

## Appendix A Reclamation Response to Comments

### Reclamation's responses to Delano-Earlimart Irrigation District's March 21, 2012 comments on Draft EA 11-085

**Delano comment 1.** *“As proposed, Arvin wants to schedule up to 100,000 acre-feet under this exchange, but there is no schedule associated with this delivery presented in the environmental documents. One should be provided.”*

**Reclamation response to comment 1:** In Section 1.2 *NEPA Purpose and Need/CEQA Project Objectives*, the scope of the Proposed Action is a 12-month period which will be consistent with the State Water Resources Control Board (SWRCB) Order. Since the SWRCB Order had not been approved at the time the draft environmental assessment was released for public comment, Reclamation chose to condition approval contingent upon by the SWRCB Order to temporarily consolidate the CVP places-of-use (CPOU) for a 12-month period, and would only occur during the timeframe for which the CPOU is in effect. Additionally, Arvin-Edison Water Storage District will be required to submit a schedule prior to the conveyance and delivery of Project Water to Metropolitan Water Storage District. Reclamation will review the schedule and consult with the Operating Non-Federal Entity, Friant Water Authority, to ensure there is sufficient capacity in the Friant-Kern Canal to convey this water. Once a concurrence of available capacity is received and after review of the current conditions, Reclamation will allow the Project Water to be conveyed and delivered consistent with Reclamation's approval and in accordance with the *“Operational Guidelines for Water Service, Friant Division, Central Valley Project”*.

**Delano comment 2:** *“Second, consideration has not been given to the potential impacts that the timing of the delivery of this water may have on the ability of other Friant districts to utilize the Friant-Kern Canal for comparable projects that will allow them to optimize their water supplies. Therefore we ask that the impact of this project on available capacity in the Friant-Kern Canal for similar projects by others be identified.”*

**Reclamation response to comment 2:** In Section 3.1.2 *“Environmental Consequences”*, Reclamation makes the following statement: *“The CVC, CVP and SWP facilities would not be impacted as the Proposed Action must be scheduled and approved by KCWA, Reclamation and DWR, respectively. If a canal capacity prorate is required during the period this water is moving through the FKC, the prorate priority shall be pursuant to the tiers defined in Section VII of the Operational Guidelines for Water Service, Friant Division CVP, dated March 18, 2005. Additionally, the exchange must be conducted in a manner that would not harm other CVP contractors or other CVP contractual or environmental obligations, or SWP contractors. Therefore, normal obligations by the overseeing agencies to deliver water to their contractors and other obligations would not be impacted. In continuance of commitments from the Program, existing Aqueduct Pump-in Facilitation Group guidelines would followed by both AEWS and KCWA when introducing water into the Aqueduct to insure that water quality would not be adversely impacted. No adverse cumulative impacts to water resources would occur as the Proposed Action would likely have similar results as the No Action Alternative as surface water would be delivered to the same general area for irrigation and recharge.”* Therefore, Reclamation will not allow adverse impacts to CVP contractors or other CVP contractual or environmental obligations. Reclamation, when reviewing the schedule and additional

documentation provided by Arvin-Edison Water Storage District, will evaluate whether the Proposed Action will have any impacts on other CVP contractors.

**Delano comment 3:** *Finally, we note that while page 2 of section 2 lists the potential sources of water that could be delivered under this proposal, the quantity from each source is not provided. As with the issue above regarding capacity impacts, the full range of potential impacts of the proposed water exchange on other Friant districts cannot be fully analyzed without first identifying the amount of water from each source.*

**Reclamation's response to comment 3:** One of the criteria that Reclamation will evaluate at the time a request is made to convey this water, is whether Arvin-Edison Water Storage District has a sufficient quantity of water available to it. In accordance with Arvin-Edison Water Storage District's contract, subdivision (c) of Article 4 states: "*The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area, or to sell, transfer or exchange pursuant to Article 10 of this Contract or bank pursuant to subdivision (d) of Article 3 of this Contract during any Year.*" Therefore, Reclamation believes there are sufficient safeguards in place to make sure that Arvin-Edison Water Storage District does not schedule Project Water in excess of the quantity of Project Water available to them.

