

## **Appendix C**

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### **Concurrence Memo from the U.S. Fish and Wildlife Service**



Reclamation has requested concurrence with a NLAA determination for this action for the blunt-nosed leopard lizard, San Joaquin kit fox, and giant garter snake. The Service's concurrence with a NLAA determination for this action is based in part on a land conversion commitment from the SLWD (Appendix A) stipulating that use of CVP water for new M&I uses will not occur until compliance with the Act has been confirmed. Such confirmation shall be consistent with a process elaborated in the 2013 Final Environmental Assessment/Initial Study for the 25-Year Transfer and Groundwater Pumping Project of the San Joaquin Exchange Contractors and the U.S. Bureau of Reclamation, pages F-29 through F-30 (Appendix B).

Additionally, although urban development in the vicinity of the community of Santa Nella (and serviced by IRC water from SLWD) could affect listed species habitat, urban development is not anticipated in the near term (during the term of the proposed IRCs) due to lack of funding and low housing demand in the area (County of Merced 2014). The information provided for this consultation, as well as the short duration of this project, and land conversion commitment in the letter from SLWD, provides the basis for the Service to concur with Reclamation's determination that these IRCs are NLAA the blunt-nosed leopard lizard, San Joaquin kit fox, or giant garter snake. No critical habitat for federally-listed species has been designated or proposed within areas considered in this IRC consultation.

The Service's concurrence with a NLAA determination for the species identified on page 1 relies on Reclamation's conclusion that CVP water contract deliveries do not result in land use changes that would adversely affect federally-listed species or critical habitat. The Service requests that prior to the next renewal of these IRCs or long term contract renewals (LTCRs), whichever comes first, Reclamation revises and updates the Central Valley Project Improvement Act (CVPIA) Comprehensive Mapping Program (described later in this memo). The Service specifically requests validation that districts that receive this IRC water will not use the water to convert native lands to other uses, thereby validating Reclamation's conclusion that CVP contract deliveries do not result in land use changes that would adversely affect federally-listed species.

### **Background and Related Consultations**

In 2004, Reclamation requested initiation of formal consultation under the Act for SLU long term contract renewals, including SLWD and PWD. Consultation on SLU long term contract renewals was suspended to allow completion of the consultation for the coordinated operations of the Central Valley Project and State Water Project Operations Criteria and Plan. In accordance with and as required by Section 3404(c) of the Central Valley Improvement Act (CVPIA) of 1992 (Public Law 102-575), IRCs are undertaken to provide a bridge between the expiration of the original long-term water service contracts and long-term renewal of those contracts. In 2007, Reclamation executed IRCs for the SLU. The Service issued a Biological Opinion on December 18, 2007 for five SLU IRCs (Westlands Water District, California Department of Fish and Game, and the Cities of Avenal, Coalinga, and Huron) (Service File No. 2008-F-0538). The SLWD and PWD IRCs were not included in that consultation based on the discussions between Reclamation and the Service relating to the extension of the Grassland Bypass Project, which both SLWD and PWD participate in. The long-term contracts for SLWD and PWD expired December 31, 2008. The Service completed informal consultations under the Act on previous IRCs for SLWD and PWD on December 22, 2008, December 15, 2011, and January 28, 2013. In those consultations, the Service concurred with Reclamation that the IRCs for SLWD and PWD for a 2-year period were NLAA

federally-listed species (Service File Nos. 2008-I-0538-2, 2008-I-0538-4, and 2013-I-0073, respectively). These previous consultations on the IRCs for SLWD and PWD are incorporated here by reference.

Interim renewal contract deliveries have several components of potential effects on listed species (e.g., effects from agricultural drainage management and disposal, and changes to land use and cropping patterns, etc.). The effects of agricultural drainage management have been addressed in other consultations, described in more detail below. The effects of IRCs considered in this NLAA concurrence memo are related solely with the delivery of water and associated land use impacts.

