



January 29, 2010

Rain Healer
South Central California Area Office
U.S. Bureau of Reclamation
1243 N St
Fresno, CA 93721

Subject: Comments on Draft EA/FONSI on San Luis Interim Contract Renewal

Dear Ms. Healer:

The Sierra Club California, Friends of the River and the Planning and Conservation League and submit these comments on the Draft Environmental Assessment (DEA) and the seven Draft Findings of No Significant Impact (FONSI) on the San Luis Interim Contract Renewals. We request a full Environmental Impact Report be completed so the decision makers and the public can:

1. Make an informed decision regarding the impact of approving specific water contract quantities that exceed available supplies;
2. Assess the Bureau of Reclamation's compliance with duties under Federal and State law including the goals and provisions of the 1982 Reclamation Reform Act [RRA] and the 1992 Central Valley Project Improvement Act [CVPIA]. Federal and State law require water delivered is beneficially used, encourages conservation, and will not cause further environmental

harm, pollution, or degradation to the waters of the state and other beneficial uses of the land or Public Trust Values.

3. Assess compliance with regulatory actions under the Clean Water Act, the CVPIA, the Migratory Bird Treaty Act, Indian Trust Assets and the Endangered Species Act from renewing contract quantities that do not accurately reflect the delivery capability and water availability of the CVP.

Analysis of the environmental documentation is insufficient to support a finding of no significant impact for the renewal of the San Luis Unit Water Service Interim Renewal Contracts 2010-2013 and it does not meet the legal requirements of the National Environmental Policy Act [NEPA].

Further we find the exclusion from the analysis of the environmental impacts of changes to the contractor' service areas, water transfers and exchanges, contract assignments, Warren Act Contracts and drainage to be arbitrary and capricious because it fails to provide any analysis or information so there can be an informed decision regarding the environmental impacts from these actions. Nor does this meet the standard of providing sufficient information for public review and comment. The reliance on individual environmental assessments or other programmatic decision making documents segments the information and fails to fully disclose the cumulative and the compounding nature of the environmental impacts from these proposed actions and the exaggerated quantities of water in these contract renewals.

Finally this document is tiered to a variety of environmental documents including the CVPIA Programmatic EIS (PEIS). Some of the documents are not complete, some of the documents rely on different baselines than this project, and some documents rely on untested or unproven promises of environmental mitigation or benefit. Use of an environmental assessment instead of an environmental impact statement limits full public disclosure and full public comment provisions that are necessary given the complicated nature of the issues raised in contract renewals including impacts to other water users in the state, pollution, water transfers and use of public wheeling facilities.

The environmental analysis provided does not fully disclose the site-specific circumstances of the San Luis Unit contracts and these specific impacts on the different CVP units. Further the baseline in the various documents is different rendering the analysis of impacts incomplete. Actions taken under this EA that are not consistent with the project description in the various ESA consultations could render the analysis of impacts on the survival and recovery of proposed and listed species invalid for the proposed action. The baseline used for the consultations is different than the baseline under the proposed project. The public is denied the opportunity to fully evaluate the impacts to endangered species because the biological assessments were not included in the document.

The DEA and proposed FONSI do not meet the legal requirements of the National Environmental Policy Act (NEPA). Specifically the document is deficient for the following reasons:

- Insufficient information is provided to make an informed decision of no significant impact.
- Impacts from federal actions associated with the interim contract water delivery were arbitrarily excluded from the analysis, including but not limited to, the impacts from water transfers and exchanges, contract reassignments, discharges of groundwater into the California Aqueduct and changes to the contract service areas or places of use. Most of these actions use the same facilities and deliver water to these contractors.
- The full range of alternatives was not analyzed. Reduced contract deliveries were not considered. The no action alternative is virtually identical to the action alternative.
- The analysis of the impacts from the exaggerated contract quantities promised for delivery do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPIA and Endangered Species Act are considered. This “over commitment” of CVP supplies has adverse impacts that were not fully disclosed.
- Selection of a narrow study area precluded analysis and information needed to assess the impacts of the proposed action on other CVP contractors, surrounding agricultural lands and impacts to the sources of water such as the Delta, the Sacramento, Trinity and American rivers.
- There is little or no information on the direct, indirect and cumulative impacts of the proposed actions including among other impacts, subsurface drainage pollution mobilization and movement from the irrigation of upslope lands. Subsurface agricultural drainage can contain extremely elevated levels of selenium, salt, boron and other toxic constituents that can migrate and/or adversely affect surrounding domestic wells, downslope agricultural farmlands, and surface waters and associated wetlands receiving drainage inputs, the San Joaquin River and Delta. Selenium is a potent reproductive toxicant to vertebrate species and can readily bioaccumulate to toxic concentrations in the food chain. We are particularly concerned with adverse selenium impacts to salmonids associated with agricultural drainage discharges in the San Joaquin River.

