comments on the Final Modified Contract, with detailed comments on key topics attached.

This Final Modified Contract was executed on February 28, 2020, without public negotiations or public release of the final contract and its exhibits. We received a copy only through a Public Information Request. This contract will provide the Westlands with a base allocation of 12 million acre-feet over the first 10 years. This is the largest water services contract managed by Reclamation and will have major impacts on the environment.

This Final Modified Contract is riddled with gaps and undisclosed provisions, as detailed in attached comments. Millions of dollars to be repaid by Westlands are deleted without explanation. Sections of the proposed contract are missing and others remain undisclosed. Attachments are identified and referenced, but withheld and undisclosed. The true amount of water to be provided is not disclosed to water users in the Delta, North of the Delta, South of the Delta, the San Joaquin Valley and Southern California. True costs and subsidies are misrepresented or just omitted. Key examples include:

- Congressionally mandated water quality standards and protections are removed and instead left to the discretion of the functionary contracting officer and Westlands to the "*extent feasible.*"
- Congressionally mandated limits on the water service area are left to the discretion of the functionary contracting officer and Westlands to modify. We know of no Reclamation regulation or law that grants such authority to a contracting officer to deliver water outside of the Congressionally designated service area. Further, this provision of the Contract directly contradicts the specific acreage specified for delivery to the San Luis Unit.²
- The Modified Final Contract fails to comply with (1) the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321 et seq., (2) the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq., (3) Federal Reclamation law, (4) CEQA Public Resources Code 21000-21189 and CESA Cal. Fish & Game Code §§2050-2106.5, and (5) CVPIA in general and specifically Section 3404(c)(2) which requires that provisions of *law* be written as *contract terms* enforceable between the parties. These enforceable provisions of law required by the CVPIA are absent from the contract.
- The Contract evades water quality requirements specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986

<http://calsport.org/news/wp-content/uploads/PCL-et.-al.-Comments-on-WWD-Permanent-Contract-Conversion-Jan-6-2020.pdf>

² See PL 86-488: *Be it enacted by the Senate and House of Representatives of the United States of America in Congress That (a) for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area.* emphasis added.

(100 Stat. 3050) Federal Coordination Act ³ or other existing Federal laws, by omitting these water quality obligations and the obligation to meet repayment by 2030.

- New cost allocation formulas as of January 2020 and other Reclamation actions reduce the amount Westlands owes for repayment by over 120 million dollars.
- Reclamation law and regulations requiring public notification, recirculation, and public comment on the Modified Final Contract were ignored.
- Cumulative impacts are ignored. Reclamation is in the process of converting virtually all CVP water service contracts, about 77 of them, into permanent water repayment 9(d) contracts similar to the Westlands Contract.⁴ Pursuant to NEPA, “cumulative impact” “is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. . . .” (NEPA Regulations § 1508.7.) The cumulative environmental impacts of converting all of Reclamation’s contracts into permanent contracts will be enormous and adverse, but have not been considered.

The Final Modified Contract is substantially different from the incomplete draft contract made available for public review in October 2019. The public interest has been significant (see the 76 detailed comments in exhibit 5). Press reports of the secrecy, unexplained financial changes, and lack of public notification have been extensive.⁵ Given the significance of the alterations

³ <https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3050.pdf> See Section 101 Project Operation and Section 102 Reimbursable costs for salinity control.

⁴ On December 20, 2019, Reclamation gave public notice on its web site that 77 contractors had requested contract conversions. The same notice said that 14 of the contract conversions had already been negotiated and the public comment period on those contract conversions would close on February 19, 2020. The subject contracts were spread among the Central, Northern, and South Central California Area Offices. See: <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=69044>

⁵ See

1. ***Interior proposes coveted deal to ex-client of agency head*** Associated Press By Ellen Knickmeyer, November 8, 2019 <https://apnews.com/4527b2b31fcf452f8e6d35afcebc8cf2>
2. ***Interior Secretary Bernhardt’s previous job raises questions about a deal for his ex-client***, Los Angeles Times By Michael Hiltzikbusiness Columnist, Nov. 15, 2019 <https://www.latimes.com/business/story/2019-11-15/interior-secretary-westlands-water-deal>
3. ***California must help kill sleazy Westlands water deal*** Mercury News & East Bay Times Editorial Boards | <https://www.mercurynews.com/2019/11/15/editorial-westlands-water-deal-smells-of-politics/>
4. ***Feds set to lock in huge water contract for well-connected Westlands Water District*** 11-19-2019, Los Angeles Times, Boxall <https://www.latimes.com/environment/story/2019-11-11/westlands-water-district-federal-water-contract>
5. ***Interior Proposes Coveted Deal to Ex-Client of Agency Head*** *The Interior Department is proposing to award a contract for federal water in perpetuity to a powerful water district that used to employ Secretary David Bernhardt as a lobbyist.* US News and Reports <https://www.usnews.com/news/politics/articles/2019-11-07/interior-proposes-coveted-deal-to-ex-client-of-agency-head>
6. ***Groups slam Trump administration’s sweetheart water deal with Westlands Water District*** Dan Bacher, Friday November 08, 2019. <https://www.dailykos.com/stories/2019/11/8/1898102/-Groups-condemn-Trump-administration-s-sweetheart-water-deal-with-Westlands-Water-District>

and the extensive public interest, public review is required by Reclamation policy.⁶ At a minimum, according to Reclamation policy and regulation, the Regional Director is to furnish revised contracts to all parties who requested the contract in response to the initial public notice. This did not occur.

To execute this contract a Judge must validate it. However, according to Judge Alan Simpson, who denied the validation request after finding that some important pieces of information were missing from the proceedings, "*Given that the contract terms, including repayment terms, are not certain, and that the contract may be changed or modified, validation is not appropriate, at this time.*"⁷

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7. <https://www.restorethedelta.org/2019/11/15/breaking-news-ap-reveals-bernhardt-westlands-sweetheart-water-deal/>
 8. **Interior suggests ex-client of department head for major contract** *The Hill* By Marty Johnson - 11/08/19 <https://thehill.com/policy/energy-environment/469642-interior-proposes-coveted-deal-to-ex-client-of-agency-head>
 9. *Environmentalists Oppose Westlands' Bid to Secure Water.* **GreenWire** November 8, 2019 <https://gvwire.com/2019/11/08/environmentalists-oppose-westlands-bid-to-secure-water/>
 10. *Seeking stability, Westlands nears permanent water contract with Feds* Alex Tavlian <http://sjvsun.com/ag/westlands-is-seeking-a-permanent-water-contract-what-does-that-mean/> November 20, 2019,
 11. **Trump delivers on pledge for wealthy California farmers**, Associated Press, By ELLEN KNICKMEYER and ADAM BEAM February 18, 2020. <https://apnews.com/ddaf365a5b5528d4949b478e92daf98b>
 12. *Westlands Water District gets permanent U.S. contract for massive irrigation deliveries.* Los Angeles Times, Bettina Boxall, Feb. 28, 2020 <https://www.latimes.com/environment/story/2020-02-28/westlands-water-district-gets-permanent-u-s-contract-for-massive-irrigation-deliveries>
 13. **Feds Ink Deal with Water District Tied to Bernhardt**, March 3, 2020 /E&E News by Jeremy P. Jacobs <https://www.eenews.net/stories/1062498809/> *As of Sept. 30, 2018, Westlands owed about \$480.7 million to the federal...*
 14. **Judge rebuffs bid to lock in Westlands contract switch.** Jeremy P. Jacobs, E&E News, March 19, 2020 <https://www.eenews.net/greenwire/stories/1062646713?t=https%3A%2F%2Fwww.eenews.net%2Fstories%2F1062646713>
 15. **Hoopa Tribe strikes at interiors coveted Westlands Water District corporate deal**, NORTH COAST NEWS Tuesday, March 31, 2020. <https://krcrtv.com/north-coast-news/eureka-local-news/hoopa-tribe-strikes-at-interiors-coveted-westlands-water-district-corporate-deal> "*Reclamation should not approve this contract until appropriate provisions are included to protect water and fisheries that are lawfully reserved to the Hoopa Valley Tribe and citizens of the Trinity River watershed,*" Billings said. *The tribe said it has proposed contract language to protect the Trinity water and called upon Reclamation and its Central Valley Project contractors to meet their obligations under existing federal law to provide for Trinity River fishery restoration funding as part of their contract requirements.*

⁶ <https://www.law.cornell.edu/cfr/text/43/426.22> See also <https://www.federalregister.gov/documents/2019/03/14/2019-04703/quarterly-status-report-of-water-service-repayment-and-other-water-related-contract-actions> *At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.* emphasis added.

⁷ **Judge rebuffs bid to lock in Westlands contract switch** Jeremy P. Jacobs, E&E News reporter Published: Thursday, March 19, 2020 <https://www.eenews.net/greenwire/stories/1062646713?t=https%3A%2F%2Fwww.eenews.net%2Fstories%2F1062646713>

In view of the above shortcomings, the Final Modified Contract should be withdrawn and the public negotiation process started over with transparency and proper public notice. Our detailed comments that follow are necessarily incomplete because they are based on what could be publicly located. Our comments are submitted with the understanding that we reserve the right to supplement the comments and Reclamation will be obligated to consider them in good faith at such time as Reclamation provides full disclosure of the entirety of the Record and all relevant documents.



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DETAILED COMMENTS ON THE MODIFIED FINAL CONTRACT

No Public Release of Final Modified Contract.

- Reclamation modified the draft contract template and finalized a permanent repayment contract (“Final Modified Contract” or “Contract”) with Westlands on February 28, 2020, to become effective on June 1, 2020 (Contract, Article 2(a), p. 12.).⁸
- A copy of the Final Modified Contract still has not been provided by Reclamation despite repeated requests.⁹ Nor is the contract available on Reclamation’s or Westlands’ websites.¹⁰ The failure to provide the Final Modified Contract to the public violates requirements of 43CFR 426.22(d).¹¹
- Our organizations were only able to secure copies of the Final Modified Contract and exhibits via a Public Records Act [Gov. Code, § 6250 et seq] request to Westlands dated March 3, 2016. Westlands responded to our request and provided the Final Modified Contract and exhibits via email on March 16, 2020.

Impacts of Diversions.

Water from the Trinity, Sacramento, and American Rivers, and the tributaries with dams owned by the Federal Government export these waters from the San Francisco Bay-Delta Estuary to serve water to the San Luis Unit (PL 86-488) of the CVP, where Westlands receives the majority of the exported water. Such deliveries have many adverse environmental impacts on the watershed, including the rivers and the San Francisco-San Joaquin Bay-Delta estuary.

Adverse impacts range from reducing freshwater flows and worsening already degraded Delta water quality; to further endangering and destroying endangered fish species and critical habitat;

⁸ See: <https://wwd.ca.gov/wwd-media/press-release-27/>

⁹ See <http://calsport.org/news/wp-content/uploads/WWD-Permanent-Contract-FOIA-Correspondence-10-19-4-2020.pdf> & <http://calsport.org/news/wp-content/uploads/Conant-Letter-Re-WWD-1-15-MAF-Contract-Conversion-10-29-19-.pdf>

¹⁰ A copy of the contract and exhibits was requested on October 29, 2020 from Ernest Conant and the contracting officer. In addition a FOIA request for the Contract was filed on October 28, 2019, Freedom of Information Act (FOIA) Request - BOR-2020-00031. On the April 17, 2020 the designated response date, BOR again delayed providing a copy of the contract and associated documents including summaries of public negotiation sessions and notices.

¹¹ <https://www.law.cornell.edu/cfr/text/43/426.22> See also <https://www.federalregister.gov/documents/2019/03/14/2019-04703/quarterly-status-report-of-water-service-repayment-and-other-water-related-contract-actions> *In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.*

to reducing freshwater flows worsening dangerous toxic algal blooms in the Delta; to adverse impacts on public health and safety in the Delta region; to adverse impacts on agriculture in the Delta. The environmental impacts of diverting this amount of water in perpetuity and exporting it to some set of lands outside of both the Congressionally authorized service area of the San Luis Unit and the State of California's authorized place of use under Reclamation's water right permits has not been analyzed nor legally sanctioned.

The Acreage in Westlands Identified to Receive Water in the Contract Exceeds Acreage Authorized by Congress Pursuant to the San Luis Act of 1960.

The Exhibit A to the Final contract – Map of Contractor’s Service Area— is not consistent with Congressional authorization and the map contained in the 1956 San Luis Unit Feasibility Study.¹² In 1960, Congress passed the San Luis Act, Pub. Law No. 86–488, 74 Stat. 156 (1960). Section 1(a) of the San Luis Act authorized Reclamation to “construct, operate, and maintain the San Luis unit as an integral part of the Central Valley Project,” in accordance with the 1956 Feasibility Study for the purpose of irrigating only 500,000 acres in the entire San Luis Unit in three counties—Merced, Fresno, and Kings. Emphasis added. We note PL 86-488 has not been amended.

The authorization for the San Luis Unit, Central Valley Project¹³ limits the gross service area to 500,000 acres of land and refers to the feasibility report¹⁴, which includes a map¹⁵ that clearly

¹² In 1956, the Bureau of Reclamation delivered to the United States Congress, “A Report on Feasibility of Water Supply Development” for the San Luis Unit (the 1956 Feasibility Report), which recommended constructing a group of water management facilities, called the San Luis Unit, as an addition to the Central Valley Project, in order to bring irrigation waters to an area of approximately 496,000 acres in the San Joaquin Valley. In 1960, Congress passed the San Luis Act, Pub. L. No. 86-488, 74 Stat. 156 (1960) authorizing water deliveries to 500,000 acres for the entire unit consistent with the Feasibility Report, see § 1(a). See:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/LA_ND/part2rebuttal/land_299.pdf

and

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/LA_ND/part2rebuttal/land_302.pdf

¹³ In 1960, Congress passed the San Luis Act, Pub. Law No. 86–488, 74 Stat. 156 (1960). Section 1(a) of the San Luis Act authorized Reclamation to “construct, operate, and maintain the San Luis unit as an integral part of the Central Valley Project,” in accordance with the 1956 Feasibility Study for the purpose of irrigating only 500,000 acres in the entire San Luis Unit in three counties—Merced, Fresno, and Kings. Emphasis added. We note PL 86-488 has not been amended.

¹⁴ U.S. Dept Of the Interior, Feasibility Report (approved by President Roosevelt, December 2, 1935), reprinted in House Committee on Interior & Insular Affairs, Central Valley Project Documents-Part One: Authorizing Documents, H.R. Doc. No. 416, 84th Cong., 2d Sess. 563 (1956). The Feasibility Report, released in Sacramento in May 1955 and reported to Congress December 17, 1956.

¹⁵ *Ibid.* See the 1956 Feasibility Report page 36.

describes the location, size, and elevation of that service area. Subtracting out acreage for San Luis Water, Panoche and Pacheco Water Districts, leaves roughly 400,000 acres of eligible land within Westlands, according to the federal authorization and confirmed in the Special Task Force Report on the San Luis Unit [PL 94-46].