In 2006 Reclamation completed an Environmental Impact Statement (EIS) and Record of Decision (ROD) under the National Environmental Policy Act (NEPA), and the Service completed a Biological Opinion (Service File No. 2006-F-0027) and a Fish and Wildlife Coordination Act Report in accordance with the provisions of section 2(b) of the Fish and Wildlife Coordination Act (48 stat. 401, as amended; 16 U.S.C. 661, et seq.) on San Luis Drainage Feature Re-evaluation (SLDFR). The purpose of the SLDFR project was to meet Reclamation's obligations under the Federal San Luis Unit Act of June 3, 1960, Public Law 86-488, 74 Stat. 156, Section 5, to provide drainage service to drainage-impacted lands within the San Luis Unit (including drainage impacted lands within SLWD and PWD). Once fully implemented, Reclamation anticipated in the EIS and ROD that the drainage discharge from the San Luis Unit would be reduced to sufficient standards to meet the statutory and judicial requirements imposed. Congress has not yet acted to authorize and make appropriations to implement the SLDFR ROD fully, although Reclamation has the authority and funding to complete some of the actions described in the EIS.

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

On June 4, 2012, the Service completed informal consultation on the San Luis Drainage Feature Re-evaluation Demonstration Treatment Facility at Panoche Drainage District (Service File No. 2011-F-0855). The SLDFR Demo Facility will operate for up to 18 months testing the efficacy and operation of reverse osmosis treatment and selenium biotreatment technologies for agricultural drainage disposal. This facility will be built within the geographical boundaries of the existing Grassland Bypass Project's Drainage Reuse Area. Subsequently, Reclamation may elect to continue operating the Facility indefinitely or delegate it to their designated operating partner for treating reuse drainage. Disposition and operation of the facility after the 18-month time period is unknown at this time and would receive separate analysis under NEPA and the Act.

On June 7, 2014, the Service completed informal consultation on the authorization to install, operate, and maintain pipelines rerouting drainage from the six drainage sumps that discharge into the Delta Mendota Canal (DMC), to the GBP's San Joaquin River Improvement Project's (SJRIP) drainage reuse area (Service File No. 2014-I-0435). Once construction is complete, drainage from

the sumps will be released into ditches within the SJRIP where it will be re-circulated and reused in the same manner as existing drainage water is managed within the SJRIP. This project will re-route approximately 1,200 acre-feet (AF) of poor quality subsurface agricultural drainage water that previously discharged into the DMC, and would prevent approximately 800 pounds of selenium and 8,300 tons of salts from entering the DMC annually.

### Proposed Action

The proposed action is the execution of IRCs for SLWD and PWD from March 1, 2015 to February 28, 2017 in the amounts and to the acreages and purposes specified in Table 1. The IRCs provide delivery of “a maximum quantity of water subject to hydrological and regulatory constraints for up to the full contract amounts,” as described in Reclamation’s Memorandum and attachments on San Luis Unit (SLU) long term contract renewals dated September 27, 2005.

**Table 1. CVP Interim Water Service Contract Amounts and Service Areas for Panoche and San Luis Water Districts**

Contractor	Water Service Contract Amount (acre-feet)	Area (acres)	Primary Contract Use	Contract Period
Panoche Water District	94,000	39,936	Agriculture	03/01/15-02/28/17
San Luis Water District	125,080	66,458	Agriculture	03/01/15-02/28/17

No changes to SLWD’s or PWD’s service areas or water delivery amounts are part of the Proposed Action. Water deliveries under these two IRCs can only be used within each CVP contract service areas as designated in Figures 1 and 2. Water from these IRCs can be delivered in quantities up to the contract total, although it is likely that deliveries will be less than the contract total.

### San Luis Water District

The SLWD is located in western Merced and Fresno Counties. The District annually irrigates between approximately 30,000 and 40,000 acres. The district has a CVP contract for 125,080 AF/year, for delivery from either the DMC or the San Luis Canal (SLC). Although water deliveries by SLWD historically have been almost exclusively used for agricultural use, development in the extreme northern portion of SLWD near the community of Santa Nella has resulted in a shift of some water supplies to M&I use. The district currently supplies approximately 800 AF/yr to 1,300 homes and businesses. The Santa Nella County Water District treats the CVP water sent from the SLWD to service the Santa Nella Community (USBR 2014b). Use of SLWD CVP contract supply for M&I needs is expected to increase over time, but urban development is not anticipated in the near term (during the term of the proposed IRCs) due to lack of funding and low housing demand in the area (County of Merced 2014).