### **Reclamation's responses to the San Luis & Delta-Mendota Water Authority and San Joaquin River Exchange Contractors' Water Authority (Authorities) March 22, 2012 joint comments on Draft EA 11-085**

**Authorities comment 1:** *The Draft EA and Draft FONSI describe the AEWS-D-MWD Exchange, as consisting of two components: (1) the delivery of AEWS-D's Central Valley Project (CVP) water to MWD in exchange for previously banked MWD State Water Project (SWP) water; and (2) the delivery of up to 100,000 acre-feet of AEWS-D's CVP water to MWD during times when AEWS-D supplies exceed current demand, after which MWD would return a like amount of SWP water to AEWS-D later in the 12-month period. (Draft EA at 1; Draft FONSI at 2.) Through a letter agreement with the Exchange Contractors and Water Authority, AEWS-D acknowledged that the AEWS-D-MWD Exchange could involve: AEWS-D providing MWD recaptured and recirculated San Joaquin River Restoration Program water in exchange for a later return to AEWS-D of MWD's SWP water later in the year (12 month period).*

*(See February 22, 2012 Letter Agreement, a copy of which is attached hereto.)*

*The Draft EA and Draft FONSI do not include this component and therefore the project description is not complete. As part of the proposed action, Reclamation must explain that the AEWS-D-MWD Exchange would also involve AEWS-D's delivery of recaptured and recirculated San Joaquin River Restoration Program (SJRRP) water to MWD in exchange for a return of MWD's SWP water to AEWS-D later in the year (12-month period).*

**Reclamation response to comment 1:** Section 2.2 of the Proposed Action states: "The second component of the Proposed Action involves the delivery of AEWS-D CVP water to MWD and the subsequent return from MWD to AEWS-D during the approved CPOU timeframe. The conveyance facilities and type of water would be the same as listed above."

The types of water referred to in the above statement are as follows:

- Class 1;
- Class 2;
- Recovered Water Account;
- Recaptured SJRRP Interim Flows (including those supplies made available through transfers/exchanges as analyzed in the 2010, 2011 and 2012 EA for recirculation of recaptured interim flows);
- Section 215 water supplies, to the extent Section 215 water is declared by Reclamation and is available to AEWSD.

**Authorities comment 2:** *The AEWSD-MWD Exchange, as currently proposed by Reclamation, which differs from the proposal by AEWSD, has the potential to increase the likelihood that the San Luis Reservoir will reach "low point" earlier in the year. For example, under this proposal, Reclamation could approve release of water from San Luis Reservoir prior to low point that is not "replaced" until after low point or that would never have been released prior to low point. This concern is not hypothetical. Nothing in the Draft ENs discussion of the proposed action would preclude Reclamation from releasing water from San Luis Reservoir for delivery to MWD with the hope that the deficit would be subsequently repaid with the recapture of water available under the SJRRP. Likewise, nothing in the Draft EA indicates that Reclamation would be precluded from releasing water from San Luis Reservoir prior to low point that, absent the Arvin-MWD Transfer/Exchange, would otherwise not be released until after San Luis Reservoir's low point.*

**Reclamation response to comment 2:** The comment refers to minimum reservoir elevations described generally as less than 370-feet above sea level in the late summer months. These elevations correspond to about 300,000 acre feet of water available in the reservoir. Reclamation is aware of the February 22, 2012 letter of agreement between the Authorities and AEWSD where AEWSD has agreed not to move recirculation water to MWD until after the "low point" has occurred in the San Luis Reservoir. Acknowledgement of this agreement will be addressed in the approval letter.

**Authorities comment 3:** *Further, the EA fails to address the terms of the agreement entered into by the AEWSD, the Authority and the Exchange Contractors wherein AEWSD agrees to not transfer water to MWD until after low point. While Reclamation's water rights permits do not contain such a restriction on its delivery of water, this transfer is not from Reclamation to MWD, but rather from AEWSD and AEWSD has agreed to this limitation. Therefore, this condition is part of the project and the effect of this condition must be analyzed.*

**Reclamation response to comment 3:** February 22, 2012 was the release date for the draft environmental assessment and the execute date of the letter of agreement between the Authorities and Arvin-Edison is February 22, 2012. Therefore, Reclamation was not aware that the Authorities and Arvin-Edison had executed a letter agreement. Section 2.2 of the draft environment assessment has a commitment that exchanges involving CVP and SWP facilities, and the CVC would be required to schedule accordingly with Reclamation, DWR and the Kern County Water Agency (KCWA), respectively, so as not to hinder their respective obligations to deliver water to contractors, participants, wildlife refuges, and to meet regulatory requirements.

Additionally, Section 3.1.2 says that the exchange must be conducted in a manner that would not harm other CVP contractors or other CVP contractual or environmental obligations, or SWP contractors. Therefore, Reclamation will not allow adverse impacts to CVP contractors or other CVP contractual or environmental obligations. Reclamation, when reviewing the schedule and additional documentation provided by Arvin-Edison Water Storage District, will evaluate whether the Proposed Action will have any impacts on other CVP contractors.