After subtracting the roughly 100,000 acres that has already been retired with taxpayer dollars and largely put to other industrial uses, that leaves approximately 300,000 acres in Westlands eligible to receive CVP San Luis Unit water exports.¹⁶ Yet, this Final contract would irrigate over 600,000 acres of land within Westlands as identified in Exhibit A of the contract. Under the contract, that acreage would be allocated between 2.2 and 1.7 ac/ft of water per acre. The inclusion of the additional acres to be irrigated represents 400,000 AF of additional unauthorized allocation of water to lands not authorized by Congress to receive federal CVP water under the San Luis Act. Without Congressional authorization, this contract arbitrarily takes water from other CVP contractors, communities, and the environment.

Public Law 86-488, authorizing the San Luis Unit, does not contain any provision authorizing an enlargement of the San Luis Unit Service area. The law is based on a feasibility study that was released in May 1955 and reported to Congress on December 17, 1956. It states that the service area is 496,000 acres and it establishes a long-term crop pattern for 440,000 acres.¹⁷ The Final contract also contradicts the December 30, 1961 Federal-State Agreement for the construction and operation of the joint-use facilities of the San Luis Unit.¹⁸

In simple terms, the Final contract enlarges the service area beyond the limit authorized by Congress. In addition to an unauthorized enlargement of the CVP contract service area, and thus an unauthorized increase in water allocation, the environmental and water quality impacts are not addressed in any NEPA documents or in any ESA consultation.

Exhibit A of the Final Contract shows inflated acreage of the district (over 600,000 acres) and associated inflated water deliveries to Westlands. This Exhibit A map documents an expansion

¹⁶ Special Task Force Report on San Luis Unit 1978 available online [see pages 18 and 20 for the finding of 500,000 gross acres authorized for all three districts finding an unauthorized expansion of more than 100,000 acres or 30%.] <http://babel.hathitrust.org/cgi/pt?id=umn.31951002836772c;view=1up;seq=35>. Also see Lloyd Carter's law review: <https://digitalcommons.law.ggu.edu/gguelj/vol3/iss1/3/>. And Friends of the Trinity water rights testimony before the State Water Resources Control Board: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/FOTR/for_94.pdf

¹⁷ Ibid. See the 1956 Feasibility Report pg 91.

¹⁸ See pg 4 of the Federal State Contract which reads: "The 'Federal San Luis Unit service area' shall mean the area of approximately 500,000 acres in Merced, Fresno, and Kings Counties as described in the report of the Department of Interior entitled, "San Luis Unit Central Valley Project," dated December 17, 1956.. ...This agreement established that the federal service under this contract.

of acreage beyond what is Congressionally authorized.¹⁹ No statutory authority is provided for this arbitrary inflated acreage and water deliveries. The enlargement of the San Luis Unit service area and distribution canals exceed the construction and operations costs of the distribution and drainage facilities. The inflated water exports causes increased impacts from the areas of export including the Trinity and Sacramento Rivers and the Sacramento-San Joaquin Delta Estuary and Bay. Further the pollution created by irrigating these lands and constructing distribution systems has not been analyzed nor disclosed. After this contract was executed Reclamation issued a public notice in March 2020, that apparently negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities.²⁰ No repayment costs or the funds necessary for Westlands to repay what is owed to satisfy the Federal Government's construction obligation to provide drainage service to lands within the San Luis Unit of the CVP including the Westlands WD service area have been included in this permanent water contract.

The Secretary is Required to Contract for the Delivery of Project Irrigation Water Only to Lands with Characteristics that Allow Delivery--this Final contract Violates that Mandate.

As stated above water is being provided outside of the Congressionally designated service area and no updated irrigable lands map has been provided. Public Law 99-546, 100 Stat. 3050. (Coordinated Operations Act) Sec. 305. § 4(c) of the Act requires, among other things, that the Secretary must show that lands receiving project water are capable of *"successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows."* No such documentation and evidence has been provided in support of the proposed permanent water contract to irrigate these lands referenced in Exhibit A of the proposed contract. In fact, the San Luis Drainage Feature Re-evaluation EIS found that roughly 300,000 acres of the lands proposed for irrigation under this contract in Westlands are drainage-impaired²¹ and will generate "toxic or hazardous irrigation return flows" to ground or surface waters. Indeed, current practice results in some of these toxic flows being discharged to the California Aqueduct without proper Clean Water Act permits or consideration of hazardous conditions for fish and wildlife.²²

¹⁹ See Plate 1--Map of the Service Area & Plate 5 Map of Land Classification found in the 1956 Feasibility Report can be found online: <http://cdm15911.contentdm.oclc.org/cdm/ref/collection/p15911coll10/id/2106>

²⁰ <https://www.federalregister.gov/documents/2020/03/31/2020-06620/quarterly-status-report-of-water-service-repayment-and-other-water-related-contract-actions> @ #21.

²¹ See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=61

²² <http://calsport.org/news/wp-content/uploads/PCL-et.-al.-Cmts-Re-WWD-Interim-Contract-12-14-19.pdf>
<http://calsport.org/news/wp-content/uploads/Conant-Burman-Ltr-Re-Extension-of-Cmt-Re-SLD-Discharges-Use-Agreement-12-10-19.pdf>
<http://calsport.org/news/wp-content/uploads/CBD-PCL-et.-al-Cmt-Ltr-Cross-Valley-Interim-Contract-12-12-2019.pdf>

Delivery of Project Water to Toxic Soils Obligates the Secretary to Provide Drainage, but Such Drainage is not Provided by the Final Contract.

Judge Hewitt ruled that under Westlands' interim contracts, the government was not obligated to provide drainage service, "*Because (Westlands) failed to show that drainage service was a bargained-for benefit of any of these contracts.*"²³ And yet, the Final permanent contract proposal obligates delivery of water to these lands that are unsuitable for irrigation and to other lands that would receive project water that are, however, outside of Congressional authorization,²⁴ but could obligate the federal government to furnish something that has been unattainable for decades—drainage.

The drainage obligation would not exist, however, if Project water deliveries to drainage-impaired lands is cut off because of the impracticability of irrigation. This alternative—cessation of irrigation water from unsuitable lands—is mandated by law and regulation.²⁵ The toxic drainage, groundwater pollution, and surface water pollution is created in large part by the Reclamation's deliveries of CVP water to these non-irrigable lands. Reducing water service instead of expanding it is the obvious and rational solution. Controlling or eliminating the supply of drainage water by eliminating deliveries to these identified toxic soils will control the demand for drainage and the enormous costs estimated at \$2.6 billion. Westlands' land uses have changed significantly²⁶ within the proposed contract acreage. These land use changes together with cessation of delivery to these lands impracticable of

http://calsport.org/news/wp-content/uploads/PCL-et-al_Comments-on-DEA-for-GBP-Stormwater-Plan_12-23_-2019-.pdf

²³ Westlands Water District v. United States, 12-12C (Fed. Cl. 2013) United States Court of Federal Claims Filed: January 15th, 2013 Docket Number: 12-12C

²⁴ See San Luis Act of 1960 Section 1(a) *for the principal purpose of furnishing water for the irrigation of approximately five hundred thousand acres of land in Merced, Fresno, and Kings Counties, California, hereinafter referred to as the Federal San Luis unit service area.*
<https://www.govinfo.gov/content/pkg/STATUTE74/pdf/STATUTE-74-Pg156.pdf>

²⁵ Continuing to provide project water to these toxic soils would require approval from Congress to increase the authorized appropriation cap under the San Luis Act. Also see Reclamation Directives and Standards PEC P12 for required continuing investigations into land classification and suitability for irrigation for the delivery of project water.

²⁶ Industrial uses including massive utility land conversion in thousands of acres has replaced irrigated agricultural uses and yet the contract is silent regarding the municipal and industrial rates and interest owed on these land use changes along with water use changes that are restricted to 5 AF per quarter section. See the maps referenced in previous comments: <http://calsport.org/news/wp-content/uploads/PCL-et.-al.-Cmts-Re-WWD-Interim-Contract-12-14-19.pdf> See also <https://www.solarpowerworldonline.com/2020/03/westlands-solar-park-california-construction-begins/> And June 25, 2019 Kings County solar projects advance <https://sierra2thesea.net/energy/kings-county-solar-projects-advance>

irrigation without generating pollution must be considered. The unauthorized financial obligation inferred by issuing this permanent water contract has not been addressed.²⁷

Failure to Comply with NEPA.

An EIS must be prepared by Reclamation before entering into a contract with Westlands. The reason is that the contract would be a major federal action significantly affecting the quality of the human environment. (42 U.S.C. § 4332(C.) “Actions include new and continuing activities, . . .” (NEPA Regulations § 1508.18(a).)²⁸ NEPA requires “that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter [NEPA], . . .” (42 U.S.C. §4332.)

NEPA processes must be integrated with other processes “at the earliest possible time to ensure that planning and decisions reflect environmental values, . . .” (NEPA Regulations § 1501.2.) Reclamation, however, has not prepared an EIS on the proposed contract. Reclamation *has not even prepared an environmental assessment* to determine whether an EIS must be prepared. (NEPA Regulations §§ 1501.3; 1508.9.) Reclamation has not made a “finding of no significant impact” on the action. (NEPA Regulations § 1508.13.) Reclamation has not instituted the required “scoping” process and has not published a notice of intent in the Federal Register. (NEPA Regulations § 1501.7.) Reclamation has not prepared a categorical exclusion or notice thereof on the contract. (NEPA Regulations § 1508.4.) The subject action would not in any event qualify for a categorical exclusion. Consequently, Reclamation has not furnished the public any information whatsoever, by which to evaluate the potential environmental consequences of the contract and the water diversions and deliveries authorized by it. Reclamation also has not furnished the public any information whatsoever, by which to evaluate the *cumulative* environmental impacts of all of the contract conversions in Reclamation’s pipeline and the water diversions and deliveries authorized by them. Reclamation has not prepared a single EIS on the related contract conversions (NEPA Regulations § 1502.4(a) and has not prepared a broad “program” EIS on the contract conversions in its pipeline. (NEPA Regulations § 1502.4(b.) Reclamation has not prepared any “environmental document” on its action. (NEPA Regulations §1508.10.)

²⁷ The 2008 SLDFR Feasibility Report sent to Congress explained that “Federal interest is established either by legislation or through an evaluation of a proposed action relative to the agency’s mission” and that, to be federally implementable, an action “must be feasible as defined by the Economic and Environmental Principles and Guidelines (Principles and Guidelines). The Principles and Guidelines require Federal actions contribute to the national economic development (NED).” The 2008 Feasibility Report continued: The San Luis Act of 1960 as amended establishes the Reclamation’s Federal interest in the proposed action. However, the requirement for a net positive contribution to the Nation’s economy cannot be met by either of the two action alternatives. The 2008 SLDFR Feasibility Report concluded the action alternative selected by the Bureau was not appropriate for implementation according to the government’s own accepted standards.

²⁸ The NEPA Regulations are codified at 40 C.F.R. §1500 et seq.

The EIS section on “alternatives” “is the heart of the environmental impact statement.” (NEPA Regulations § 1502.14.) The alternatives section, should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public. (NEPA Regulations § 1502.14.)

An environmental assessment also must include discussion of alternatives. Reclamation must prepare an EIS or first prepare an environmental assessment and then an EIS, which must “Rigorously explore and objectively evaluate all reasonable alternatives, . . .” to the action. (NEPA Regulations § 1502.14(a.) The EIS will necessarily include alternatives that reduce deliveries of project water in order to increase freshwater flows and begin to restore watershed rivers and the Delta.

The Ninth Circuit Court of Appeals reversed a district court decision denying environmental plaintiffs’ summary judgment because the challenged environmental document issued by Reclamation under NEPA, “did not give full and meaningful consideration to the alternative of a reduction in maximum water quantities.” (*Pacific Coast Federation of Fishermen’s Assn’s v. U.S. Dept. of the Interior*, 655 Fed. Appx. 595, 2016 WL 3974183*3 (9th. Cir., No. 14-15514, July 25, 2016) (Not selected for publication).) “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.” (*Id.* at *2.) Reclamation’s “reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts.” (*Id.* at *3.)

The requirement under NEPA to consider the alternative of reducing exports to increase flows through the Delta is so obvious that the Ninth Circuit’s decision was not selected for publication because no new legal analysis was required to reach the decision. The decision pertained to interim two-year contract renewals. If the alternative of reducing exports must be considered during renewal of two-year interim contracts, it most assuredly must be considered before entering into permanent contracts. Moreover, “an alternative may be reasonable, and therefore required by NEPA to be discussed in the EIS, even though it requires legislative action to put it into effect.” *Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454 (9thCir. 1984.)

Reclamation has failed to proceed in the manner required by NEPA with this contract conversion. Reclamation proceeded with FINAL contract agreements with Westlands to convert the contract renewal contracts to permanent repayment contracts without having first prepared and issued an EIS.

Examples of Environmental Issues Ignored by Reclamation’s Failure to Prepare an EIS or even an Environmental Assessment.

The NEPA Regulations give guidance on whether an action “significantly” affects the quality of the human environment. “‘Significantly’ as used in NEPA requires considerations of both

context and intensity:” (NEPA Regulations § 1508.27.) Ten factors are listed in § 1508.27(b) 1-10 in evaluating intensity meaning severity of the impact.

1508.27(b)(2) The degree to which the proposed action affects public health or safety

The water deliveries to Westlands diminish freshwater flows through the Delta which decreases water supplies and water quality and worsens the amount and frequency of toxic algal blooms in the Delta. That is one of the ways by which the action affects public health and safety.

(3) Unique characteristics of the geographic area

The Delta already fails to meet established water quality standards and is an ecologically critical area. The water deliveries to Westlands exacerbate the decline of the Delta.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The effects of the contract will be highly controversial because of the worsening water supply and water quality crisis in the Delta. The controversy is evidenced by the recent article in the Los Angeles Times entitled *Feds set to lock-in huge water contract for well-connected Westlands Water District* (Bettina Boxall, Los Angeles Times November 11, 2019)²⁹.

The new contract doesn't include the water reduction. Nor does it contain provisions for reassessing delivery amounts if Westlands retires land on its own without a drainage settlement.

The Westlands contract is highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks

Because Reclamation has failed to engage in any NEPA environmental analysis whatsoever, the impacts of the contract are highly uncertain.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

About 77 contractors started negotiations to convert the contracts. Converting the Westlands contract would, therefore, establish a precedent for future actions with significant effects.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

²⁹ See: <https://www.latimes.com/environment/story/2019-11-11/westlands-water-district-federal-water-contract>

The Westlands contract conversion is related to other contract conversions in the pipeline that would have cumulatively significant impacts.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat

Endangered winter-run Chinook salmon, threatened spring-run Chinook salmon, Central Valley steelhead, Green Sturgeon, and Delta smelt continue to decline because of the reductions in water quality and flows resulting in rising temperatures, increased salinity, and sedimentation. CVP water deliveries harm the fish by reducing water flows and worsen the contamination of San Joaquin Valley surface waters, groundwater, and soils with pollutants including selenium.

(10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment

It appears that the contract would violate Reclamation Law by enlarging the service area and water quantities beyond the limits authorized by Congress. Reclamation's refusal to prepare an EIS appears designed to facilitate the violation of reclamation law by not providing any information whatsoever by which the public can evaluate how much land will remain in production for how long and how much land will be retired from agricultural production and when. And how much land will be converted to municipal and industrial uses.

Reclamation's Action is Discretionary.