Figure 1. CVP Contract Service Area Boundary for San Luis Water District

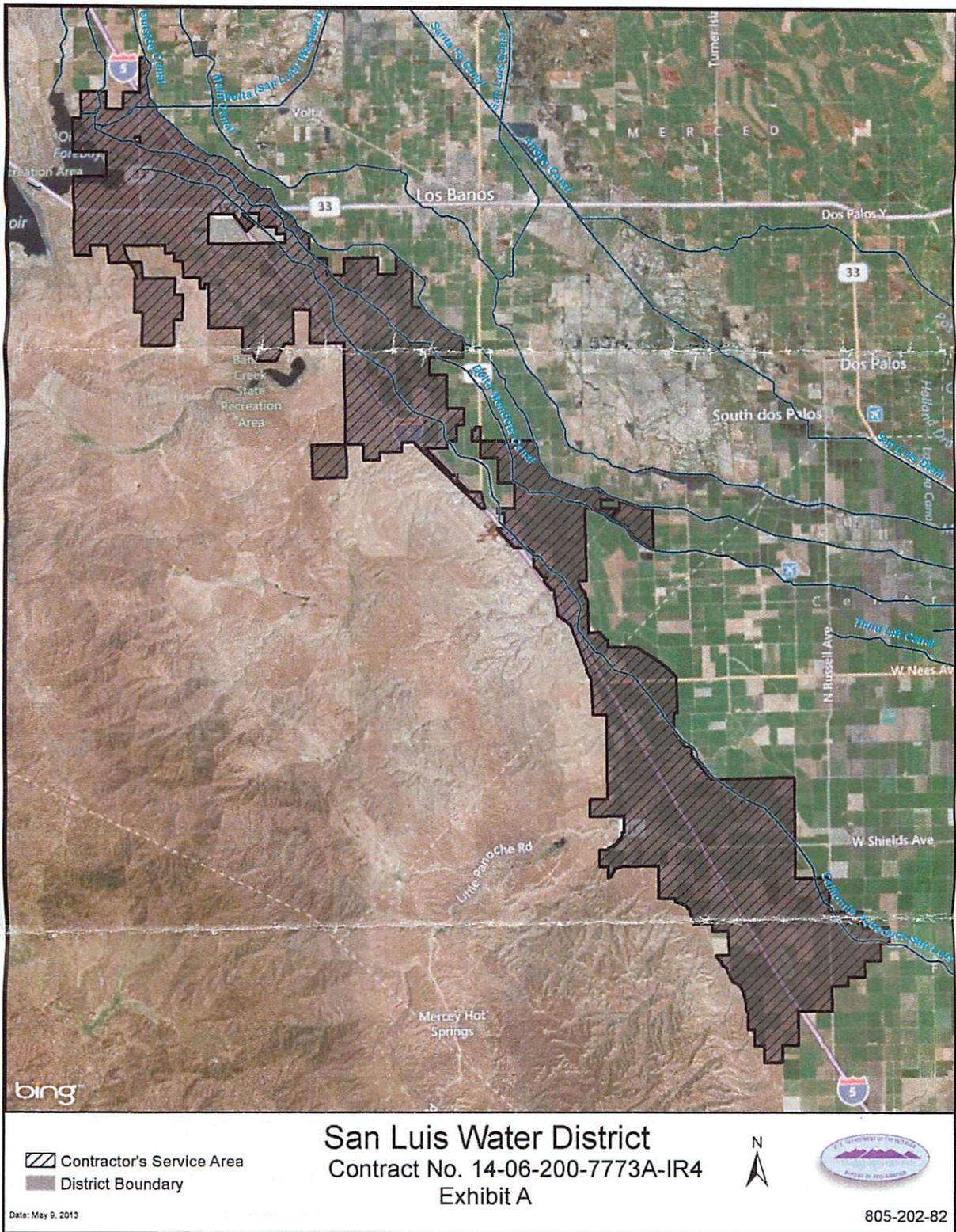
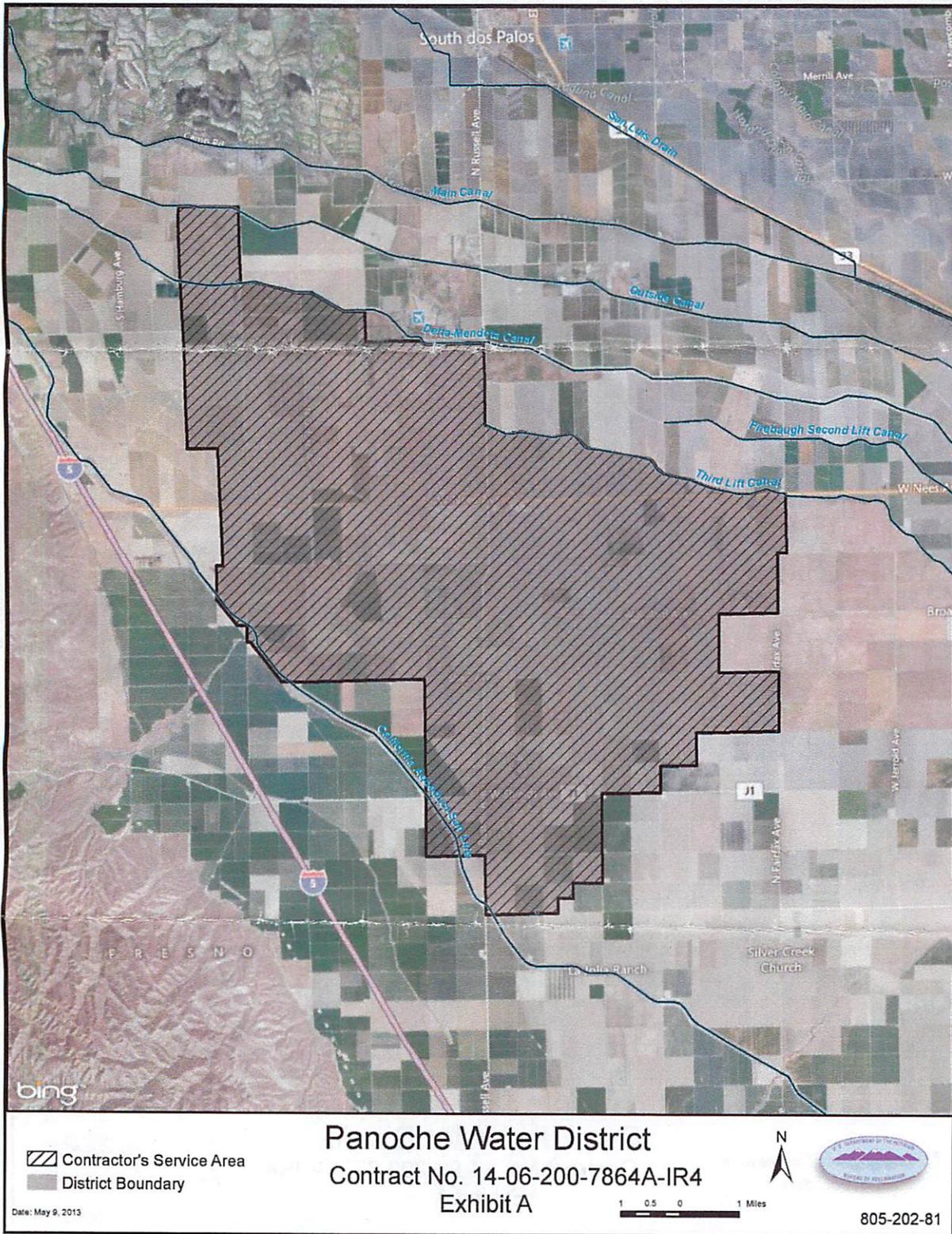