Thank you for your consideration of our comments. We urge you to reject the proposed Finding of No Significant Impact and instead prepare an Environmental Impact Statement.

Respectfully submitted,

Jim Metropulos



Senior Advocate
Sierra Club California

Steve Evans



Conservation Director
Friends of the River



Charlotte Hodde
Water Program Manager
Planning and Conservation League

Attachment: Detailed comments

cc: Nancy Sutley, Chair, Council Environmental Quality
Ken Salazar Interior Secretary
David Hayes, Deputy Interior Secretary
Don Glaser, Regional Director BOR
Dan Nelson, San Luis Delta-Mendota Water Authority
Alexis Strauss, USEPA
Charles Hoppin, Chairman SWRCB
Karl Longley, Chairman CVRWQCB
Rod McGinnis, NMFS
Ren Lohofener, USFWS
John McCamman, Department of Fish and Game
Lester Snow, Department of Water Resources
Mark Madison, City of Stockton

Rudy Schnagl, CVRWQCB
Interested parties

DETAILED COMMENTS

1. The DEA fails to analyze the ongoing impacts and continued impacts of water deliveries on water quality, soils or other natural resources from water to applied to contaminated soils. Insufficient information is provided to support the conclusion there will be “no effect on surface water supplies or quality” or the conclusion that there will be “no significant effect on groundwater supplies or quality.” [Pg.3 FONSI-09-101]

The area affected by the delivery of water under these interim contracts includes waters of the United States (the San Joaquin River and many of the west tributaries, such as Mud and Salt Sloughs and the Grasslands wetland channels) that are listed as impaired pursuant to the Clean Water Act. The 2005 Bureau of Reclamation’s DEIS and Supplemental Information for Renewal of Long Term Contracts for San Luis Unit acknowledges that deliveries under these contracts have adversely altered both groundwater flow and quality (pp.3.8-4 and 3.8-6) and that all of the alternatives evaluated in the DEIS, including the no-action alternative (i.e. renewal of the contracts with current terms and conditions) would result in the continuing degradation of water quality in the area.

The DEA does not analyze the irrigation of upslope lands as sources of selenium mobilization into drainage, ground or surface water. Studies since the early 1990’s have established that irrigation and associated drainage from the San Luis Unit contribute significantly to the movement of pollutants, particularly selenium, which affect surface and ground water within the region¹. Selenium in soils from the San Luis Unit are mobilized by irrigation and storm water run-off [see 1990 Drainage Management Plan for the West San Joaquin Valley, California, Figure 6, p.28] with the highest concentrations of salts and selenium located down slope [Figure 2.5 Drainage Feature Reevaluation Preliminary Alternatives Report, Dec. 2001]

According to EPA water deliveries from these contracts where selenium concentrations exceed water quality standards affect important resources such as the Grassland Ecological Area.² Concentrations in some canals have reached levels 20 times the standard protective of aquatic health.³ EPA goes on to note, “*subsurface drainage flow comes, in part, from the Westlands Water District [Westlands] and other water districts upgradient of the northerly districts*

¹ “A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley,” September 1990 [Bureau of Reclamation, Fish and Wildlife Service, US Geological Survey, Ca Dept. of Fish and Game and California Department of Water Resources.

² EPA Detailed comments for the DEIS and Supplemental Information for Renewal of Long-Term Contracts for San Luis Unit Contractors, CA, April 17, 2006.

³ Ibid.

*with high selenium/Total Dissolved Solid (TDS) concentrations. There is potential for the water deliveries to exacerbate mobilization of pollutants and movement (through shallow groundwater) into areas where there could be fish and wildlife exposure.*⁴ Clearly the DEA should have provided information on the San Luis Unit's role in groundwater accretions and discharges of pollutants into wetland channels and the San Joaquin River and identified the impacts to wetlands and wildlife.

There is no information or analysis to support the DEA finding the proposed action "would have no effect on birds protected by the Migratory Bird Treaty Act (16 USC Section 703 et seq.)" [pg 36]. No monitoring data was provided to show there has been no incidental take, harm to eggs, or increased mortality from irrigating these selenium lands. A 2005 EA evaluating a proposed water assignment from Broadview Water District to Pajaro Valley Water District (Broadview EA) does document runoff from Westlands has degraded domestic well fields and contaminated irrigation canals with pollutants.