Our organizations have not seen any communication from Reclamation explaining why the Westlands contract was finalized without completing any NEPA review. Reclamation does refer in "whereas" clauses in the draft contract to the Water Infrastructure Improvements for the Nation Act (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) (WINN Act.) The contract recites,

WHEREAS, 4011(a)(1) provides that 'upon request of the contractor, the Secretary of the Interior *shall* convert any water service contract in effect on the date of enactment of this subtitle and between the United States and a water users' Association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) *under mutually agreeable terms and conditions.*' (Draft Contract, 8th Whereas clause, p. 4; also, 20th Whereas clause, p. 8.) (Emphasis added.)

Reclamation may contend that the WINN Act including use of the word "shall" makes entry into the conversion contracts non-discretionary and thus not subject to NEPA. As provided by WINN Act section 4011(a)(1), however, the terms and conditions *must be mutually agreeable* meaning they must be agreeable to the Secretary of the Interior, as well as to the contractor. That means under the plain language of the Act, the Secretary of the Interior retains discretion because the terms and conditions of the contracts must be agreeable to him. In *Aluminum Co. of America v. Central Lincoln Util. Dist.*, 467 U.S. 380, 397 (1984), the Supreme Court held,

Because the Regional Act does not comprehensively establish the terms on which power is to be supplied to DSIs [direct-service industrial customers] under the new contracts, it is our view that the Administrator has broad discretion to negotiate them.

NEPA cases have rejected efforts by agencies to avoid complying with NEPA by contending their actions are non-discretionary, when there is some discretion.³⁰ The Secretary of the Interior has discretion to determine contract terms and conditions that are agreeable to him. That being the case, Reclamation has failed to comply with NEPA by converting the Westlands water contract without completing environmental review before that contract was finalized.

Failure to Comply with CVPIA.

NEPA Compliance is also Required by the Central Valley Project Improvement Act before entering into Conversion Contracts.³¹ Savings language in the WINN Act (section 4012(a)(2) requires, “This subtitle shall not be interpreted or implemented in a manner that— [omitted] (2) affects or modifies any obligation under the Central Valley Project Improvement Act [CVPIA] (Public Law 102-575; 106 Stat. 4706), except for the savings provisions for the Stanislaus River predator management program expressly established by section 11 (d) and provisions in section 11(g); [omitted]”

The CVPIA was enacted in 1992 to reduce adverse environmental impacts of Central Valley Project (CVP) operations and to modify State water right permits to included fish and wildlife as a purpose of the project. The CVPIA requires preparation of an EIS before Reclamation renews any long-term water service contract. (CVPIA §§ 3402(a), 3404(c)(1.) That requirement has not been eliminated by the WINN Act.

Further the contract does not contain within the contract terms explicit language that is enforceable between the parties as required by CVPIA Section 3404(c)(2). This section requires that provisions of *law* be written as *contract terms* enforceable between the parties. Exhibit D, which previously was not available to the public for comment, provides no repayment for required Trinity River Division (TRD) facilities or CVPIA restoration activities. Enforceable contract provisions of *law* that by law must be written as *contract terms* enforceable between the parties include for example:

- *Section 3406(b)(2), which authorizes and directs the dedication of up to 800 thousand AF (TAF) of CVP water for environmental purposes.*

³⁰ Such cases include *Forelaws on Board v. Johnson*, 743 F.2d 677 (9th Cir. 1984.)

³¹ Section 3404(c) of the CVPIA requires that an EIS be completed before Reclamation can renew any long-term repayment or water service contract for a period of 25 years. Reclamation defines "long term contract" as a "*contract with a term of more than 10 years.*" See <https://www.usbr.gov/recman/pec/pec-p05.pdf> By these definitions any contract term longer than 10 years is by Reclamation's own definition 'a long-term contract.' A conversion to a permanent contract fits the definition of a long-term contract. Thus, federal law requires a full EIS before entering into permanent repayment contracts. Congress determined that long-term contracts would have a significant effect on the environment such that an EIS is required.

- *Section 3406(b)(23), which addresses restoration efforts for the Trinity River Division (TRD).*
- *Section 3406(d), which requires firm CVP water supplies amounting to 480 TAF to be delivered to federal, state and some private wildlife refuges.*

At page 7, lines 13-16, of the reporter’s transcript of the February 27, 2020 Westlands' validation proceeding, Westlands' Daniel O’Hanlon states that “Exhibit D . . . is the repayment obligation . . . the total represents Westlands’ share of the construction costs of the Central Valley Project.”³² However, most of the CVP project elements necessary to provide water to Westlands have been omitted from repayment contrary to Reclamation law:

- What about repayment for the capital costs of the Trinity River Division (TRD) and other CVP facilities that convey water 400 miles to Westlands?
- Has the TRD’s capital cost been fully retired?
- If not, then why is there no repayment allocated to WWD for its share of the remaining capital costs of the TRD and other conveyance facilities?
- Why aren’t those constructions costs that are “not reflected in such schedules”(see *section 4011(a)(2)*) pursuant to WINN Act paragraphs A and B required to be repaid and thus included in exhibit D?

In addition Reclamation has failed to prepare an EIS before entering into the contract with Westlands. CVPIA Section 3404(a), precludes the issuance of any new short term, temporary, or long term CVP contracts for any purpose other than fish and wildlife without NEPA compliance.

Judicial Confirmation of the Contract Amendments Has Not Been Obtained.

Westlands has failed to obtain from the court a ruling with regard to the validity of this contract.³³ To protect the United States, Reclamation law³⁴ and specifically the Act of May 15, 1922, requires state court to validate the contract. Section 1 of the Act of May 15, 1922, which states in part:

..that no contract with an irrigation district under this act shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid.

³² IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF FRESNO
 ·Before the Honorable ALAN M. SIMPSON, Judge, Department 502 Reporter's Transcript 2-27-2020 Job # 610275.

³³ Superior Court Of The State Of California County Of Fresno, Central Division, Case No. 19CECG03887, Validation Of Contract Date: January 28, 2020

³⁴ See 43 U.S.C §511(1976) Section 46 of the Omnibus Adjustment Act of 1926 and 43 U.S.C. §423 (1976).

The Act of May 15, 1922 requires the judicial confirmation of contracts with irrigation districts. This has not occurred.

Failure to Comply with the Coordinated Operations Act of 1986³⁵

The modified Final Contract omits the obligation of Westlands and the United States to deliver Project water in accordance with water quality standards specified in PL 99-546. This language was omitted from the Final Contract: "*water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws.*" Instead the quality of water and operations are left to the Contracting Officer instead of specific reference to required water quality protection levels. Congress directed that the United States and its Contractors operate the CVP *in conformity with State water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta and Estuary* and to operate the CVP *so that water supplied at the intake of the Contra Costa Canal is of a quality equal to the water quality standards contained in the Water Right Decision 1485 of the State of California Water Resources Control Board, dated August 16, 1978, except under limited conditions.* We know of no law that authorizes Reclamation to change this Congressional direction in a contract. This substantially changes the terms of the contract and obligations to meet state water quality standards. Changing the water quality protection standards to some undefined term as "what is feasible" also has significant environmental impact and has not been analyzed nor the endangered species impacts considered. This is a significant change to the final contract and received no public notice.

This is from the draft contract release:

QUALITY OF WATER

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. (emphasis added)

This is from the Final modified contract:

PROTECTION OF WATER AND AIR QUALITY

(a) The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest level possible as determined by the Contracting Officer. (emphasis added)

³⁵ <https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3050.pdf> See Section 101 and Section 102

Also required under Section 102 of Public Law 99-546—OCT. 27, 1986 100 STAT. 3051, the contract needs to provide for repayment of D-1485 salinity costs and complying with State water quality standards. The modified Final contract does not include these reimbursements and repayment of these costs.

Failure to Comply with CEQA.

Public Resources Code Section 21151, which provides that EIRs are required for certain projects, notes that a Categorical Exclusion is not allowed when:

1. The project site is environmentally sensitive as defined by the project's location. A project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.
2. The project and successive projects of the same type in the same place will result in cumulative impacts;
3. There are "unusual circumstances" creating the reasonable possibility of significant effects.

The final contract amendments contain significant changes to compliance with State water quality standards, the amount of land disturbance and water exports that were not previously disclosed in the draft contract that was made available for public comment. Our previous comments have also described significant groundwater contamination and downstream cumulative impacts. The toxic runoff, drainage, and effects of drainage treatment and disposal, including but not limited to, fish, wildlife, air emissions, transportation and other impacts, have not been disclosed. The final contract is also silent with regard to paying for these water quality costs and protections. Without a proven drainage solution, water quality impacts from irrigation of toxic soils in Westlands have far reaching impacts outside of the district and in downstream waters.³⁶ Therefore, there clearly are significant effects to the environment associated with the issuance of permanent water contracts and, therefore, a full EIR under CEQA needs to be completed along with compliance with federal and state endangered species laws.

Further any full EIR for long term contracts should include information on the relationships between irrigation in the San Luis Unit (including Westlands) and groundwater movement downslope, in terms of flow and water quality. The USEPA has noted previously that such an environmental review should provide information on the San Luis Unit's role in groundwater

³⁶ The Department of Interior's Inspector General issued a report in November 2019 that finalized their investigation on the Demo-Plant. The Inspector General found that the Demo-Plant did not provide the agricultural drainage service that is required by statute and it did not consistently meet operational performance criteria. In addition, the USBR was found to not have provided effective oversight of the cooperative agreement for operation and maintenance of the Demo-Plant. As a result, USBR spent a reported \$67.8 million for a project that does not meet its legal obligation and that had not consistently met operation performance goals.[see <https://www.doioig.gov/reports/bureau-reclamation-did-not-effectively-manage-san-luis-demonstrationtreatmentplant>]

accretions and discharges of pollutants into wetland channels and the San Joaquin River and identify impacts to wetlands and wildlife.³⁷ Absent this information, the public and decision makers are left in the dark as to significant impacts and required mitigation measures, such as “*changes in amounts and location of water applied, which will reduce drainage production and selenium mobilization.*” The effects of toxic pollution from Westlands caused by irrigation enabled by the proposed permanent water contracts are significant and complex and must be addressed in a comprehensive EIR.

Finally, consideration and analysis of a full range of project alternatives is needed to prevent significant impacts. We have raised these issues in the past, and they are even more pertinent today. They include first the failure to study “the alternative of a reduction in maximum interim contract water quantities. By failing to study this alternative, the Westlands defies the *PCFFA* Court’s instruction that Reclamation must “give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities.” *PCFFA*, 655 Fed. Appx. at 599. Second, the CEQA exemption fails to disclose – let alone analyze as required – the massive environmental impacts of diverting this water from the Delta and applying to contaminated soils. Third, an accurate map of the land uses that will be receiving water under these contracts is needed to determine the impacts of converting these agricultural areas to other uses, including utilities³⁸. And, fourth, there needs to be an assessment of the ability of existing agricultural users to pay the significant amounts of debt required under the contract conversion process. This required debt load predictably will change land uses and the likely shift to industrial uses must be disclosed and analyzed. Lastly, no information is provided as to how this debt will be repaid and the impacts on existing agricultural and industrial operations, especially during severe prolonged droughts and climate change, will be managed. These critical shortcomings leave decision-makers and the public in the dark.

³⁷ See <https://archive.epa.gov/region9/nepa/web/pdf/san-luis-deis-supplemental.pdf>

³⁸ See WWD 2008 Bond Debt Statement: 30,065,000 Westlands Water District adjustable Rate Refunding Revenue Certificates of Participation, Series 2008a _ Westlands Water District Notes To Financial Statements Years Ended FEBRUARY 28, 2007 AND 2006 @ page 31: “*In February and March 2005, the District acquired approximately 8,750 acres of land within the Broadview Water District, which is substantially all of Broadview’s irrigable acreage. In conjunction with the acquisition, the District initiated the process to annex all of Broadview’s lands and will seek a permanent assignment of Broadview’s Central Valley Project Water Contract totaling 27,000 acre-feet to the District from the Bureau of Reclamation. Of this water supply, the District plans to annually make available 6,000 acre-feet of entitlement to the Naval Air Station – Lemoore pursuant to the Supplemental Water Allocation Agreement between the District and NASL.*” See this 2016 overview of transmission lines, towers and land conversion maps for Westlands WD: http://docketpublic.energy.ca.gov/PublicDocuments/15-RETI_02/TN210903_20160330T140735_Daniel_Kim_Comments_WSP_comments_to_RETI_20_plenary_group_meeti.pdf & <http://web.energyacuity.com/REProject.aspx?id=16887>

Failure to comply with California Endangered Species Act (CESA) or Federal Endangered Species Act (ESA)

This final modified contract contains significant changes which have not been analyzed nor disclosed to the general public for review and comment. As emphasized in our December 14, 2019 comments Westlands' CVP Interim Contracts and our January 7, 2020, comments on Westlands' CVP Repayment contract conversions for Westlands, and January 21, 2020 comments on proposed adoption of a Categorical Exemption under CEQA, areas within the project site, and downstream habitats known to be habitats for endangered species that are sensitive to selenium contamination and salt. Specifically, impacts from these water contract deliveries and drainage contamination may occur to the following State and Federally-listed species:

- San Joaquin kit fox (*Vulpes macrotis mutica*) State Threatened (ST) and Federally Endangered (FE),
- Tipton kangaroo rat (*Dipodomys nitratooides nitratooides*) SE and FE,
- Nelson's antelope squirrel (*Ammospermophilus nelsoni*) ST,
- California Least Tern (*Sterna antillarum browni*) SE and FE,
- Swainson's hawk (*Buteo swainsoni*) ST,
- tricolored blackbird (*Agelaius tricolor*) ST, the federally endangered
- blunt-nosed leopard lizard (*Gambelia sila*) SE and FE,
- giant garter snake (*Thamnophis gigas*) ST and FT, and,
- San Joaquin woollythreads (*Monolopia congdonii*) FE and Rare Plant Rank (CRPR) 1 B.2,
- Green sturgeon (*Acipenser medirostris*) FT
- Central Valley spring-run chinook salmon (*Oncorhynchus tshawytscha*) FT
- Steelhead trout (*Oncorhynchus mykiss*) FT
- Buena Vista lake ornate shrew (*Sorex ornatus relictus*) FE

Impacts may also occur to State candidate species (CS) and State species of special concern (SSC):

- American badger (*Taxidea taxus*) State SSC,
- Tulare grasshopper mouse (*Onychomys torridus tularensis*), State SSC,
- burrowing owl (*Athene cunicularia*) State SSC,
- San Joaquin coachwhip (*Masticophis flagellum ruddocki*) State SSC,
- crotch bumble bee (*Bombus crotchii*) the State CS, and,
- Munz's tidy-tips (*Layia munzii*) CRPR 1 B.2.

These concerns were previously raised in in regard to the issuance of two-year interim contracts.³⁹ These previously identified impacts are now be further compounded by a permanent contract and yet, no compliance with the CESA or the Federal ESA have been provided. Further, Senator Feinstein noted with the passage of the WIIN Act, "... the bill's savings clause that prevents the legislation from violating state or federal environmental laws including the *Endangered Species Act* and biological opinions..."⁴⁰

Final Contract References Compliance with ESA Without Compliance.