Figure 2. CVP Contract Service Area Boundary for Panoche Water District



Surface water deliveries from the CVP are SLWD's only long-term water supply. The district does not own any groundwater wells and has no long-term contracts for surface water or groundwater supplies. Private groundwater sources are limited; there are approximately 20 privately owned and operated groundwater wells that provide water to 6,000 acres in SLWD, or only about 5 percent of the acreage within SLWD. The majority of the SLWD's water users do not have access to groundwater that can be used for irrigation (USBR 2014a).

The SLWD acquires supplemental water supplies through transfers with other parties, including other CVP contractors during years of shortages when available; however, frequent water supply shortages have led to widespread fallowing in SLWD. On average, almost half the irrigable acreage in SLWD is fallowed (USBR 2014a).

Land use in SLWD includes agriculture in the east, with grazing land concentrated on the west side of the district. Almonds are the most prevalent crop in SLWD, but grains, forage and row crops also are grown (USBR 2014b). Increasingly, agricultural land use in SLWD has shifted to higher value permanent crops as contract deliveries have declined and cost of transferred water has increased over time (USBR 2014a).

The area in the vicinity of Santa Nella near the junction of Interstate 5 (I-5) and State Route 152 (SR 152) has become a pinch point for the north-south movement of wildlife along the western side of the San Joaquin Valley. The past development of the San Luis Reservoir, O'Neill Forebay, the SLC, DMC, Outside Canal, Los Banos Reservoir, the commercial and residential development around Santa Nella, agricultural development east of I-5, and the presence of I-5 and SR 152 themselves have created substantial barriers to the north-south movement of wildlife in the region. Several planned developments are contemplated in western Merced County, including Villages of Laguna San Luis (Villages), Fox Hills, and continued development under the Santa Nella Community Plan as denoted in Table 2 (County of Merced 2014).

Urban development projects in the Santa Nella area could have substantial impacts on wildlife movement. Specifically, the 6,305-acre Villages mixed-use development would extend north of SR 152. Under current design, the Villages would constrain north-south movement of wildlife in the vicinity of the open space areas planned around the periphery of the development and to the movement corridors provided through and adjacent to the project site under the Wright Solar Habitat Conservation Plan. However, although the community plan for the Villages has been approved by the County, permits from other regulatory and resource agencies, including permits from the Service and California Department of Fish and Wildlife (CDFW) for incidental take of listed species under the Act and state Endangered Species Act (CESA) have not been obtained. Given the potential effects on San Joaquin kit fox from this proposed development, and its status as a state- and federally-listed species, it is highly likely that refinements in the configuration or extent of this planned development, or additional mitigation or minimization measures to reduce effects on movement, would be required during the permitting process (County of Merced 2013, 2014).

**Table 2. Summary of Impacts to Biological Resources in the Vicinity of the Community of Santa Nella<sup>1</sup>**

Development Name	Total Acres	Developed Acres	Remaining Undeveloped Acres	Sensitive Habitat	Special Status Species
Santa Nella	2,848	452	2,397	Annual grassland	California red legged frog, burrowing owl, Swainson's hawk, northern harrier, California horned lark, San Joaquin kit fox
Villages at Laguna San Luis	6,305	285	6,020	Annual grassland	California red legged frog, San Joaquin kit fox, Blunt nosed leopard lizard, Burrowing owl, Ferruginous hawk
Fox Hills	1,231	0	1,231	Annual grassland	California red legged frog, San Joaquin kit fox
Total	10,384	737	9,648		

<sup>1</sup> Adapted from Merced County 2030 General Plan Final PEIR, October 2013.

The Fox Hills development would be located on both sides of I-5. The majority of this proposed development would occur east of I-5; only a proposed golf course would occur west of I-5. All project-specific approvals for the Fox Hills development have been obtained and some infrastructure (e.g., roads, water lines) has been constructed, although full build-out of the 1,231 acre development is not anticipated in the near term (during the term of the proposed IRCs) due to lack of funding and low housing demand (County of Merced 2013, 2014).

#### *Conservation Measure*

As denoted in a letter from Martin McIntyre, General Manager of SLWD dated August 28, 2014 (commitment letter), the District has committed to not delivering CVP water to new M&I development or previously uncultivated land without confirmation that compliance through Section 7 or Section 10 of the Act has occurred. The SLWD commitment letter is provided in Appendix A.

#### Panoche Water District

The PWD is located in western Merced and Fresno Counties. Panoche WD is primarily an agricultural district and has a CVP contract for 94,000 AF/year, delivered from either the DMC or the SLC (USBR 2014a). The District serves approximately 38,000 acres of which about 35,000 acres are irrigated annually. Typical crops produced in the District include tomatoes, cotton, pistachios, grapes, almonds and wheat (USBR 2014b). The PWD also participates in a drainage management

program that reduces agricultural drainwater volumes and contaminant loads by altering cropping patterns and/or irrigation methods in targeted areas (USBR 2010).

A small amount of CVP water is diverted annually within the District to satisfy domestic needs. Municipal and Industrial water use is incidental to agricultural use and amounts to less than 50 AF/yr. Use for M&I within PWD is not expected to increase during the term of this IRC because it is unlikely that agricultural land would be converted to other land uses. With the exception of drought conditions, almost no groundwater is utilized in the District (USBR 2014b).