In addition, the DEA's contention [pg9] that the language in the Section 3404(c) of the CVPIA precludes the Secretary from considering reduced contract quantities as a project alternative is not accurate. The carte blanche elimination of this alternative is not consistent with Secretarial discretion contained in Section 3404 (c) as to whether to renew these contracts at the end of the first long term renewal and nothing in the "shall" of renew that limits the Secretarial discretion regarding amount and requirements to ensure water is put to beneficial use. In addition, the elimination of this alternative fails to consider the requirements of 40 CFR 1502.14 (b) and NEPA's 40 Most Asked Questions, which emphasize the need to evaluate all reasonable alternatives even if they conflict with local or federal law.

The DEA should include both information on the relationships between irrigation in the San Luis Unit [Westlands and northern districts] and ground water movement downslope, in terms of flow and water quality. It should provide information on the delivery of water to the San Luis Unit is adversely altering both groundwater flow and quality and the potential for movement (through shallow groundwater of pollutants (e.g. selenium) to the waters of the San Joaquin River and its tributaries, such as Mud and Salt Sloughs and the Grasslands Channels that are listed as impaired pursuant to the Clean Water Act. Based on this information a full EIS should include mitigation measures, such as monitoring and adaptive tools, farm edge groundwater monitoring, contract provisions, or changes in contract amounts and location of water applied, which will reduce drainage production and selenium mobilization. Such alternatives and mitigation

⁴ Ibid. Attachment A. See also EPA comments re The Notice of Intent for Long-term Contract Renewal, Central Valley Project, California, January 8, 1999. And EPA comments re Proposed Long Term Contracts and Associated Environmental Assessments. December 8, 2000.

measures would not, however, address the need for environmental water to mitigate the impacts from the creation of such a nuisance or pollution. These additional mitigation measures are needed to meet state and federal law and Public Trust duty under the Bureau's water rights.

2. The Proposed Action narrowly defines the project and assumes it does not extend to the San Francisco Bay Estuary and Sacramento San Joaquin Delta.

Export water supply from the Delta, which affects key habitat variables such as channel configuration, delta hydraulics, delta inflows and water quality are identified as one of the contributors in the decline of key fish species. The DEA excludes any analysis of these impacts from the proposed action. Further the DEA excludes any analysis of Warren Act contracts, water transfers and exchanges, all of which could increase the diversions from the Delta under the proposed action to renew these contracts at quantities which exceed available supplies.

Additionally the California Regional Water Quality Control Board, September 10, 2005, identified potential Delta impacts from constituents that originate in the San Luis Unit project area. In particular, analyses related to implementation of the salinity/boron TMDL have pollutant loads coming from sub-watersheds such as the Grasslands area, which includes the Northern contract area. Also the proposed action does not provide any information or analysis from the combination of impacts that could result from this action and the recent federal action under the USBOR Grasslands Bypass ROD December 22, 2009 where selenium discharges that do not meet protective aquatic objectives will be discharged into tributaries of the San Joaquin for an additional ten years.

3. The proposed action does not reflect legal and environmental constraints on water deliveries. The impact of this package of false promises to the financial markets and other CVP contractors is not disclosed.

Financial Assurances are False. The quantity of the interim contract renewals should be based on existing, developed project supplies. The needs assessment contained in the DEA does not accurately reflect environmental needs, Indian Trust obligations, and Public Trust obligations. In fact the DEA readily admits relying on a 2007 needs assessment is faulty. The DEA states, "the analysis for the Water Needs Assessment did not consider that the CVP's ability to deliver CVP water has been constrained in recent years and may be constrained in the future because of many factors including hydrologic conditions and implementation of federal and state laws". [pg 14]

The proposed action should accurately reflect realistic contract quantities with existing developed water supplies and reasonably foreseeable water availability. Failure to truthfully reflect actual contract amounts can potentially lead to financial market speculation based on unrealistic water contract deliveries. Westlands has already leveraged these federal water contracts to borrow from the financial markets \$50 million dollars.⁵ Even the DEA suggests retaining these inaccurate water quantities in the contracts provides assurances for investments. [pg10] These false assurances could lead to substantial financial dislocations to bond holders and financial markets.

All contracts should include an honest and full disclosure that water service contracts are not permanent entitlements. The rationale that these false representations provide assurance is misleading. Further the DEA suggests that the Bureau is bound to this charade because of the PEIS for the CVPIA. NEPA compliance and the law require an accurate analysis of the impacts of a proposed project action. The cumulative effects of this exaggeration of water delivery quantities will only become more acute as senior water rights holders upstream develop their water supplies [See PEIS, Figures IV-79 and IV-80 and accompanying text.] Based on Westlands assurances these exaggerated water contracts are being used as collateral claiming the water can be marketed outside of the district boundaries to buyers in Southern California and San Francisco.⁶ No analysis or information regarding the environmental impacts of water sales, transfers or exchanges is provided despite the fact numerous transfers are taking place within, outside and into the Westlands.