The Final contract states on Lines 359-362 that 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 any water service contract between the Contracting Officer and the Contractor in effect immediately prior to the Effective Date of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA)...*" Yet no ESA consultation has been completed on these contracts nor has there been a consultation that identifies Westlands as an Applicant under the ESA. As denoted on page 2-12 of the USFWS ESA Section 7 Handbook,⁴¹

For purposes of this discussion, the Federal action involves the approval of a permit or license sought by the applicant, together with the activities resulting from such permission. The action agency determines applicant status, including requests arising from prospective applicants in early consultations. The action agency also determines how the applicants are to be involved in the consultation, consistent with provisions of section 7(a)(3), (b) and (c) of the Act and the section 7 regulations.

Reclamation has failed to proceed in the manner required by ESA and Westlands has failed to proceed in the manner required by CESA with this contract conversion. Reclamation has failed to complete an ESA consultation and Westlands has failed to consult under CESA before the contract was finalized. Even language in the Final contract suggests that ESA consultations would be completed and that Westlands would comply with applicable provisions of biological opinions. Without Applicant status, there are no applicable provisions in an ESA consultation for Westlands. This contract provision is a mirage designed to evade federal ESA requirements. Reclamation failed to request Applicant status for Westlands, so the language in the Contract suggesting that there are applicable provisions in biological opinions is inappropriate and misleading.

³⁹ See Environmental Advocate Comment Letter Re Interim Contract Renewal WWD Santa Clara.pdf John Buse, Center for Biological Diversity February 6, 2018. See <http://calsport.org/news/wp-content/uploads/Environmental-Advocate-Comment-Letter-Re-Interim-Contract-Renewal-WWD-S....pdf>

https://www.restorethedelta.org/wp-content/uploads/2020.01.21-CBD-PCL-et-al_Objects-to-CEQA-Exemption-for-Westlands-Perman....pdf

⁴⁰ see <https://www.feinstein.senate.gov/public/index.cfm/pressreleases?ID=FF5C94EB-667A-4DEC-A0A4-296AB5027BE4>

⁴¹ See: https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf

Insufficient Information is Provided to Initiate ESA Consultation

Exhibit C of the final contract fails to provide an accurate updated water needs assessment and instead provides an amorphous methodology that defers the water needs assessment to some vague time in the future. As noted in previous communication on San Luis Unit water contract renewals from USFWS⁴² to Reclamation the water needs assessment information is outdated and insufficient. USFWS wrote in 2004:

However, the Service believes that the BA inadequately describes: the specific area that may be affected by the action, the manner in which the action may affect any listed species or critical habitat, the effects of related actions, and any cumulative effects. We are therefore not initiating consultation on this project until such a time as the information requested below is provided. Based on the information provided in your BA and in our files, we believe the proposed action has the potential to adversely affect listed species and their critical habitat as described in Table 6 of the BA, and attached to this memo and request that Reclamation provide the additional information requested to initiate formal consultation on this project. In addition to the species included in Table 6, we believe that water deliveries to SLU contractors may also affect groundwater and surface water quality outside of the SLU which could affect delta smelt downstream in the San Joaquin River and Delta.... The Service therefore requests that Reclamation update the water needs assessment for Westlands Water District to reflect the reduced irrigated acreage within the District, and provide such water needs assessment to the Service with a request for formal consultation on this project. Reclamation should revise the water needs assessments for Pacheco, Panoche and Westlands WD's to reflect a more recent baseline of water usage within these districts. Reclamation should further revise the water needs assessment for WWD to include a reduction in irrigated acreage as a result of permanent land retirement within the district...

The final contract still does not contain an accurate up to date water needs assessment. Substantial changes have occurred since this 2004 USFWS information request including over 102,000 acres of land retirement, changes to municipal and industrial uses including roughly 20,000 acres slated for solar utility uses.⁴³ Reclamation needs to provide an accurate water needs assessment for WWD that includes the reduction in irrigated acreage as a result of permanent land retirement within the district.

⁴² See <http://calsport.org/news/wp-content/uploads/04-I-2958-SLU-LTCR-Insuff-Memo.pdf>

Assistant Field Supervisor, Sacramento Fish and Wildlife Office Endangered Species Division to Chief Resources management Division BOR, November 22, 2004, *Request for Additional Information to Initiate Formal Section 7 Endangered Species Act (ESA) Consultation on Execution of Long-Term Water Service Contract Renewals between the United States and Eight Water Service Contractors of the Central Valley Project's San Luis Unit*. pg 1,2 &12

⁴³ See <https://wwd.ca.gov/wp-content/uploads/2017/12/westlands-solar-park.pdf>

Effects of Drainage from Westlands Caused by Imported Irrigation Water from the CVP are Significant and Complex and Must be Addressed in a Comprehensive EIS.

Federal and State law prohibit degradation of the waters of the State and Nation. The proposed contract conversions would allow the continued delivery of CVP water to lands known to create pollution when applied to irrigate these soils without data or substantive environmental analysis of the effects of drainage contamination from Westlands or Reclamation. This drainage pollution can deform fish and wildlife, impair reproduction, and reduce survival. These adverse impacts affect trust resources including migratory birds, anadromous fish, and federally and state listed species. Continued delivery of water to these soils, as contemplated by this contract renewal, will degrade the waters of the State and Nation. The USEPA, in their comments on San Luis Unit Long Term Contract Renewals (@ pg 4 of Attachment A), concluded that, “*the Drainage solutions and features relied upon to implement these solutions should not be separated from the implementation of long-term water contracts.*”⁴⁴ Yet that is exactly what Reclamation has done in with this contract conversion for Westlands.⁴⁵

The USEPA in their comment letter on the Draft EIS and Supplemental Information for Renewal of Long Term Contracts for San Luis Unit (SLU) Contractors (CEQ# 050411 and 060056, dated April 17, 2006, @ pg 5 and 6 of Attachment A) found that, “*Subsurface drainage flow comes in part from the Westlands Water District and other water districts upgradient of the northerly [San Luis Unit] districts with high selenium/Total Dissolved Solids (TDS) concentrations ([USBR SLDFR] Plan Formulation Report Addendum, July 2004).*” EPA recommended that the FEIS for San Luis Unit Long Term Contracts should include information on the relationships between irrigation in the San Luis Unit (including Westlands) and groundwater movement downslope, in terms of flow and water quality. EPA further noted that Reclamation should provide information on the San Luis Unit’s role in groundwater accretions and discharges of pollutants into wetland channels and the San Joaquin River and identify impacts to wetlands and wildlife. Based on this additional information, the FEIS should consider mitigation measures, such as “*changes in amounts and location of water applied, which will reduce drainage production and selenium mobilization.*”⁴⁶

Cumulative Impacts of Project Water Deliveries are Significant.

Reclamation and Westlands failed to consider the effects of other past, present, and reasonably foreseeable future actions that could result in cumulative impacts on the

⁴⁴ [Ibid.](#)

⁴⁵ <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=68443> USBR October 25, 2019 Reclamation releases draft repayment contract for Central Valley Project contractor. And Reclamation extends the public comment period for the released draft repayment contract for Central Valley Project contractors <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=68567>

⁴⁶ <https://archive.epa.gov/region9/nepa/web/pdf/san-luis-deis-supplemental.pdf>

biological resources of the study area before finalizing Westlands permanent contract. Reclamation concluded, for the last Westlands' interim contract renewals that there would only be minimal cumulative impacts to biological resources over a 2-year period.⁴⁷ However, that rationale does not extend to a contract executed permanently. Further, these conclusions of finding minimal cumulative impacts to biological resources are dependent on the timely implementation of future agricultural drainage service, habitat restoration, land acquisition and retirement, water conservation, and CVPIA programs including implementation of Fish and Wildlife Habitat Restoration Programs under Sections 3406 b(2), b(3) and 3406 d(1) and d(2).

The 2019 Draft EA for Westlands interim contracts references the Programmatic EIS for CVPIA which identified these restoration programs necessary to remediate adverse impacts of these contract renewals⁴⁸. Yet, some important ecosystem restoration provisions of CVPIA, such as acquisition of full Level 4 refuge water supplies, have lacked funding for adequate implementation. Purchase of environmental water under the CVPIA b(3) program has also fallen substantially short of targeted needs due to inadequate funding mechanisms. This unmet need may increase in the future as market prices for water continue to rise with demand. Further, past and present efforts to meet water quality standards in the San Joaquin Basin have been significantly hampered by the lack of adequate fresh water supplies. The USEPA recommended, in their comments on the DEIS and Supplemental Information for San Luis Unit Long Term Contracts (@ pg 6 of Attachment A) that, "The cumulative impacts analysis in the FEIS should be based on the past and present trends of supplies available for redirection to meet restoration and refuge needs in the area, including Trinity Restoration needs. Where information is available, the analysis should reflect the actual implementation status of CVPIA restoration actions."⁴⁹ Further as noted previously, the portion of these costs as well as, the obligation for payment need to be included in the contract as an enforceable provision.

Examples of actions that should be reviewed in a Cumulative Effects analysis include:

CVP water assignments

In October 2019, Reclamation released a draft EA on new water assignments from Mercy Springs and Fresno Slough WDs (both Delta-Mendota Unit CVP contractors) to Angiola Water District.⁵⁰ Angiola WD is a non-CVP contractor in the Tulare Basin that is outside of

⁴⁷ See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=41301

⁴⁸ https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41303

⁴⁹ <https://archive.epa.gov/region9/nepa/web/pdf/san-luis-deis-supplemental.pdf>

⁵⁰ See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=33881

the CVP Place of Use (POU) as established by the SWRCB.⁵¹ Allocating federal water outside of the State permitted Place of Use, and without consideration of CVPIA fish and wildlife restoration programs is not consistent with state or federal laws.

James ID commented on the DEA for this partial water assignment in October 2019.⁵² Comments included:

1. Proposed action will cause unrecoverable land subsidence;
2. the action will create additional flood risk;
3. the action will alter historical groundwater flows between the Delta-Mendota and the Kings Groundwater Subbasins;
4. the action will prevent the Kings Groundwater Subbasin from achieving sustainability;
5. the action will impact surface water quality deliveries to CVP and Settlement Contract Water Contractors; and,
6. the DEA fails to satisfy the requirements of NEPA.

Aqueduct pump-ins from Westlands

Polluted groundwater from Westlands is being pumped into the California Aqueduct as part of a Warren Act Contract approved by USBR in 2015 despite records showing elevated levels of selenium, arsenic, and boron in this groundwater.⁵³ The California Department of Water Resources conducts monthly monitoring of the California Aqueduct and has documented occurrences of elevated levels of concern for selenium at Check 21 near Kettleman City (station number KA017226), especially during times when surface water flows have been restricted in the Aqueduct and groundwater from Westlands is being pumped into the Aqueduct. Some of these monthly water quality samples have exceeded the US EPA's November 2018 proposed selenium objectives for protection of aquatic fish and wildlife. These proposed objectives include a lentic water quality objective of 1.5 µg/L (lentic meaning of, relating to, or living in still waters, such as lakes, ponds, or swamps), which would be the applicable selenium objective for Kern National Wildlife Refuge and other wetlands that are fed by water from the Aqueduct.⁵⁴

⁵¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/eirs/eir1999_ccpou/docs/ccpoufeir.pdf

⁵² Comments for James ID on the Partial Assignment from Mercy Springs to Angiola begins on pdf page 23 of FEA: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=42646

⁵³ https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=21021

⁵⁴ Federal Selenium Criteria for Aquatic Life and Aquatic Dependent Wildlife Applicable to California Docket RIN, 2040-AF79 EPA-HQ-OW-2018-0056 FRL-9989-46-OW. These selenium criteria established lentic and lotic water values, and bird egg and fish tissue values. See: <https://www.regulations.gov/document?D=EPA-HQ-OW20180056-0001>.

The 50 µg /L drinking water selenium objective that is currently applicable to water in the California Aqueduct is not protective of fish and wildlife resources that use water from the Aqueduct. Kern National Wildlife Refuge receives their refuge water supplies from the California Aqueduct. Endangered species, such as the federally listed as endangered Buena Vista Lake Shrew, are likely to be impacted from cumulative levels of selenium in this source water contaminated by Westlands' groundwater discharges. The once-a-month water quality sampling is insufficient to capture selenium spikes that accumulate downstream, or to assess the bioaccumulation in the food chain.⁵⁵

Water Transfers and Exchanges that could benefit or involve Westlands

Mendota Pool Group 20 Year Exchange Program

Reclamation and Westlands jointly prepared an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Mendota Pool Group (MPG) 20-Year Exchange Program. The MPG proposes to pump non-CVP groundwater into the Mendota Pool in exchange for CVP water, which would otherwise be delivered to the Mendota Pool.

The EIS/EIR evaluates up to 25,000 acre-feet of water per year (AFY) of groundwater to be pumped into the Mendota Pool and exchanged for 25,000 acre-feet of CVP water which would be delivered to Westlands. This project would be implemented through a series of exchange agreements over a 20-year period between Reclamation and the MPG as authorized by Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C., subsection 389) and the Warren Act of 1911 (36 STAT.925; 43 U.S.C., subsection 523), and 34 U.S.C. §3408(d). These Exchange Agreements would supplement Westlands CVP water deliveries. The Project also includes construction of an 85-acre groundwater recharge facility just west of Mendota Pool.

CDFW commented on the NOP for MPG 20 Year Exchange Program in 2013.⁵⁶ CDFW was very concerned about salt loading into the Mendota Pool conveyance system and water supplies for the Mendota Wildlife Area. The Mendota Pool/Fresno Slough is the only water conveyance system available for Reclamation to deliver Level 2 and Level 4 Refuge Water supplies to Mendota WA. CDFW provided the following concerns of this project:

1. Continuing water quality degradation and impacts to associated biological (both terrestrial and aquatic) resources within the Mendota Pool/Fresno Slough.
2. Degradation of the quality of Refuge water supplies and related water quality impacts to wildlife habitats with the Department's Mendota WA.
3. Subsidence of the Mendota Dam and levees that allow the Mendota Pool to function.

⁵⁵ Selenium & Arsenic concentrations in the California Aqueduct, downstream of where groundwater has been pumped into the canal, have increased markedly in 2015 and in the case of Arsenic are approaching the Maximum Contaminant Level for drinking water of 0.010 mg/L.