In addition to its CVP IRC water, PWD has entered into a long-term water supply contract with the Central California Irrigation District and Firebaugh Canal Water District. This agreement provides 3,000 AF/yr in supplemental water to PWD through 2033. The District has also entered into an agreement with San Luis Canal Company. This agreement provides up to 5,000 AF/yr of supplemental water to PWD through December 31, 2021. Both sources supplement anticipated ongoing shortages in the CVP contract supply and provide that total deliveries to PWD cannot exceed the CVP IRC contract total quantity. The District acquires other water supplies when available through transfers with other contractors during years of shortages in their CVP contract allocations. Some groundwater is also used within PWD. There are 42 privately owned and operated groundwater wells in the District's service area in addition to one District-owned well. Because of its poor quality, groundwater is primarily used as contingency during CVP water shortages (USBR 2014a).

### **Needs for Future Interim or Long Term Contract Renewals**

In order to facilitate future consultations on CVP IRCs or Long Term Contract Renewals the Service asks that the following be included with Reclamation's materials provided for initiation of consultation under the Act:

#### Applicant Status or Change to Contract Language

Article 3(e) of the IRC contracts for SLWD (Contract No. 14-06-200-7773A-IR3) and PWD (Contract No. 14-06-200-7864A-IR3) includes the following language with respect to consultation under the Act:

*“The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (E.S.A), as amended, that are within the Contractor's legal authority to implement.”*

Because the contract includes language relevant to the Contractors' compliance with the Act in their use of the CVP water authorized by these iRCs, the Service recommends that prior to the next IRC or Long Term Contract Renewals, Reclamation should complete one of the following:

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

Comprehensive Mapping Commitment from CVPIA Biological Opinion

In the CVPIA Programmatic biological opinion (CVPIA BO), dated November 2000 (Service File No. 98-F-0124), Reclamation and the Service committed to develop a Comprehensive Mapping Program to identify remaining natural habitats and cropping patterns within CVP Service Areas, and identify any changes within those habitats that have occurred from 1993 to 1999, and then every 5 years thereafter (pages 2-62 and 2-63). Reclamation completed a mapping assessment of habitat changes from 1993 to 1999 and 2005. The most recent habitat/crop mapping efforts for CVP Service Areas completed by Reclamation were completed on 2005 imagery. The 2014 BE for these IRCs did include an analysis of land use changes within SLWD and PWD using a variety of data sets including the Farmland Mapping and Monitoring Program for 2000 and 2010. This mapping effort consolidated land use classes into four main categories: urban, grazing land, farmland, and nonagriculture and native lands. Although this analysis was useful in looking at past trends in land use, it is not consistent with the previous Central Valley Habitat Monitoring Program, nor is it based on current, large-scale orthorectified digital aerial photography as denoted in the CVPIA BO. The Service therefore requests that prior to the next IRC or Long Term Contract Renewal, this comprehensive mapping effort be updated with current imagery and compared with the previous mapping efforts to update the environmental baseline and to verify assumptions by Reclamation that the IRCs do not result in land use changes that would affect federally listed species. Reclamation has informed the Service of the intent to redo this mapping effort in 2015 (pers. comm., R. Grimes, USBR Mid-Pacific Regional Office, October 1, 2014).

**Conclusion**

The information Reclamation provided for this consultation, including the written commitment from SLWD in Appendix A, and the short duration of this project provides a sufficient biological basis for the Service to concur with Reclamation's determination that the IRCs for SLWD and PWD are NLAA the San Joaquin kit fox, blunt-nosed leopard lizard, or giant garter snake. For future consultations on CVP IRCs or Long Term Contract Renewals, however, in order to test assumptions made for past IRC consultations, the Service asks that the additional information specified above be provided when Reclamation initiates these consultations under the Act.

Our concurrence with your NLAA determination concludes this consultation for this action. Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary. If you have questions regarding this consultation, please contact Thomas Leeman, Chief, San Joaquin Valley Division, or Joy Winckel, Senior Fish and Wildlife Biologist at the letterhead address or at (916) 414-6600.

**Attachments**

cc:

U.S. Bureau of Reclamation, Sacramento, California (Attn: Russ Grimes)

