

SAN LUIS WATER DISTRICT AND PANOCHE WATER DISTRICT

FINAL ENVIRONMENTAL ASSESSMENT

INTERIM CONTRACT RENEWAL

Appendix F
ITA and Cultural Resources Determinations

February 2011

Healer, Rain L

From: Goodsell, Joanne E
Sent: Thursday, August 05, 2010 2:32 PM
To: Healer, Rain L
Cc: MPR Cultural Resources Section
Subject: 10-SCAO-272 San Luis and Panoche Water Districts Water Service Interim Renewal Contracts 2011-2013 (EA-10-70)

Tracking No. 10-SCAO-272 / EA-10-70

Project: San Luis and Panoche Water District's Water Services Interim Renewal Contract 2011-2013

Rain,

With reference to EA-10-70, the Proposed Action for Reclamation to execute water service interim renewal contracts with San Luis Water District (SLWD) and Panoche Water District (PWD) is the type of action that has no potential to cause effects on historic properties or other cultural resources. Likewise, the No Action Alternative has no potential to affect such resources.

In accordance with, and as required by, Section 3404(c) of the Central Valley Project Improvement Act (CVPIA), Reclamation proposes to execute interim renewal Central Valley Project (CVP) water service contracts with SLWD and PWD, two of the water districts located in the CVP's San Luis Unit of the West San Joaquin Division. Both of these contractors have existing interim renewal contracts which expire February 28, 2011. These new contracts would extend the delivery of water to these districts for a two-year period, from March 1, 2011, through February 28, 2013.

As the Proposed Action and No Action Alternative are administrative in nature, unless there are substantial contractual changes that result in ground disturbance or modifications to built environment features, no additional Section 106 consideration is required. Thank you for the opportunity to review and comment. I will be providing my edits for the Cultural Resources portion of the EA shortly in a separate email.

Sincerely,

Joanne Goodsell
Archeologist, Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way, MP-153
Sacramento, CA 95825
(916) 978-5499 jgoodsell@usbr.gov

Healer, Rain L

From: Rivera, Patricia L
Sent: Monday, July 26, 2010 7:26 AM
To: Healer, Rain L
Subject: RE: EA-10-70 San Luis and Panoche WDs Interim Renewal Contracts 2011-2013

Rain,

I reviewed the proposed action to execute two interim renewal contracts beginning March 1, 2011 for San Luis Water District (SLWD) and Panoche Water District (PWD). Both of these renewal contracts will be renewed for up to two years.

The Proposed Action is the execution of two interim renewal water service contracts between the United States and SLWD and PWD which are the same two included in the No Action Alternative. Both of these contractors have existing interim renewal contracts which expire February 28, 2011. SLWD and PWD are on their first interim renewal contract. The Proposed Action would be their second.

The Proposed Action would continue these existing Interim Renewal Contracts, with only minor, administrative changes to the contract provisions to update the previous interim renewal contracts for the new contract period. In the event that a new long-term water contract is executed, that interim renewal contract would then expire.

No changes to SLWD's and PWD's service areas or water deliveries are part of the Proposed Action. CVP water deliveries under the two proposed interim renewal contracts can only be used within each designated contract service area. Contract service areas for the proposed interim renewal contracts have not changed from the existing interim renewal contracts. The proposed interim renewal contract quantities (see Table 1) remain the same as in the existing interim renewal contracts. Water can be delivered under the interim renewal contracts in quantities up to the contract total, although it is likely that deliveries will be less than the contract total. The terms and conditions of the 2008 interim renewal contracts from EA-07-56 are incorporated by reference into the Proposed Action.

Interim renewal contracts are undertaken under the authority of the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and long-term renewal of those contracts. Each of the 11 renewal contracts will be renewed for up to two years with contract provisions as negotiated between Reclamation and each of the San Luis Unit contractors. Negotiations between Reclamation and each of the San Luis Unit contractors have recently been completed. The negotiated form draft interim renewal contracts can be found in Appendix A.

The Proposed Action includes language addressing the operation and maintenance of facilities by San Luis Unit Contractors as described in the No Action Alternative as well as water measurement and conservation articles. The Proposed Action also includes the same definition of municipal and industrial water as the No Action Alternative.

Article 16(c) of the interim renewal contracts for irrigation specifies that the Contracting Officer shall notify the Contractor in writing when drainage service becomes available, and provides for the payment of rates for such service after such notice. The M&I contracts do not include drainage language. The primary difference between the Proposed Action and the No Action Alternative is that the Proposed Action does not include tiered pricing. Section 3405(d) of the CVPIA does not require tiered pricing to be

included in contracts of three years or less in duration and negotiations between Reclamation and the six San Luis Unit contractors concluded with a form of contract which does not include tiered pricing. Consequently, if at least 80 percent of the contract total is delivered in any year during the term of the interim renewal contracts, in such year no incremental charges for water in excess of 80 percent of the contract total will be collected and paid to the Restoration Fund.