**Authorities comment 4:** *NEPA requires discussion and analysis of the environmental impacts of the proposed action and any alternatives, including any unavoidable adverse environmental effects. (40 C.F.R. § 502.16.) Due to the incomplete nature of the project description, as described above, and a failure to consider the impact of the proposed action on San Luis Reservoir operations, the potential environmental impacts of the proposed action are not identified or analyzed in the Draft EA. Specifically, if the proposed action causes San Luis Reservoir to reach low point earlier, there could be impacts that must be considered under NEPA. Reclamation has previously identified the types of impacts that result from low point through its development of the San Luis Reservoir Low Point Improvement Project. (See, e.g., San Luis Low Point Improvement Project Environmental Scoping Report, available at [www.usbr.gov/mp/sllpp/docs/SLLPIP\\_EnvironmentalScopingReport.pdf](http://www.usbr.gov/mp/sllpp/docs/SLLPIP_EnvironmentalScopingReport.pdf); San Luis Low Point Improvement Project Plan Formulation Report, available at [www.usbr.gov/mp/sllpp/docs/SLLPIP\\_PFR\\_January\\_2011.pdf](http://www.usbr.gov/mp/sllpp/docs/SLLPIP_PFR_January_2011.pdf). Further, to the extent the AEWSD-MWD Exchange involves water available as a result of the SJRRP, the AEWSD-MWD Exchange is subject to the San Joaquin River Restoration Settlement Act, Section 10004(d), which requires the Secretary of the Interior to mitigate any impacts of the SJRRP. This obligation is over and above that required by NEPA.*

**Reclamation response to comment 4:** As noted in response to comments 2 and 3, the February 22, 2012 letter of agreement between the Authorities and AEWSD where AEWSD has agreed not to move recirculation water to MWD until after the low point has occurred in the San Luis Reservoir negates the need to analyze the effect of reaching the low point earlier than that which would occur without the action.

**Authorities comment 5:** *In addition, if the exchange involves water available as a result of the SJRRP, it will be subject to and may not conflict with the temporary transfer provisions of the Order of the State Water Resources Control Board as set forth in "Order Approving Temporary Transfer And Change, issued In The Matter Of Permits 11885, 11886 and 11887 (Applications 234, 1465 AND 5638) of U.S. Bureau Of Reclamation, dated September 30, 2011." The EA fails to analyze these requirements.*

**Reclamation response to comment 5:** Section 1.5 incorporates by reference San Joaquin River Restoration Program (SJRRP) to evaluate activities necessary to convey the flows in the San Joaquin River from Friant Dam to the Sacramento-San Joaquin Delta (Delta), and to conduct data collection and monitoring activities during Interim Flow releases. The California State Water Resources Control Board (SWRCB), Division of Water Rights, issued corrected Water Rights Order (Order) WR 2010-0029-DWR. The order specifies necessary terms and conditions to be carried out for WY 2012. Condition #2 of the Order states “Any San Joaquin River water temporarily stored or routed through San Luis Reservoir shall not be delivered to south-of-Delta contractors other than Friant Division Contractors. The water need not be directly delivered, but can be made available through transfers and exchanges. Reclamation shall document that it

*has taken all practicable measures to provide contract water to the Friant Division Contractors, while complying with all other conditions of this Order.”*

Therefore, this Order allows for transfers and exchanges of Friant water that need not be directly delivered to the Friant contractors provided this water is put to beneficial use in other districts. The Proposed Action would comply with this approval from the SWRCB.

**Authorities comment 6:** *Reclamation can avoid a NEPA violation if it were to modify the proposed action or otherwise agree to implement the proposed action consistent with the following three conditions, which the Exchange Contractors, Water Authority, and AEWSD agreed to in the attachment letter agreement:*

*A. The AEWSD-MWD Exchange will not interfere with or harm Reclamation's ability to meet any of its contractual obligations, including its obligations under the Second Amended Exchange Contract or the 1939 Purchase Contract between Miller and Lux and the Department of Interior.*

*B. The AEWSD-MWD Exchange will not cause a net reduction in CVP water supply to CVP contractors south of the Delta.*

*C. As part of the AEWSD-MWD Exchange, Reclamation will not move SJRRP water in San Luis Reservoir to MWD until after the low point in San Luis Reservoir has occurred.*

*If Reclamation is unwilling to do that, Reclamation must revise the description of the propose action and analyze the potential its potential impacts, including those impacts that are likely to result if the AEWSDMWD Exchange causes San Luis Reservoir to reach low point earlier in the year.*

**Reclamation response to comment 6:** (A) Section 3.1.2 says that the exchange must be conducted in a manner that would not harm other CVP contractors or other CVP contractual or environmental obligations, or SWP contractors. Therefore, Reclamation will not allow adverse impacts to CVP contractors or other CVP contractual or environmental obligations. (B) See response to A. (C) The February 22, 2012 letter of agreement between the Authorities and AEWSD where AEWSD has agreed not to move recirculation water to MWD until after the low point has occurred in the San Luis Reservoir addresses this concern.