## Literature Cited

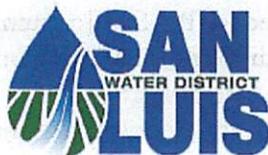
- County of Merced. 2014. Draft Environmental Impact Report for the Wright Solar Park Conditional Use Permit Application CUP 12-017. *Prepared by* County of Merced Community and Economic Development Department Merced, CA, and ICF International, Sacramento CA, 6 chapters and 9 appendices. Available at:  
[http://www.co.merced.ca.us/pdfs/env\\_docs/eir/wright\\_solar\\_deir\\_07\\_01\\_14.pdf](http://www.co.merced.ca.us/pdfs/env_docs/eir/wright_solar_deir_07_01_14.pdf)
- \_\_\_\_\_. 2013. 2030 Merced County General Plan Update, Final Program Environmental Impact Report. State Clearinghouse #2011041067. *Prepared by* Merced County Community and Economic Development Department, Merced, CA, and Environmental Planning Partners, Inc., Sloughouse CA, 4 chapters and 2 appendices. Available at:  
<http://www.co.merced.ca.us/index.aspx?NID=100>
- [USBR] U.S. Bureau of Reclamation. 2014a. Draft Finding of No Significant Impact and Draft Environmental Assessment on Central Valley Project Interim Renewal Contracts for Panoche Water District and San Luis Water District 2015-2017. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 48 pp. and 2 appendices.
- \_\_\_\_\_. 2014b. Biological Evaluation for the Central Valley Project Interim Renewal Contracts for Panoche Water District and San Luis Water District 2015-2017. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 18 pp. and 2 appendices.
- \_\_\_\_\_. 2010. Draft Finding of No Significant Impact and Draft Environmental Assessment on San Luis Water District's and Panoche Water District's Water Service Interim Renewal Contracts 2011 – 2013. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 40 pp. and 4 appendices.

Appendix A.

**Chris Hurd**  
*President*

**Bill Diedrich**  
*Vice President*

**Mike Wood**  
*Tax Assessor/Collector*



**Tom Teixeira**  
*Secretary/Treasurer*

**Grant Craven**  
*Director*

**Martin McIntyre**  
*General Manager*

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August 28, 2014

Jennifer L. Lewis  
Wildlife Biologist  
Bureau of Reclamation  
South-Central California Area Office  
1243 "N" Street  
Fresno, CA 93721-1831

Dear Ms. Lewis:

In connection with the pending Interim Renewal Contract between the United States and San Luis Water District, I understand that the Bureau of Reclamation requires certain confirmations from the San Luis Water District. In response to that request, we provide the following commitment:

I, Martin R. McIntyre, confirm that, to the extent permitted by law and within its powers, the District will not knowingly deliver Central Valley Project water to new municipal or industrial development or previously uncultivated land without confirmation from the Bureau of Reclamation or other evidence that compliance with the Endangered Species Act has occurred with respect to the subject land either through Section 7 or Section 10 of the Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin R. McIntyre", is written over a horizontal line.

Martin R. McIntyre  
General Manager

MRM/mrm

cc: Board of Directors, San Luis Water District  
Gary Sawyers, General Counsel, San Luis Water District

**Appendix B.**

Excerpt from the January 2013 Final Environmental Assessment/Initial Study for the 25-Year Transfer and Groundwater Pumping Project of the San Joaquin Exchange Contractors and U.S. Bureau of Reclamation, pages 2-17 through 2-18 and copied for reference below:

Use of transferred water for new M&I uses will not occur until (1) compliance with CESA and with CEQA, including analysis and mitigation for other sensitive biological resources, has been confirmed with the DFG and (2) ESA compliance for such M&I uses has been demonstrated by one of the following methods:

1. A letter or memo from the Service stating that the use will not result in adverse effects on listed or proposed species or proposed or designated critical habitat.
2. An incidental take permit for the M&I use issued by the Service pursuant to section 10(a)(1)(B) of the ESA.
3. A non-jeopardy, non-adverse modification or destruction biological opinion, or a biological opinion with a reasonable and prudent alternative, or a memo/letter concurring with a "not likely to adversely affect" determination issued by the Service to the lead Federal agency having jurisdiction over the project(s) using the transferred water for M&I use.

A properly documented "no effect" determination made by the Federal agency(ies) having jurisdiction over the project(s) using the transferred water for M&I use. Commitment 8 on page 2-70 of the CVPIA Programmatic Biological Opinion requires Reclamation to "provide necessary information to the Service's SFWO Endangered Species Division" on Central Valley Project actions "where a determination of no effect has been made, sufficiently in advance, to enable the Service's review". Reclamation would accomplish this via the current SCCAO practice of immediately notifying Service of the availability of NEPA documents for public review and comment. Because any significant impacts from M&I use would be mitigated by the M&I projects before a water transfer is approved and water is actually provided, the proposed project has no significant impacts on the environment that are related to such transfers.