See http://www.water.ca.gov/waterdatalibrary/waterquality/station_group/index.cfm

⁵⁶ 2013 CDFW comments on NOP for MPG starting on page 5 of Appendix B:
https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41116

4. Water delivery impacts, such as delivery schedules, for Level 2 and 4 water supplies to the Mendota WA.

CDFW commented on the MPG DEIS/R in 2019. CDFW identified sections of the DEIR/S that do not adequately identify or mitigate all of the Project's significant, or potentially significant, impacts on biological resources...In addition, because of these issues, CDFW has concerns that USBR and WWD may not have the basis to approved the project or make "findings" as required by CEQA unless the environmental document is modified to eliminate and/or mitigate significant impacts as feasible (CEQA Guidelines, § § 15704, 15091 & 15092). Increases in Total Dissolved Solids from groundwater pumped into Mendota Pool could adversely affect the federally and State listed giant garter snake. Further, groundwater overdraft and subsidence has adversely affected water conveyance in the Mendota Wildlife Area.⁵⁷

James ID submitted comments on the MPG DEIS/R on January 14, 2019.⁵⁸ James ID commented that their district "*would bear the brunt of significant direct, indirect, and cumulative water quality degradation and other impacts caused by the Project, given its southerly position relative to Project discharges, which become more degraded as they flow towards JID's point of diversion...the EIS/EIR fails to consider or require any mitigation or alternative to protect JID. Indeed, the EIS/EIR essentially fails to analyze and ignores water quality impacts to JID, including associated impacts to crops, soils, and groundwater within the district that is relied upon by its growers. Such failure of evaluation and analysis is prejudicial because it precludes very relevant information about the environmental consequences of the project from being presented to or know by the public and decionmakers, including lead and responsible agencies. Because of such deficiencies, ... the EIS/EIR fails to comply with NEPA and CEQA and must be revised and recirculated before the proposed Project can be considered for approval...*" James ID sued Westlands in March 2020 over the MPG Exchange Program.⁵⁹

Long Term Water Transfer Program (formerly known as North to South Water Transfer Program). Revised Final EIS/R completed in September 2019.⁶⁰ USBR is federal lead agency, San Luis and Delta Mendota WA is State lead agency. Aqualliance legally challenged these transfers in 2015, ultimately forcing Reclamation to revise the NEPA and FWS to revise the ESA

⁵⁷ 2019 CDFW comments on the MPG DEIS/R starting on page 504 of the FEIS:
https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41117

⁵⁸ See James ID comments on DEIS/R starting on page 565 of FEIS:
https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41118

⁵⁹ See: <https://sjvwater.org/district-sues-to-stop-salty-water-exchange/>

⁶⁰ See: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=40932

consultation.⁶¹ Reclamation issued a revised Final EIS in September 2019 and signed a ROD on 4/7/2020.⁶²

Groundwater banking

Agricultural Aquifer Storage and Recovery Program

In August 2019, Westlands filed a Mitigated Negative Declaration (MND) for the Agricultural Aquifer Storage and Recovery (Ag-ASR) Program. The Ag-ASR Program will be implemented within Westland's 600,000+ acre service area on the west side of the San Joaquin Valley. With the Ag-ASR Program, surface water from existing sources will be recharged into groundwater aquifers through groundwater wells during times when surplus or supplemental surface water is available, and later extracted by landowners for irrigation when it is needed. The Ag-ASR Program includes the incremental additions of about 20 well conversions per year for recharge with a conservatively high target of 400 operational Ag-ASR wells over the next 15 to 20 years. Most infrastructure is already in place.

Imported surface water within the Westside Subbasin will be derived largely from CVP water deliveries and smaller amounts from flood flows off the Kings River. Surface water from the San Luis Canal and from the Kings River, diverted from a location near the upstream end of the Mendota Pool, would be the main sources of supply for the Project. The Project would average up to 29,000 acre-feet annually. The Project proposes to import surface water from the Kings River by diverting from a location near the upstream end of the Mendota Pool.

CDFW provided comments on the MND on September 30, 2019.⁶³ CDFW voiced concern regarding adequacy of mitigation measures for the following special status plant and wildlife species and habitats “*known to occupy the Project area: the State threatened and federally endangered San Joaquin kit fox (Vulpes macrotis mutica), the State and federally endangered Tipton kangaroo rat (Dipodomys nitratooides nitratooides), the State and federally endangered and State fully protected blunt-nosed leopard lizard (Gambelia sila), the State threatened Swainson's hawk (Buteo swainsoni), the State threatened Nelson's antelope squirrel (Ammospermophilus nelsoni), the State threatened tricolored blackbird (Agelaius tricolor), the federally endangered and California Rare Plant Rank (CRPR) 1 B.2 San Joaquin woollythreads (Monolopia congdonii), the CRPR 1 B.2 Munz's tidy-tips (Layia munzii), the State candidate crotch bumble bee (Bombus crotchii), and the State species of special concern American badger (Taxidea taxus), Tulare grasshopper mouse (Onychomys torridus tularensis), San Joaquin coachwhip (Masticophis flagellum ruddocki), and burrowing owl (Athene cunicularia).*”

CDFW recommended USFWS be consulted on impacts of this project: “*CDFW recommends consultation with the USFWS prior to any ground disturbance related to this Project due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act*

⁶¹ See: www.aqualliance.net/wp-content/uploads/2018/02/AquAlliance10YearMSJ_Order021518.pdf

⁶² See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=18361

⁶³ See: <https://ceqanet.opr.ca.gov/2019089109/2/Attachment/6QMajD>

(ESA) is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that_ could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting.”

CDFW also noted that, “*Project-related diversions acquiring surface water from the Kings River watershed may impact additional riparian, wetland, fisheries and terrestrial (upland) wildlife species and habitats, including the Fresno Slough and Mendota Wildlife Area (MWA), and the San Joaquin River. Affected special status species and habitats vary depending upon location and may include, but are not limited to, the Federal threatened Central Valley DPS steel head (Oncorhynchus mykiss), the Federal and State threatened Central Valley spring-run ESU Chinook salmon (O. tshawytscha), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (O. tshawytscha), the State and Federal threatened giant garter snake (Thamnophis gigas), the State threatened Swainson's hawk, the State candidate tricolored blackbird, the State species of special concern burrowing owl and western pond turtle, and numerous additional special status species and habitats. The Project proposes to divert an average of up to 29,000 AF annually, and the Mendota Pool would be one of two main sources for this diversion amount. CDFW recommends revising the MND to identify potential impacts to riparian and other natural resources listed above due to surface flow diversion from the Kings River and Fresno Slough, and proposing measures that minimize and mitigate potential impacts to a less than significant level.”*

Conveyance of up to 50,00 acre-feet of Westlands Water District's 2017 Central Valley Project (CVP) water to Semitropic Water Storage District's Groundwater Bank

DWR will deliver up to 50,000 acre-ft of Westlands' 2017 CVP water to KCWA for storage in Semitropic's Groundwater Banking Program, under Article 55 of KCWA's long-term Water Supply Contract with DVR. The US Dept. of Interior's Bureau of Reclamation (Reclamation) will make Westlands' 2017 CVP water available for delivery by DWR to KCWA's turnout(s) at either Banks Pumping Plant or O'Neill Forebay by February 28, 2018. The return of water to Westlands is proposed to be delivered in two ways: 1) pump-in delivery to the CA Aqueduct at Reaches 10A, 12E, and/or 13B in exchange for a like amount concurrently delivered by DWR to the CVP portion of O'Neill Forebay; or 2) by delivery of KCWA's SWP Table A water to the CVP portion of O'Neill Forebay. The return of water from KCWA to Westlands must be completed by Dec. 31, 2028.⁶⁴

- Westlands is involved with a number of groundwater pump-ins, transfers and exchanges. These actions have adverse local effects as many involve substitution of higher quality surface water supplies with lower quality groundwater or commingling of poor quality groundwater with surface water supplies. These projects can cumulatively effect...The cumulative total potential water that would be made up by these actions is over 700,000 AF, although availability of some of these supplies rely on floodwater capture and are variable. (See Exhibit 3) The present, and reasonably foreseeable future groundwater pumping,

⁶⁴ See: <https://ceqanet.opr.ca.gov/2017051016/3>

exchanges and transfers that involve Westlands include Mendota Pool Group (MPG) Exchange⁶⁵

- Westlands San Luis Canal Pump-in Program⁶⁶
- Reclamation Approvals Associated with the Poso Creek Water Company's Multiyear Banking and Transfer Program⁶⁷
- Reclamation Approvals Associated with Harris Farms and Shows Family Farms Multiyear Banking and Transfer Program⁶⁸
- Westlands Water District 5-year Warren Act Contract for Kings River Flows in the San Luis Canal⁶⁹
- Firebaugh Canal Water District 5-Year Transfer Program, 2019-2023⁷⁰
- Delta-Mendota Canal Groundwater Pump-In Program Revised Design Constraints⁷¹
- San Joaquin River Exchange Contractors Water Authority, 25-Year Groundwater Pumping and Water Transfer Project⁷²
- Long Term Water Transfer Program⁷³
- Water transfers from the San Joaquin Exchange Contractors⁷⁴

Westlands is also planning and/or implementing a number of groundwater banking projects:

- Agricultural Aquifer Storage and Recovery Program⁷⁵
- Panoche Creek Groundwater Replenishment Project⁷⁶
- Pasajero Groundwater Replenishment Project⁷⁷

⁶⁵See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=36282

⁶⁶See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=21021

⁶⁷See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=28801

⁶⁸See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=32081

⁶⁹See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=29341

⁷⁰See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=36203

⁷¹See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=32781

⁷²See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=2771

⁷³See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=18361

⁷⁴ See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=9086

⁷⁵ See: <https://ceqanet.opr.ca.gov/2019089109/2/Attachment/QdGzdr>

⁷⁶ See: <http://sldmwa.org/integrated-regional-water-management-plan/>

⁷⁷ Ibid.

Impacts outside of Westlands

Impacts of the execution of the Westlands contract go far beyond the district's boundary. The impacted area includes the zones of export including the Trinity and Sacramento Rivers and the Sacramento-San Joaquin Delta Estuary and Bay. The effects to these areas outside of the district's boundary can be profound and significant. For example, since 1964, Reclamation has been diverting Trinity River water 400 miles south to the San Luis Unit, including Westlands. These diversions have had a profound effect on fisheries, including a 90% decline in Trinity River fish populations. In 1984, Congress passed the Trinity River Basin Fish and Wildlife Management Act (Pub. L. No. 98-541) which recognized that Trinity River Division (TRD) operations substantially reduced instream flows in the Trinity River, resulting in degraded fish habitat and consequently a drastic reduction in anadromous fish populations. The 1984 Act directed the Secretary to develop a management program to restore fish and wildlife populations in the Basin to levels approximating those that existed immediately before TRD construction began. In 2000, the USDI signed a Record of Decision for the Trinity River Restoration Program. The TRRP ROD noted that "*Amendments to the 1984 Act redefined its restoration goals so that the fishery restoration would be measured not only by returning anadromous fish spawners, but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful harvest opportunities. (These restoration goals were reaffirmed through enactment of the Trinity River Fish and Wildlife Management Reauthorization Act of 1995, Pub. L. No. 104-143, May 15, 1996)*".⁷⁸

The San Francisco Bay and Delta ecosystem is also 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).⁷⁹ Sources of selenium contamination include agricultural drainage from the Central Valley (Linares et al 2015; Presser and Luoma 2010).⁸⁰

Drainage Impacts

The Effects of Drainage from Westlands caused by irrigation enabled by the execution of this Final contract are Significant and Complex. The pollution created by irrigating drainage-impaired lands in Westlands, and the future implementation drainage management actions within the district have not been analyzed or disclosed. The USEPA noted in their comments on the San Luis Unit DEIS (@ pg 6 of Attachment A) that, "*continuing the current practices of managing agricultural drainage will have adverse impacts on groundwater and surface water quality, and beneficial uses including fish and wildlife, potential drinking water supplies, and agriculture.*"⁸¹ These adverse impacts affect trust resources including migratory birds, anadromous fish, and

⁷⁸ See: <https://www.trrp.net/DataPort/doc.php?id=227>

⁷⁹ See: https://www.waterboards.ca.gov/water_issues/programs/tmdl/2014_16state_ir_reports/category4a_report.shtml

⁸⁰ See: <https://setac.onlinelibrary.wiley.com/doi/abs/10.1002/etc.2775> & See: <https://pubs.usgs.gov/pp/p1646/>

⁸¹ See: <https://archive.epa.gov/region9/nepa/web/pdf/sanluis-deis.pdf>

federally and state listed species. Continued delivery of water to these soils, as contemplated by this Final contract, will degrade the waters of the State and Nation. The USEPA in their comments on San Luis Unit Long Term Contract Renewals (@ pg 4 of Attachment A) concluded that, “*the Drainage solutions and features relied upon to implement these solutions should not be separated from the implementation of long-term water contracts.*”⁸² Yet that is exactly what Reclamation has done.

Additionally, there is no disclosure of the effects of reallocation of water from retired lands in Westlands to upslope lands within District. The USEPA in their comments on the San Luis Unit Long Term Contracts Supplemental EIS (@ pg 3 of Attachment A) noted concern that “*redistribution of supplies from lands which are no longer in production to land currently dependent on groundwater could lead to expansion of drainage-impaired lands* (p. 84, “Land Retirement Final Report”, Feb. 1999). *Water redistributed upslope can create conditions of shallow groundwater in downslope areas, leading to more widespread drainage problems.*”⁸³ Some of the drainage impaired lands in Westlands have been permanently retired from irrigation and repurposed into a Master-planned energy park. CIM Group is repurposing 21,000 acres of selenium-contaminated and drainage-impaired farmland to accommodate solar PV generating facilities with a total generating capacity of approximately 2,000 MW with construction to be phased over 12 years. Water needs for solar O&M are approximately 0.5% of agricultural needs. Annual water consumption estimates for a 250 MW solar facility is 2.16 acre-feet per quarter-section (160 acres). For comparison, the average irrigation rate for agricultural lands within Westlands Water District is approximately 2.5 acre-feet per acre per year, or 400 acre-feet per quarter-section per year.⁸⁴ Water originally applied to the lands in the Solar Park are being reallocated for Ag use within the district.

Conclusion

In short, Reclamation and Westlands' have failed to comply with State and Federal laws including NEPA, CVPIA, CEQA, CESA and ESA under this contract conversion process. The public has been given a puzzle of dizzying complexity without the puzzle picture. Despite federal laws and rules, Reclamation did not provide the public with copies of the contract and thus, thwarted federal law. Westlands' proposed contract conversion must be withdrawn and restarted with full consideration of all similar contract conversions and their cumulative effects. The water contract conversion process must start with outreach to the 17-20 parties of interest that have thus far been excluded or contracted out under the proposal. Furthermore, all of these invisible draft contracts must be publicly disclosed and the critical exhibits must be provided to the public and those areas of origin that are most impacted by the water that is being taken and exported to Westlands.

⁸² Ibid.

⁸³ See: <https://archive.epa.gov/region9/nepa/web/pdf/san-luis-deis-supplemental.pdf>

⁸⁴ See: <https://wwd.ca.gov/wp-content/uploads/2017/12/westlands-solar-park.pdf>

Reclamation has failed to address reduction in exports, the expanded Service Area outside of Congressional boundaries, the irrigability of lands in Westlands, the cumulative effects such as groundwater pump-ins and exchanges, transfers along with the drainage impacts and conversion to municipal and industrial uses as contemplated under the conversion of this 9(e) contract to a 9(d) repayment contract that would be issued in perpetuity. Given the numerous potential environmental effects associated with Westlands water deliveries, a full EIS and ESA analysis must be completed prior to the execution of these new conversion contracts in perpetuity.

EXHIBITS:

1. Contract Conversions South of the Delta
2. Operation and Maintenance and Reconstruction Contracts
3. Pump-In Projects
4. Drainage Projects
5. Public Interest & Agency Comment Letters

Exhibit 1: Status of permanent contract conversions for south of the Delta and compliance with Federal laws.