Environmental Impacts from Exaggerated Water Contract Amounts Are Not Disclosed. The DEA allows for the continued obligation of contract water quantities above the amounts that are currently delivered. No detailed evaluation of the environmental effects caused by the delivery of water above currently delivered amounts is provided. Failure to provide this information leaves out critical impacts of the proposed action and understates the cumulative impacts. For example, the American River Division plays a key role in the operation of the CVP to meet Endangered Species Act [ESA] requirements, water quality regulations, and water supply demands within, and south of the San

⁵ Fitch Rates \$50MM San Luis & Delta Mendota Water Auth., California Revs 'A'; Outlook Stable © Business Wire 2009-03-05. The Fitch Bonding Agency states, "The inherent value in the district's extensive water entitlements through its role as the contractor with the federally owned CVP is a credit strength."

⁶ Ibid. Business Wire 3-5-09. "There is concentration amongst WWD water purchasers. But offsetting this risk somewhat is the value of the cash crops farmed in the district (about \$1.3 billion in fiscal 2008) and the absence of alternative/equivalent supplies or infrastructure to deliver water. In addition, WWD potentially has the ability to sell and transfer water rights outside the district should agriculture cease to be economic, as the demand for water in southern California and the San Francisco Bay area by users with connectivity to the CVP is very high."

Francisco Bay-Delta.⁷ A detailed analysis of these environmental effects is important because increased diversions from the American and Sacramento Rivers to meet these contract renewal amounts can adversely affect beneficial uses, such as water quality and habitat for threatened and endangered anadromous fishery.

4. The water contract quantities are arbitrarily fixed and renewed without regard to updated site specific situations and impacts. This is problematic not just because of conveyance limitations, but because the land within Westlands that is eligible to receive CVP water has been reduced due to drainage settlements involving land retirement. The Westlands CVP Service Area boundary in the contract (an exhibit to the Interim contract) and the DEA map for the project area still includes those lands that were retired from irrigation by Interior (by means of non-irrigation covenants). By law and covenants those lands that are no longer eligible to receive CVP water in the Service Area. The service area for the DEA is inaccurate.

This inaccuracy is compounded because the Water Needs Assessment also relied on the inclusion of lands that were retired and not part of the service area.

Further compounding the inaccuracy of the project service area are the reallocations of water supplies from surrounding water districts purchased by Westlands to obtain the district water supplies. The Westlands purchase of the Broadview WD in 2005 and the contract supply of 27,000 AF was reallocated from Broadview to Westlands. Thus, Westlands according to the DEA the exaggerated contract amount is 1.15 million plus 27,000 AFY (plus several thousand acre feet that were assigned from Mercy Springs WD and Centinela WD to Westlands) in a district that has retired 40,000+ acres in a settlement with Interior, and an additional 60,000 acres that Westlands acquired and put out of production. The DEA does address the impacts from the reduction in Westlands irrigable acreage by about 1/6th while obtaining an increase in their water allocation (with the Broadview, Mercy Springs and Centinela supply).

5. Despite completion of the Programmatic EIS for the Central Valley Project Improvement Act (CVPIA PEIS), the DEA does not adequately address site specific impacts of the Proposed Action. The DEA does not fill in the gaps contained in the CVPIA PEIS.

6. Given the changes in the CVP operation and specifically the potential increase of water deliveries to selenium soils within the San Luis Unit from exchanges, water transfers, Warren Act contracts or contract assignments along with the proposed changes to the Grasslands Bypass project and the proposed actions contained in this DEA, consultation should be reinitiated

⁷ FEIS for Renewal of Long-Term Municipal and Industrial Service Contracts for the American River Division, Central Valley Project [CVP] (pgs. 4-4 and 4-6)

with USFWS and National Marine Fisheries Service (NMFS) for the proposed action. The baseline of the original consultations has changed. These consultations need to analyze the cumulative effects of this proposed project along with new information regarding the impact of selenium and other contaminants upon the anadromous fishery in the San Joaquin River⁸ and wildlife within the Study Area described in the Programmatic Environmental Impact Statement for the CVPIA.

7. Contract terms to include repayment of costs for the Trinity River Restoration Program pursuant to CVPIA Section 3406(b)(23) should have been included in the Proposed Action.

8. We incorporate by reference comments regarding the deficiencies in this DEA and the DFONSI submitted by C-Win, the California Sportfishing Protection Alliance, The Bay Institute and the North Coast Rivers Alliance.

⁸ C-WIN Letter to Hayes regarding the Dr. Lemly Memo 12-9-09