The following assumptions are made under each alternative:

- A. Execution of each interim renewal contract is considered to be a separate action;
- B. A two year interim renewal period is considered in the analysis, though contracts may be renewed for a shorter period.
- C. The contracts will be renewed with existing contract quantities as reflected in Table 2.1 below;
- D. Reclamation would continue to comply with commitments made or requirements imposed by applicable environmental documents, such as existing biological opinions (BOs) including any obligations imposed on Reclamation resulting from consultations; and
- E. Reclamation would implement its obligations resulting from Court Orders issued in actions challenging applicable BOs that take effect during the interim renewal period.

Table 1. San Luis Unit Contractors, Their Entitlements, and Contract Expiration Dates

Contractor and Current Contract Number	Contract Entitlement	Expiration of Previous Interim Renewal Contract	Purpose of Use
San Luis Water District 14-06-200-7773A-IR1	110,000 acre-feet (AF)	2/28/2011	Ag and M&I
Panoche Water District 14-06-200-7864A-IR1	94,000 AF	2/28/2011A	Ag and M&I

The proposed action does not have a potential to affect Indian Trust Assets. The nearest ITA is a Public Domain Allotment, which is approximately 52 miles NE of the project location.

Patricia

SAN LUIS WATER DISTRICT AND PANOCHE WATER DISTRICT

FINAL ENVIRONMENTAL ASSESSMENT

INTERIM CONTRACT RENEWAL

Appendix G
Comment Letters Received

February 2011



December 13, 2010

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

Subject: 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.

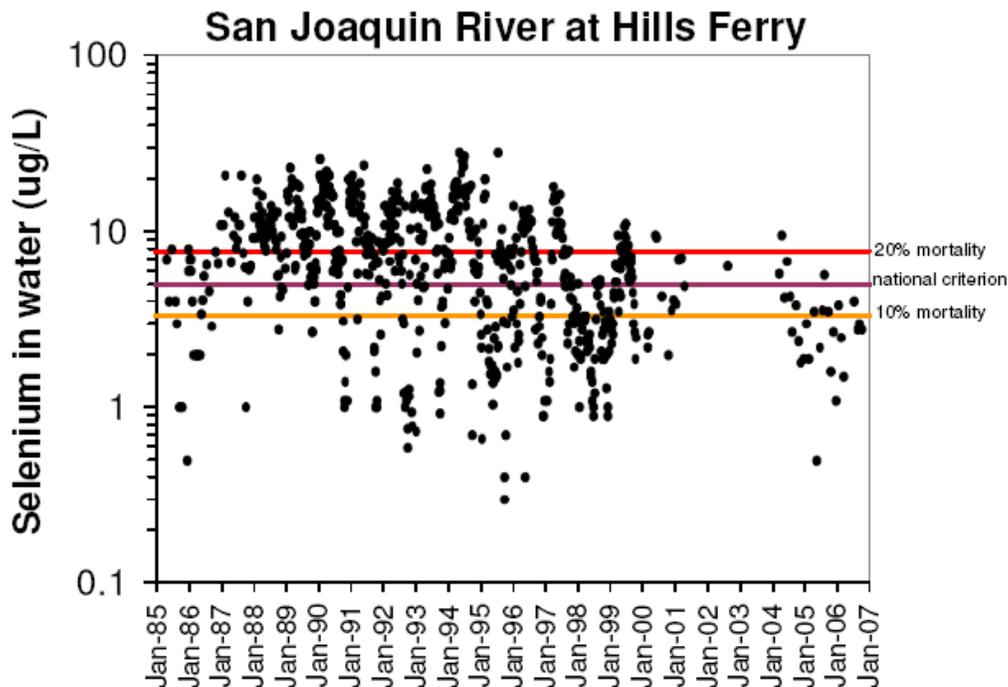
Dear Ms. Healer:

We oppose the adoption of the above referenced FONSI. The proposed contracts and Draft FONSI supported by the Draft Environmental Assessment Number EA-10-070, San Luis Water District's Panoche Water District's Water Service Interim Renewal Contracts 2011-2013 ignore the increased environmental impacts caused by two more years of diversions under these contracts. Comments by the above groups and others were basically ignored.¹

Coalition-2

The draft documents are legally inadequate and must be withdrawn. These water contracts whereby provisions of the 1963 water contracts are simply renewed do not reflect the realities of water quality impacts, endangered species impacts, and water supply impacts. Nor do these contracts reflect the water quality permit obligations and mitigation to the areas of diversion that supply this diverted water from the Delta including the Trinity River, Sacramento River and American River. This water is diverted to irrigate toxic selenium soils resulting in return flow pollution to the Delta and Bay estuary. This polluted groundwater and discharge to the San Joaquin River and surrounding wetland areas impacts endangered species along with the environmental and economic well being of the estuary.² As you can see from the concentration data below, discharges from these districts and others into the San Joaquin River increase the mortality of federally listed endangered Chinook salmon, Central Valley Steelhead and North American green sturgeon and impact their critical habitat.