Permanent Contract Conversion	Contractor	Quantity (acre-feet)	Contract Use	Contract Status	Contract Effective Date	Contract Conversion Compliance with Federal Laws		
						NEPA	ESA	CVPIA
San Luis Unit								
14-06-200-495A-IR1-P	Westlands WD	1,150,000	Ag/M&I	No public release of final, Executed 2/2	6/1/2020	NO	NO	NO
14-06-200-7773A-IR5	San Luis WD	125,080	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-7864A-IR5	Panoche WD	94,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
6-07-20-W0469-BA	Pacheco WD	10,080	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-4173-IR5	City of Coalinga	10,000	M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-4619A-IR5	City of Avenal	3,500	M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-7081A-IR3	City of Huron	3,000	M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8033A-IR5	CDFW M&I Only for Mendota WA	10	M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		1,395,670						
Delta Mendota Canal Unit -- Assigned to Westlands								
14-06-200-336+30:365A-XXX-B	Westlands WD 2 -Way Mercy Springs WD Partial Contract Assignment with Santa Clara	6,260	Ag/M&I	No public release of final, Comment Closed 2/19/2020	TBD	NO	NO	NO
14-06-200-8092-XXX	Westlands WD DD #1, Broadview WD Contract Assignment	27,000	Ag/M&I	No public release of final, Comment Closed 2/19/2020	TBD	NO	NO	NO
7-07-20-W0055-XXX	Westlands WD DD#1 , Centinella WD Contract Assignment	2,500	Ag/M&I	No public release of final, Comment Closed 2/19/2020	TBD	NO	NO	NO
14-06-200-8018-XXX	Westlands WD DD #1, Widren WD Contract Assignment	2,990	Ag/M&I	No public release of final, Comment Closed 2/19/2020	TBD	NO	NO	NO
14-06-200-3365A-XXX-C	WWD DD #2, Mercy Springs WD Partial Contract Assignment	4,198	Ag/M&I	No public release of final, Comment Closed 2/19/2020	TBD	NO	NO	NO
14-06-200-7823J	Westlands WD, Oro Loma Partial Contract Assignment	4,000	Ag/M&I	Unkown	TBD	NO	NO	NO
Subtotal		46,948						
Delta Mendota Canal Unit								
14-06-200-7858A	City of Tracy	20,000	M&I	No public release, In negotiation				
7-07-20-W0045-LTR1	The Westside Irrigation District-- assigned to City of Tracy	5,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-4305A-LTR1	Banta Carbona Irrigation District	20,000	M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-785-LTR1	Byron Bethany Irrigation District	20,600		Unknown				
7-07-20-W0045-LTR1	The Westside Irrigation District	5,000	M&I	No public release, In negotiation	TBD	NO	NO	NO
3-07-20-W1124-LTR1	U.S. Department of Veterans Affairs, San Joaquin Valley National Cemetery	850	M&I	Unknown	?	NO	NO	NO
14-06-200-1072-LTR1	West Stanislaus Irrigation District	50,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-922-LTR1	Del Puerto Water District	140,210	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-7754-LTR1	Eagle Field WD	4,550	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-3365A-LTR1	Mercy Springs Water District-- 1300 AF assigned to Angiola WD(SWP)	2,842	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO

Permanent Contract Conversion	Contractor	Quantity (acre-feet)	Contract Use	Contract Status	Contract Effective Date	Contract Conversion Compliance with Federal Laws		
						NEPA	ESA	CVPIA
14-06-200-7823-LTR1	Oro Loma Water District	600	Ag/M&I	Unknown	?	NO	NO	NO
14-06-200-3598A-LTR1	Patterson Irrigation District	22,500	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		292,152						
Mendota Pool Unit								
14-06-200-7859A-LTR1	Coehlo Family Trust	2,080	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-4019A-LTR1	Fresno Slough Water District-- Assigned to Angiola WD(SWP)	4,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-700-A-LTR1	James Irrigation District	35,300	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
2-07-20-W0266-LTR1	Laguna Water District	800	M&I	Unknown	?	NO	NO	NO
14-06-200-3802A-LTR1	Reclamation District # 1606	228	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-701-A-LTR1	Tranquillity Irrigation District	13,800	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-3537A-LTR1	Tranquillity Public Utility District	70	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		56,278						
Contra Costa Canal								
175r-3401A-LTR1	Contra Costa Water District	195,000	M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		195,000						
Cross Valley Canal								
14-06-200-8292A-IR17	County of Fresno	3,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8293A-IR17	County of Tulare	5,308	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8466A-IR17	Hills Valley Irrigation District	3,346	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8601A-IR17	Kern-Tulare Water District	40,000	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8237A-IR17	Lower Tule River Irrigation District	31,102	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8238A-IR17	Pixley Irrigation District	31,102	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8367A-IR17A	Rag Gulch Water District	13,300	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
14-06-200-8565A-IR17	Tri-Valley Water District	1,142	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		128,300						
Eastside Division (New Melones)								
6-07-20-W0329	Stockton East Water District	75,000	Ag/M&I	No public release, comment closes May 18, 2020	TBD	NO	NO	NO
4-07-20-W0330	Central San Joaquin Water Conservation District	80,000	Ag/M&I	No public release, comment closes June 8, 2020	TBD	NO	NO	NO
Subtotal		155,000						
San Felipe Division								
8-07-20-W0130	San Benito County WC and FCD	43,800	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
7-07-02-W0023A	Santa Clara Valley Water District	152,500	Ag/M&I	No public release, In negotiation	TBD	NO	NO	NO
Subtotal		196,300						

South of Delta Total (excluding SJR exchange contracts) 2,465,648

Exhibit 2: Status of Operations and Maintenance Contracts for south of the Delta and compliance with Federal laws.

Project Name	Contractor(s)	Project Description	Project Status	Project Effective Dates	Compliance with Federal Laws	
					NEPA	ESA
San Luis & Delta Mendota WA 35-Year Operation, Maintenance and Replacement Agreement	SLDMWA	Reclamation proposes to issue a 35-year OM&R agreement to the Authority, who will continue to operate, maintain, and replace all facilities covered under the current agreement.	CEC signed on 11/12/2019, draft Contract out for 15-day public comment thru 12/20/2019.	35-year Contract	YES, CEC	YES, USFWS 2005 BiOp (04-F-0368) for USBR's SCCAO O&M
Draft repayment contract for Central Valley Project Delta Division - C.W. "Bill" Jones Pumping Plant	SLDMWA	Contract between USBR and SLDMWA for the Repayment of Extraordinary Maintenance Costs for the C.W. "Bill" Jones Pumping Plant.	Draft contract out available for public comment thru May 29, 2020 , CEC signed 6/13/2019.	This Contract shall become effective on the date it is signed and shall remain in effect until the Authority has fully repaid its Repayment Obligation to the United States as described in Article 5 in the Contract.	YES, CEC	?

Exhibit 3: Status of Contracts for Pump-ins and other projects south of the Delta and compliance with Federal laws.

Project Name	Contractor(s)	Contract Quantity (acre-feet)	Maximum potential quantity (AF per Year)	Project Description	Project Status	Project Effective Dates	Compliance with Federal Laws		
							NEPA	ESA	CWA
Mendota Pool Group (MPG) Exchange	Mendota Pool Group, Westlands (State Lead Agency), Wonderful Orchards	Provides an exchange (groundwater for CVP water, CVP water delivered to WWD) of up to 25,000 AFY would be allocated to Westlands. Maximum of 400,000 AF of groundwater to be exchanged with CVP water to be delivered to Westlands WD over 20 years.	25,000	MPG landowners will annually pump a not-to-exceed total of 38,316 acre-feet per year, which includes up to 26,316 acre-feet per year for exchange and the remainder for irrigation on their lands around the Mendota Pool. Groundwater discharged into the Mendota Pool by MPG would be made available to Reclamation to satisfy existing CVP water.	Record of Decision signed January 2020.	20 Year Program 2020-2040	Yes	Yes for groundwater recharge facility only	Water Quality Commitments in EIS/R include: MPG discharge points into the Mendota Pool with TDS concentrations greater than 1,600 mg/L will not be pumped for exchange into the Pool (or greater than 1,200 mg/L during September, October, and November). Wells with selenium concentrations equal to or greater than 2 µg/L will be shut off.
Mercy Springs Partial Assignment and Fresno Slough Full Assignment of CVP Contract to Angiola WD	Mercy Springs, Fresno Slough and Westlands WDS	5,300 AFY	5,300	Permanent full assignment of Fresno Slough's CVP water contract (4000 AF) and the partial assignment of Mercy Springs Water Contract (1300 AF) to Angiola WD	FONSI signed March 4, 2020.	Fresno Slough and Mercy Springs Contracts are included in the WIIN Conversion Table	Yes	NO	Concerns raised regarding local groundwater conditions.
Westlands 2020-2025 San Luis Canal Pump-in Program	Westlands	up to 30,000 AFY of groundwater pumped into SLIC to be used by Westlands growers.	30,000	Would allow the water users in WWD to pump up to 30,000 acre-feet (AF) of pumped District groundwater (Non-Project Water) from different existing wells within Fresno and Kings counties into the San Luis Canal (SLC), a Federally owned facility, operated by the State of California, for conveyance when the District's contract water allocation entitlement from the United State Bureau of Reclamation(USBR) is 20 percent or less, annually from 2020 through 2025.	WWD RFP to prepare CEQA documentation due date was 3/17/2020. NEPA and CEQA expected in spring/summer 2020. Westlands CEQA for previous program covered 2017-2019	Would extend pump-in program for 5 years. Current Warren Act contract with USBR expires June 30, 2022.	YES for 5 years. See: https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=21021	Unlikely (No ESA consultation was completed for the previous pump in program)	TBD
Agricultural Aquifer Storage and Recovery Program (Ag-ASR)	Westlands	Based on the District's hydrogeology, long term modeling and planning assumptions, maximum recharge rates from the Pilot Study, and implementation of Ag-ASR in 400 wells, it is anticipated that water stored in Westlands' Ag-ASR Program could average as much as 29,000 feet (AF) annually.	29,000	With the proposed Project, surface water from existing sources would be recharged into groundwater aquifers during times when surplus or supplemental surface water is available, and later extracted by landowners for irrigation when it is needed. The Project includes the incremental additions of about 20 well conversions per year for recharge with a target of 400 operational aquifer storage and recovery (ASR) wells over the next 15 to 20 years.	Notice of Determination to adopt a MND on 10/8/2019.	Indefinite	N/A	NO	NO
Reclamation Approvals Associated with the Poso Creek Water Company's Multiyear Banking and Transfer Program	Westlands and San Luis WDS	Up to 50,000 AFY	50,000	Transfers of up to 50,000 AF per year of available CVP water supplies over a 9-year period. Transfers of CVP water would be from CVP contractors to Poso Creek members either for direct agricultural use on member lands located within Westlands, San Luis, Wheeler Ridge, and Semitropic or for banking in Semitropic and/or the Kern Water Bank for later use on member lands within those same districts. Westlands has stored surplus water in various groundwater banks including Semitropic (SWSD) and Wheeler Ridge (WRM).	FONSI signed 7/10/2017. Last year's Water Exchange was noticed by Westlands via a NOE.	2017-2025	YES	NO	NO
Water transfers from the San Joaquin Exchange Contractors	Various recipients including Westlands, refuges, Santa Clara, KCWA, etc.	25-Year Transfer/Exchange Program from 2014-2038. Authorizes transfer of up to 150,000 AFY. In 2019, Westlands received 80,000 AF of SJ Exchange Contractor Transfer Water	150,000	Exchange and/or transfer of up to 150,000 AFY for 25 years from the San Joaquin River Exchange Contractors Water Authority (SIRECWA) to San Joaquin Valley public and private wetlands, and south of Delta agricultural, municipal and industrial users in Alameda, Contra Costa, Fresno, Kern, Kings, Madera, Merced, Monterey, San Joaquin, San Benito, Santa Clara, Santa Cruz, Stanislaus, and Tulare counties. The water for the Transfer Program is developed by the SIRECWA by means of a suite of actions consisting of the following: tailwater recapture, temporary land fallowing, reductions in deep water percolation and applied water efficiency improvements.	ROD signed 7/30/2013. Last year's transfer to Westlands was noticed via a NOE	2014-2038	YES EIS/R in 2014	YES only on incremental difference between the 25 year transfer program and the previous 10 year program	NO
Long Term Water Transfer Program	Certain SLDMWA member agencies, Contra Costa WD and EBMUD	Limited to 250,000 AF to be transferred in any given year.	250,000	Covers a range of potential water transfers from water contractors north of the Delta to CVP water contractors south of the Delta.	Revised Final EIS/R completed in September 2019. ROD signed 4/7/2020.	Revised Final EIS/R covers 5 years, 2020-2024.	YES	YES	?
Crescent Canal Project	Westlands	Would provide an additional 15,500 AF of water from Kings River flood flows when available.	15,500	Westlands Water District (WWD) is proposing this project to enhance water supply reliability of WWD. The Crescent Canal is 22 miles long, and flows northwest from the Main Diversion off the Kings River. The purpose of the Project is to capture flood flows from the Kings River via the Crescent Canal and deliver flood flows to WWD.	Listed as "Planning" stage and medium priority in SLDMWA Westside-San Joaquin IRWMP Update 2018.	TBD	TBD	TBD	Would divert some Kings River floodflows reducing flows to the San Joaquin River.

Project Name	Contractor(s)	Contract Quantity (acre-feet)	Maximum potential quantity (AF per Year)	Project Description	Project Status	Project Effective Dates	Compliance with Federal Laws			
							NEPA	ESA	CWA	
Lateral 13 Intertie Project	Westlands	Up to 8,500 AF via water transfers from Tranquility ID.	8,500	WWD Lateral 13 Intertie Project (Project) connects Lateral 13 to the Tranquility Irrigation District's (TID) Slough Canal for water supply reliability. WWD is proposing to convey transfers (up to 8,500 AF) from TID via the Project.	Listed as "Under Design" and medium priority in SLDMWA Westside-San Joaquin IRWMP Update 2018.	TBD	TBD	?	?	
Lateral Inter-Connection Project	Westlands	Not specified		WWD is proposing the Lateral Inter-Connection project which connects laterals 4, 5, and 6 to achieve a higher efficiency distribution system for the area meet water demands and provide operational flexibility.	Listed as "Under Design" and medium priority in SLDMWA Westside-San Joaquin IRWMP Update 2018.	TBD	TBD	?	?	
Panoche Creek Groundwater Replenishment Project	Westlands	Not specified		The proposed project consists of a recharge basin conveyance, and a groundwater well to recover the stored water. The proposed project consists of conveying excess flood flows which are all available approximately every 4-5 years surplus water and any other type of eligible water available from local water conveyance facilities to a proposed recharge basin that will percolate into the groundwater aquifers for future use.	Listed as "Planning" stage and medium priority in SLDMWA Westside-San Joaquin IRWMP Update 2018.	TBD	TBD	TBD	Selenium may be a constituent of concern in flood flows in Panoche Creek.	
Pasajero Groundwater Replenishment Project	Westlands	Capacity is up to 10,800 AF over a 6-month period to capture floodflows from Los Gatos Creek watershed.	10,800	The proposed Pasajero Groundwater Replenishment Project would be located near the city of Coalinga just north of Los Gatos Creek. The project consists of a 60-acre recharge basin, conveyance, and a groundwater well to recover the stored water, as needed. The recharge basin will store excess flood flows which are available approximately every 4-5 years surplus water and any other type of eligible water available.	Listed as "Planning" stage and medium priority in SLDMWA Westside-San Joaquin IRWMP Update 2018.	TBD	TBD	TBD	Los Gatos Creek is within the Atlas Coalinga Mine Superfund area over asbestos contamination.	
Reclamation Approvals Associated with Harris Farms and Shows Family Farms Multiyear Banking and Transfer Program	Westlands and San Luis WDs	Up to 15,000 AFY of CVP water to be banked in Semitropic or Kern WB	15,000	Reclamation proposed to approve a series of transfers of up to 15,000 AF per year of available CVP water supplies over a 9-year period from CVP contractors to Harris Farms, Inc. and Shows Family Farms, LP either for direct agricultural use on their lands located within Westlands, San Luis, and Semitropic or for banking in Semitropic and/or the Kern Water Bank for later use on their lands within those same districts.	FONSI signed 6/4/2018.	2018-2026	YES	NO	NO	
Westlands Water District 5-year Warren Act Contract for Kings River Flows in the San Luis Canal	Westlands	Up to 50,000 AFY of Kings River flood flows in the San Luis Canal	50,000	Westlands has an agreement with the Water Association for Kings River flood flows and is able to take the flood flows off the Fresno Slough via laterals 6-1 and 7-1. However, many of the parcels that could be serviced by these two laterals within Westlands have been retired. Therefore, in 2011 Westlands requested approval from Reclamation to convey up to 50,000 afy of Kings River flood flows in the San Luis Canal over a 5-year period.	FONSI signed 8/4/2017.	2017-2022	YES	NO	NO	
Firebaugh Canal Water District 5-Year Transfer Program, 2019-2023	Firebaugh Canal WD, and Pacheco, San Luis and Westlands WDs	Up to 7,500 AFY	7,500	Firebaugh Canal Water District (Firebaugh), has requested approval from Reclamation for a series of annual transfers between 2019 and 2023 of up to 7,500 acre-feet per year (AFY) of its Central Valley Project (CVP) water supply to Pacheco Water District (Pacheco), San Luis Water District (San Luis), and Westlands Water District (Westlands) hereafter referred to as the Transfer Recipient Districts. To make Firebaugh's CVP water supplies available for the transfers, Firebaugh landowners would pump groundwater from three wells to meet in-district demands.	FONSI signed 5/7/2019.	2019-2023	YES	NO	NO	
Delta-Mendota Canal Groundwater Pump-in Program Revised Design Constraints	Banta Carbona ID, Byron-Bethany ID, West Stanislaus ID, and Del Puerto, Mercy Springs, Panoche, Pacheco, and San Luis WDs	Up to 50,000 AFY	50,000	Five-year Warren Act Contracts to the Delta-Mendota Canal Pump-in Program Participating Districts that include additional design constraints to address their potential contribution to subsidence along the Delta-Mendota Canal. The purpose of the project is to provide additional water supplies for CVP contractors located along the DMC.	FONSI signed 5/7/2018.	2018-2022	YES	NO	NO	
San Joaquin River Exchange Contractors Water Authority, 25-Year Groundwater Pumping and Water Transfer Project	San Joaquin Exchange Contractors to CVP south of Delta contractors.	Up to 20,000 AFY	20,000	Twenty-five year program to transfer of up to 20,000 acre-feet of substitute water from the Exchange Contractors to other Central Valley Project contractors. The water would consist of a maximum of 15,000 acre-feet of developed water from ground water pumping and a maximum of 20,000 acre-feet from a combination of conservation measures: temporary land fallowing and ground water pumping. Reclamation approves and/or executes short-term and/or long-term temporary water transfers or	FONSI signed 1/14/2008.	2008-2033	YES	NO	NO	
Total Maximum Potential AF			716,600							

Exhibit 4: Status of Drainage projects south of the Delta and compliance with Federal laws.

Project Name	Contractor(s)	Project Description	Project Status	Project Effective Dates	Compliance with Federal Laws		
					NEPA	ESA	CWA
Kaljjan Drainage Reuse Project	SLWD	The Project is located within the San Luis Water District approx. 9 miles south of Los Banos. The Project will reclaim drain water from the Charleston Drainage District for blending and permit conveyance of other supplies for beneficial use. Project will augment the District's supply and increase reliability enable the conveyance of flood water for beneficial use reduce poor quality drain water discharges to the San Joaquin River (SJR) system and free up capacity in the SJR Water Quality Improvement Project.	In development	TBD	TBD	TBD	?
Westlands Upper Aquifer Groundwater Supply Pilot Project	Westlands WD	The pilot project will extract groundwater from the upper aquifer using a private well and the water will be treated to remove dissolved solids (TDS). The goal is to produce product water with TDS equivalent to the water quality in the San Luis Canal. The water user will pump the product water into Lateral 7 and use the treated reject water to grow Jose Tall Wheat Grass on District owned land. The pilot project will evaluate costs of treating upper aquifer groundwater and will track reduction in shallow groundwater levels around groundwater well and Jose tall wheat grass.	Uncertain	Assume this will be implemented over a short time period (1 year)? Project funding is small \$20,000. Was discussed during WWD Board Meeting.	NO	NO	NO
Widren Water District Pilot Project Extension	Widren WD	Widren constructed a Reverse Osmosis Treatment Plant to extract and treat their shallow drainage water for use within an in-district Reuse Area. Product water is discharged into the DMC for transfer for exchange. In 2019 Reclamation issued a 3-year Warren Act contract/Exchange Agreement to Widren Water District for the introduction and conveyance of up to 1,000 acre-feet of Reverse Osmosis-treated groundwater (non-Project water) into the Delta-Mendota Canal as well as potential storage in San Luis Reservoir.	In 2017, Reclamation completed an EA/FONSI (EA-16-035) for this pilot project which included issuance of a 1-year Warren Act contract/Exchange Agreement and a 25-year land use authorization for installation, operation, and maintenance of a pipeline connection to an existing discharge facility on the Delta-Mendota	March 2019-March 2022	YES	NO	NO
Westlands Upper Aquifer Groundwater Supply Pilot Project	Westlands WD	This pilot project is being conducted in cooperation with a Westlands water user. The pilot project will extract groundwater from the Upper Aquifer using a private well and the water will be treated to remove dissolved solids from the product water. The goal is to produce product water with total dissolved solids concentration equivalent to the water quality in the San Luis Canal. The water user will pump the product water into Lateral 7 and use the treated reject water to grow Jose Tall Wheat Grass on District owned land. The pilot project will evaluate costs of treating upper aquifer groundwater and will track reduction in shallow groundwater levels around groundwater well and Jose tall wheat grass.	Uncertain	Assume this will be implemented over a short time period (1 year)? Project funding is small \$20,000. Was discussed during WWD Board Meeting.	NO and because it is a "pilot project" probably no CEQA either.	NO	NO
10-Year Use Agreement for the San Luis & Delta-Mendota Water Authority Long-term Storm Water Management Plan for the Grasslands Drainage Area	SLDMWA, Panoche Drainage District	Under the Proposed Action, Reclamation will allow the SLDMWA to continue to introduce and convey up to 150 cfs of stormwater commingled with drainage through the San Luis Drain for 10 years.	FONSI Signed 12/31/2019	1/1/2020 - 12/31/2029	YES	YES	NO NPDES permit. State issued WDR to be reopened in 2 years.
Grasslands Channel Enlargement	SLDMWA, Panoche Drainage District	The Grassland Bypass Project currently is limited to a capacity of 150 cfs. The proposed project will increase the capacity of the Grassland Bypass Channe (GBC) to 300 cfs by enlarging the inlet and outlet connections of the system. Maximum historic storm flows are approximately 250 cfs.	Not included in 2019 CEQA/NEPA for 10 Year Use Agreement for the San Luis Drain. Listed as "low" priority in SLDMWA Westside-San Joaquin IRWMP Update 2018	TBD	TBD	TBD	TBD
Westlands Solar Park	Westlands	Master-planned energy park in Westlands on drainage-impaired lands managed by CIM Group. CIM Group is repurposing 21,000 acres of selenium-contaminated and drainage-impaired farmland to accommodate solar PV generating facilities with a total generating capacity of approximately 2,000 MW with construction to be phased over 12 years.	12-year buildout. Final EIR completed in December 2017: https://wwd.ca.gov/wp-content/uploads/2017/12/westlands-solar-park.pdf	Indefinite	N/A	?	N/A

Exhibit 5:

Documents Adopted by Reference: 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. January 21, 2020, CBD et. al. Re: Objection to Adoption of Westlands Water District Board of Directors Distribution District #1 & #2 Resolution Nos. 101-20, 102-20, 103-20 and 104-20 Because of: (1) Insufficient Public Notice and Inadequate Project Description and (2) Failure to Comply with the California Environmental Policy Act (CEQA), the Central Valley Project Improvement Act (CVPIA), and state and federal Endangered Species Acts. Westlands Water District Board of Directors.**
- 2. January 7, 2020, PCL et. al. Re: Written Comments on WIIN Act Draft Repayment Contracts between Bureau of Reclamation and Westlands Water District. Ernest Conant, Bureau of Reclamation Regional Director Mid-Pacific Regional Office, and Erma Leal, Repayment Specialist, Bureau of Reclamation.**
- 3. January 6, 2020, PCL et al. Re: Comments Westlands WD Conversion Contract for 1.15 MAF & Exhibits under the WIIN Act § 4011. Brenda Burman, Bureau of Reclamation Commissioner, Ernest Conant, Bureau of Reclamation Regional Director Mid-Pacific Regional Office, and Erma Leal, Repayment Specialist, Bureau of Reclamation.**
- 4. January 2, 2020, “Conservation, Fishing and Tribal Comments on Bureau of Reclamation Mid-Pacific Region December 2019 Central Valley Project Final Cost Allocation Study” to Brenda Burman, Commissioner, USBR from PCL et al [20 Conservation, Fishery, Tribal and Community Organizations].**
- 5. December 23, 2019, “Comments on the Draft EA on a 10-Year Use Agreement for the San Luis & Delta-Mendota Water Authority Long-term Storm Water Management Plan for the Grassland Drainage Area (Draft EA – 19-029) – A Comprehensive EIS is Required and Compliance with the Clean Water Act” to Rain Emerson, USBR from PCL et al [20 Conservation, Fishery, Tribal and Community Organizations].**
- 6. December 20, 2019, “Comments on draft Agreement between US Bureau of Reclamation and San Luis & Delta Mendota Water Authority Operations and Maintenance Activities” to USBR from PCL et al [20 Conservation, Fishery, Tribal and Community Organizations].**
- 7. December 14, 2019, PCL et. al. Re: Interim Renewal Contract for Central Valley Project Water Contracts for Westlands Water District (Draft EA-19-043)—An abuse of discretion and failure to comply with federal law. Colin Davis, Bureau of Reclamation, South-Central California Area Office.**

8. **December 12, 2019, “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” to Colin Davis, USBR from Center for Biodiversity et al [17 Conservation, Fishery and Community Organizations].**
9. **December 10, 2019, “New Information Regarding Deformities in Sacramento Splittail and Drinking Water Quality Raise Significant National Issues for Consideration in the Draft Environmental Assessment for the proposed 10-Year Agreement to Use the San Luis Drain for Discharges to the San Joaquin River and San Francisco-Bay Delta by the San Luis & Delta-Mendota Water Authority--We Seek a Public Hearing, an EIS and Extended Comment Period--2 Weeks Is Insufficient.” Letter to Brenda Burman, Commissioner and Ernest Conant, California-Great Basin Regional Director, USBR from PCL et al [8 Conservation and Fishery Organizations].**
10. **November 5, 2019, “Comments on Tentative Waste Discharge Requirements (WDRs) for Surface Water Discharges from the Grassland Bypass Project in Merced and Fresno Counties” to Ashley Peters, Central Valley Regional Water Quality Control Board from PCFFA et al [22 Conservation, Fishery, Tribal and Community Organizations].**
11. **October 29, 2019, PCL et. al. Re: Westlands WD Conversion Contract for 1.15 MAF Exhibits under the WIIN Act § 4011. Ernest Conant, Bureau of Reclamation Regional Director Mid-Pacific Regional Office.**
12. **September 9, 2019, “Coalition Comments on Grassland Bypass Project Long-Term Storm Water Management Plan EIR Addendum and Initial Study--A Full EIR-EIS is Required” to Joseph C. McGahan, Drainage Coordinator, San Luis and Delta Mendota Water Authority, Sue McConnell, Central Valley Regional Water Quality Control Board, and Rain Emerson, USBR from PCL et al [21 Conservation, Fishery, Tribal and Community Organizations].**
13. **July 31, 2019, “Comments of PCFFA and IFR on Grassland Bypass Project Long-Term Storm Water Management Plan, 2020 – 2035” to Karl Longley, Chairman, Central Valley Regional Water Quality Control Board and Ernest Conant, Regional Director, USBR Mid Pacific Region.**
14. **March 28, 2019, “Comments on Federal Selenium Criteria for Aquatic Life and Aquatic-Dependent Wildlife Applicable to California, Docket RIN, 2040-AF79 EPA-HQ-OW-2018-0056 FRL-9989-46-OW.” To USEPA from PCL et al [18 Conservation, Fishery, Tribal and Community Organizations].**

- 15. January 16, 2018, Steve Volker, "Comments of PCFFA, SFCBOA, IFR and NCRA on 16 Central Valley Project Interim Renewal Contracts for Cross Valley Canal, Delta Division and American River Division" Brenda Burman, Commissioner Bureau of Reclamation; Quentin Branch, Kate Connor Bureau of Reclamation, David Murillo, Regional Director Mid-Pacific Regional Office.**
- 16. January 12, 2018, PCL et. al. Re: Interim Renewal Contract for Central Valley Project Water Contracts for Westlands Water District (EA17-021& FONSI-15-023A1)--An abuse of discretion and failure to comply with federal law. Brenda Burman, Commissioner Bureau of Reclamation; Quentin Branch, Kate Connor Bureau of Reclamation, David Murillo, Regional Director Mid-Pacific Regional Office.**
- 17. November 20, 2017 Comments of Fishery Organizations Opposing H.R. 1769, the San Luis Drainage Resolution Act.**
- 18. April 6, 2017 Comments of Fishery Organizations to Rain Emerson USBR on on Draft EA/FONSI for the Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2016-2018.**
- 19. February 6, 2017, Environmental Advocates et. al. Re: Comments EA-17-021, FONSI-15023A & Renewal of Six Interim Contracts for Westlands, Santa Clara et. al. Brenda Burman Commissioner of Reclamation David Murillo Mid-Pacific Regional Director Michael Jackson, Area Manager, SCC-100 South-Central California Area Office, Paul Souza Pacific Southwest Region Regional Director USFWS.**
- 20. August 8, 2016 Comments from the Bay Institute, Contra Costa Water Agency, Contra Costa Water District, Defenders of Wildlife, and Natural Resources Defense Council to Alicia Forsythe USBR on Northerly District Agreement, San Luis Unit.**
- 21. August 8, 2016 Comments from the Bay Institute and Defenders of Wildlife to Alicia Forsythe USBR on Northerly District Agreement, San Luis Unit.**
- 22. August 8, 2016 Coalition of Environmental Organizations concerned about water bird and wetland habitats Comments to Alicia Forsythe USBR on Northerly District Agreement, San Luis Unit.**
- 23. August 8, 2016 Coalition of Environmental, Environmental Justice, Tribal and Fishing Organizations Comments to Alicia Forsythe USBR on Northerly District Agreement, San Luis Unit.**

- 24. June 30, 2015 Comments from Pacific Advocates to Karl Longley Central Valley Regional Water Quality Control Board on Draft Waste Discharge Requirements for the Grassland Bypass Project.**
- 25. June 25, 2015 Coalition of Environmental, Environmental Justice, Tribal and Fishing Organizations Comments to Karl Longley Central Valley Regional Water Quality Control Board on Draft Waste Discharge Requirements for Surface Water Discharges from the Grassland Bypass Project.**
- 26. June 25, 2015 The Bay Institute Comments to Margaret Wong, Central Valley Regional Water Quality Control Board on Waste Discharge Requirements for SLDMWA and USBR – Surface Water Discharges from the GBP.**
- 27. June 22, 2015, Comments of the Pacific Coast Federation of Fishermen's Associations to Margaret Wong, Central Valley Regional Water Quality Control Board Requesting Denial of Proposed Waste Discharge Requirements for for Surface Water Discharges from the Grassland Bypass Project.**
- 28. June 30, 2014, Coalition Of Environmental, Environmental Justice, Tribal and Fishing Organizations Comments to Karl Longley Central Valley Regional Water Quality Control Board on Draft Waste Discharge Requirements for the Grassland Bypass Project.**
- 29. June 4, 2014, Institute for Fisheries Resources (IFR COALITION) Comments on Proposed CVP Cost Allocation Methodology: A recipe for continuing deficits and failure to repay taxpayers, Brooke Miller-Levy Project Manager, Bureau of Reclamation.**
- 30. April 2, 2014, PCL et. al. Subject: "Final Record of Decision and Final Environmental Assessment [FEA] for Westlands Water District et. al. Central Valley Project Interim Contract Renewals for Approximately 1.2 MAF of water" Rain Emerson Bureau of Reclamation, South-Central California Area Office.**
- 31. March 29, 2014, "Subject: Final Record of Decision and Environmental Assessment [EA] for Westlands Water District et. al. Central Valley Project Interim 6 Contract Renewals for Approximately 1.2 MAF of water. Rain Emerson Bureau of Reclamation, South-Central California Area Office.**
- 32. February 13, 2014 "Coalition of Environmental, Environmental Justice, Tribal and Fishing Organizations' Comments In Opposition To The Grassland Drainer Proposal To Discharge Selenium And Other Pollutants To Broadview Water District Lands—Another Kesterson In The Making". EWC letter to Sally Jewell, Secretary of Interior; Rod McInnis NMFS Regional Administrator & Jared Blumenfeld, USEPA Regional IX Administrator.**

33. **January 13, 2014, "The Environmental Assessment [EA] for Westlands Water District et. al. Central Valley Project Interim Contract Renewals" Rain Emerson, Bureau of Reclamation, South-Central California Area Office.**
34. **January 9, 2014, "The EA for Westlands Water District Central Valley Project Interim Contract Renewals listed below & the Finding of No Significant Impact (FONSI) is supported by Reclamation's Environmental Assessment (EA) Number EA-13-023, *Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2014 – 2016.* Rain Emerson, Bureau of Reclamation, South-Central California Area Office."**
35. **December 21, 2013 "Comments On the Draft Environmental Assessment (DEA 13-026) for the 10 year 100,000 Acre Feet of Proposed Water Transfer/Exchange Program from the Arvin-Edison Water Storage District (AEWSD) to Metropolitan Water District (MWD) & Draft Finding of No Significant Impact (FONSI 13-026)" To Chuck Siek, Bureau of Reclamation From PCL et. al. [13 Conservation, Fishery and Community Organizations.]**
36. **November 26, 2013 "Grasslands Bypass Project -- Violations of the Endangered Species Act and Reduced Monitoring Threaten Endangered Species and Public Health" To Secretary of Interior Sally Jewell, Rod McInnis Regional Administrator, National Marine and Fisheries Service; Jared Blumenfeld Regional IX Administrator, EPA. [From CWIN et. al. and 15 Conservation, Fishery and Community Organizations.]**
37. **November 1, 2013, Central Valley Project Interim Contract Renewals: Pajaro Valley Water Management Agency, Westlands Water District Distribution District No. 1, and Santa Clara Valley Water District 14-06-200-3365A-IR14-B Tracy, City of (The West Side) 7-07-20-W0045-IR14-B Tracy, City of (Banta-Carbona) 14-06-200-4305A-IR14-B Westlands Water District Distribution District 1 (Widren) 14-06-200-8018-IR14-B Westlands Water District Distribution District 1 (Centinella) 7-07-20-W0055-IR14-B Westlands Water District Distribution District 1 (Broadview) 14-06-200-8092-IR14 Westlands Water District Distribution District 2 (Mercy Springs) 14-06-200-3365A-IR14-C Westlands Water District 14-06-200-495A-IR4 Tracy, City of 14-06-200-7858A-IR1. EWC et. al letter to Karen Hall Bureau of Reclamation.**
38. **April 22, 2013 Comments on GBP Revised Monitoring Plan To Stacy Brown USBR from 14 Conservation, Fishery and Community Organizations.**
39. **March 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.]

- 40. February 13, 2012 “Comments on FONSI-070-103 Long-term Warren Act Contract and License for Delta Lands Reclamation District No. 770 EA-07-103.” To Rain Healer, USBR, From 11 Conservation, Fishery and Community Organizations.**
- 41. January 20, 2012, “Delta Division, San Luis Unit 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, Bureau of Reclamation, South-Central California Area Office, from Leonard E. Masten Jr. Chairman Hoopa Valley Tribe.**
- 42. January 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, Bureau of Reclamation, South-Central California Area Office, from 12 Conservation, Fishery and Community Organizations.**
- 43. January 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, Bureau of Reclamation, South-Central California Area Office from Stephen Volker on behalf of 4 Tribal, Conservation, Fishery and Community Groups.**
- 44. November 16, 2011, Notice Inviting Public Comment on BDCP MOA to Hon. Kenneth Salazar, Secretary John Laird, Secretary from 190 Conservation, Fishery and Community Organizations.**
- 45. November 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, Bureau of Reclamation, Regional Director Mid-Pacific Region, from 13 Conservation, Fishery and Community Organizations.**
- 46. October 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, Bureau of Reclamation, South-Central California Area Office, from 8 Conservation, Fishery and Community Organizations.**
- 47. September 7, 2011 “Closure of Grassland Bypass Project (GBP) Data Collection and Review Team (DCRT) Meetings to Selected Members of the Public.” To Michael L. Connor USBR Commissioner from 11 Conservation, Fishery and Community Organizations.**

48. **August 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.**
49. **May 5, 2011 “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.**
50. **February 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.**
51. **December 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.**
52. **November 16, 2010 “Letter to Senator Feinstein on Long Term Solution to Westlands Drainage Problem” To Commissioner Connor from Environmental Working Group.**
53. **July 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, USEPA from 16 Conservation, Fishery and Community Organizations.**
54. **July 16, 2010 Letter to Tom Glover, Westlands Deputy District Manager, Re RE: Opposition to Negative Declaration for the Westlands Water District and San Luis Water District Transfers and Related Exchanges Project. Eastside to Westside 57,500 acre feet.[Updated] From Zeke Grader et.al. From 13 Conservation, Fishery and Community Organizations.**
55. **July 3, 2010 Letter to Brad Hubbard Bureau of Reclamation, “Comments on Draft DEIS/EIR for proposed new transfer program that would provide for the transfer and/or exchange of up to 150,000 acre-feet of water from the San Joaquin River Exchange Contractors Water Authority [SJEC]1 to several potential users— Westlands Water District, SWP Contractors, Kern Water Bank and other users for over 25 years—2014-2038.” Adam Lazar Center for Biological Diversity et. al. and 11 Conservation, Fishery and Community Organizations.**
56. **May 19, 2010 Letter to Donald Glaser, USBR From David Ortmann, Pacific Coast Management Council.**

- 57. March 2, 2010 “Final Scoping Comments for Westlands Water District [Westlands] Proposed “Conveyance of Non-project 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, Westlands WD, from 14 Conservation, Fishery and Community Organizations.**
- 58. February 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.**
- 59. January 29, 2010 “Comments of The Bay Institute and NRDC on Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the San Luis Unit interim renewal contracts (Central Valley Project, California)” To Rain Healer, USBR, from Hamilton Candee.**
- 60. January 29, 2010 “Comments on Draft EA/FONSI on San Luis Interim Contract Renewal” To Rain Healer, USBR from California Water Information Network and California Sportfishing Protection Alliance.**
- 61. January 29, 2010 “Comments on Draft EA/FONSI on San Luis Interim Contract Renewal” To Rain Healer, USBR from PCL, Friends of the River & Sierra Club.**
- 62. January 29, 2010 “Comments on Draft Environmental Assessment and Finding of No Significant Impact for the San Luis Unit Water Service Interim Renewal Contracts” To Rain Healer, USBR from Joseph Membrino for Hoopa Valley Tribe.**
- 63. September 18, 2007 “Comments on Draft Environmental Assessment (EA) and seven Draft Findings of No Significant Impact (FONSI) for the proposed execution of seven San Luis Unit interim renewal water service contracts.” To Judi Tapia, USBR from Hamilton Candee, NRDC.**
- 64. September 7, 2007 “Comments on San Luis Unit Interim Renewal Contracts.” To Sheryl Carter, USBR from California Water Information Network.**
- 65. April 17, 2006: “Final NRDC-TBI Comments on Long-Term Water Service Renewal Contract for Westlands Water District.” To Richard Stevenson, USBR from Hamilton Candee NRDC.**
- 66. April 8,2006: “Comments on DEIS and Draft Supplemental Information for San Luis Unit Renewal Contracts – Part II.” To Shane Hunt, USBR from The Bay Institute and NRDC.**

67. **September 15, 2005: “Supplemental NRDC Comments on Westlands contract - ESA & NEPA issues.” To Richard Stevenson, USBR from Hamilton Candee, NRDC.**
68. **September 14, 2005: “Additional Comments on Draft Renewal Contract for Westlands Water District.” To Richard Stevenson, USBR from Hamilton Candee, NRDC.**
69. **August 31, 2005: “NRDC Supplemental Comments on Drainage DEIS.” To Claire Jaquemin, USBR, from Hamilton Candee NRDC.**
70. **August 4, 2005: “Comments on Proposed CVP Long Term Water Service Renewal Contract for Westlands Water District.” To Richard Stevenson, USBR from Hamilton Candee for NRDC and TBI.**
71. **January 21, 2005: “NRDC – TBI Comments on Draft EIS for San Luis Unit Renewal Contracts.” To Joe Thompson, USBR from NRDC and TBI.**
72. **December 17, 2004: “Further Additional Comments of NRDC and Bay Institute on Draft EA/FONSI for DMC Unit Renewal Contracts.” To Joe Thompson, USBR from NRDC and TBI.**
73. **December 16, 2004: “Comments on Draft EA/FONSI for DMC Unit Renewal Contracts.” To Joe Thompson, USBR from NRDC and TBI.**
74. **December 14, 2004: “NRDC Comments on Draft EA/FONSI for DMC Unit Renewal Contracts.” To Joe Thompson, USBR from Hamilton Candee, NRDC.**
75. **January 9, 2001: “Comments on Proposed CVP long Term Renewal Contracts for Friant, Hidden Buchanan, Cross-Valley, Feather River and Delta-Mendota Canal Units.” To David Hayes, Deputy Secretary of Interior et. al. from Hamilton Candee NRDC.**
76. **December 7, 2000: “Comments on the Draft EA on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation.” To Al Candlish, USBR, from Hamilton Candee NRDC.**

Agency Comments and ESA Consultations adopted by reference:

1. **June 25, 2015: “USFWS Comments on the May 2015 Draft Waste Discharge Requirements for the Surface Water Discharges from the Grassland Bypass Project and the Discharges to Groundwater from the Growers in the Grassland Drainage Area.” To Margaret Wong, Central Valley Regional Water Quality Control Board, from Jennifer Norris, USFWS.**

- 2. November 13, 2014: “USFWS Response to Questions from Congressman George Miller on a Proposed Settlement on San Joaquin Valley Drainage.” From Ren Lohofener, USFWS Region 8 Regional Director.**
- 3. November 10, 2014: “USEPA Response to Questions from Congressman George Miller on a Proposed Settlement on San Joaquin Valley Drainage.” From Jared Blumenfeld, Regional Administrator, USEPA Region 9.**
- 4. August 26, 2014: “USEPA Comments on Draft Environmental Impact Statement for the Bay Delta Conservation Plan, San Francisco Bay Delta, California (CEQ# 20130365).” To Will Stelle, Regional Administrator West Coast Region National Marine Fisheries Service from USEPA Region 9.**
- 5. June 4, 2012: “USFWS ESA Consultation on San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche” To: Dave Hyatt, USBR from Ken Sanchez, USFWS.**
- 6. September 22, 2010: “NMFS Comment Letter – San Joaquin River Selenium Control Plan Basin Plan Amendment” To: Ms. Jeanine Townsend, Clerk to the State Water Resources Control Board from Howard Brown, NMFS.**
- 7. September 22, 2010: “USFWS Comment Letter – San Joaquin River Selenium Control Plan Basin Plan Amendment” To: Ms. Jeanine Townsend, Clerk to the State Water Resources Control Board from Susan K. Moore, USFWS.**
- 8. May 8, 2010: “USFWS Comments on the March 2010 Draft Staff Report Concerning the Proposed Basin Plan Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins to Address Selenium Control in the San Joaquin River Basin.” To Gail Cismowski, Central Valley Regional Water Quality Control Board, from David Harlow, USFWS.**
- 9. December 18, 2009: “USFWS ESA Consultation on the Proposed Continuation of the Grassland Bypass Project, 2010 – 2019.”**
- 10. August 27, 2007: “USFWS Comments on Draft EA/IS for 25-Year Groundwater Pumping/Water Transfer Project for the San Joaquin River Exchange Contractors Water Authority.” Letter to Robert Eckart, USBR from Michael Hoover, USFWS.**
- 11. April 17, 2006: “EPA Comments on the Draft Environmental Impact Statement (DEIS) and Supplemental Information for Renewal of Long Tenn Contracts for San Luis Unit Contractors (CEQ# 050411 and 060056).” Letter to Kirk Rogers, USBR from USEPA.**
- 12. March 6, 2006: USFWS Fish and Wildlife Coordination Act Report to USBR for the San Luis Drainage Feature Re- Evaluation.**

- 13. December 8, 2000: “Comments on Proposed Long-Term Contracts and Associated Environmental Assessments.” Letter to Alan R. Candlish and Bill Luce, USBR, from Deanna Wieman, USEPA.**
- 14. January 8, 1999: “Review of USBR’s Notice of Intent for Long-term Contract Renewal, Central Valley Project, California.” Letter to Alan R. Candlish, USBR, from Deanna Wieman, USEPA.**