Figure 1. Selenium concentrations measured in the San Joaquin River at Hills Ferry (data from the Central Valley Regional Water Quality Control Board).



Continuing to divert water to these toxic lands and discharging pollution to the San Joaquin River will only increase the impacts to these endangered species and the garter snake, endangered San Joaquin Kit fox and threatened Delta smelt along with critical habitats. Further, the contract renewals also do not reflect the legal obligations of the Bureau of Reclamation to the areas of origin under their water rights permits.

Coalition-4 | The Bureau continues to ignore its legal obligations under the Central Valley Project Improvement Act and other state and federal laws to incorporate meaningful reforms in these new contracts and accurate analysis of their impacts in the environmental reviews. For the past decade environmental and federal agencies have raised these concerns that have been ignored. Despite repeated requests to accurately reflect the law the Bureau also continues in this document to suggest that it is an **obligation of the Secretary to** "renew water contracts." This failure to accurately reflect the Secretary's discretion has been repeatedly brought to the Bureau's attention and yet this inaccurate recital is repeated again in this FONSI.

PWD and SLWD have uncontrolled groundwater pollution, polluted drainage and runoff that are not under required water discharge permits from the State Water Resources Control Board, violate Clean Water Act Standards and violate both the Federal and State Water Quality Antidegradation policies. Further we request a full Environmental Impact Statement be completed so the decision makers and the public can:

- Coalition-5 |
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 Water District's [SLD] and Panoche Water District's [PWD] Water Service Interim Renewal Contracts 2011-2013 and it does not meet the legal requirements of the National Environmental Policy Act [NEPA].

Coalition-6 | Further we find the exclusion from the analysis of the environmental impacts of changes to the contractor's service areas, water transfers and exchanges, contract assignments, Warren Act Contracts and drainage to be arbitrary 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

Coalition-6 ↑

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.

Coalition-7

The environmental analysis provided does not fully disclose the site-specific circumstances of the SLWD and PWD contracts and the specific impacts environmental impacts caused by diverting water to irrigate these agricultural lands. Further the baseline in the various documents is different rendering the analysis of impacts incomplete. Actions taken under this FONSI 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 Draft FONSI supported by the Draft Environmental Assessment Number EA-10-070 does not meet the legal requirements of the National Environmental Policy Act (NEPA). Specifically the document is deficient for the following reasons:

Coalition-8 ↓

- 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, water delivery from the California Aqueduct and changes to the contract service areas or places of use.
- The full range of alternatives was not analyzed in the supporting environmental documents including reduced contract deliveries.
- The analysis of the impacts from the implicit promise of unsustainable water 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.

Coalition-8

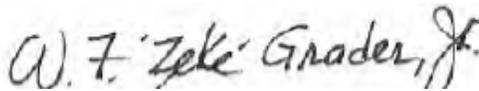
- There is little or no information on the direct, indirect and cumulative impacts of the proposed actions including among other impacts, mobilization of pollutants from applying imported water to toxic soils and movement from the irrigation of upslope toxic lands. Subsurface polluted ground water can contain extremely elevated levels of selenium, salt, boron, mercury 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 discharges of polluted groundwater, sump water and drainage to 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



Zeke Grader, Executive Director
Pacific Coast Federation of
Fishermen's Associations



Conner Everts
Executive Director
Southern California Watershed Alliance



Larry Collins
President
Crab Boat Owners Association Inc



Carolee Krieger
Board President and Executive Director
California Water Impact Network



Bill Jennings
Chairman Executive Director
California Sportfishing Protection Alliance



Byron Leydecker, Chair
Friends of Trinity River



Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League



Bruce Tokars, Co-Founder
Salmon Water Now

Attachment: Detailed comments

cc: Interested parties

DETAILED COMMENTS

1. The draft FONSI and supporting environmental document fail 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.2 FONSI-10-070]

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 draft FONSI and environmental documents do 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 region³. 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 San Luis Drainage Feature Re-evaluation Preliminary Alternatives Report, Dec. 2001]

Coalition-9

According to EPA water deliveries from these contracts where selenium concentrations exceed water quality standards affect important resources such as the Grassland Ecological Area.⁴ Concentrations in some canals have reached levels 20 times the standard protective of aquatic health.⁵ EPA goes on to note, "*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.*"⁶ Clearly the draft FONSI should have provided information on the San Luis Water District and Panoche Water Districts' role in groundwater accretions and discharges of pollutants into wetland channels and the San Joaquin River and identified the impacts to these wetlands and wildlife.

Coalition-10

There is no information or analysis to support the draft FONSI and environmental documents finding that the proposed action "would have no effect on birds protected by the Migratory Bird Treaty Act (16 USC Section 703 et seq.)" In fact the assertion is not supported by existing data. Monitoring data in 2009 shows there has been harm to migratory bird eggs and increased mortality from irrigating these selenium lands

Coalition-11

In addition, the draft FONSI's contention 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) and fails to consider the requirement that Secretary is required to ensure water is put to beneficial use.

Coalition-12

The Draft FONSI and environmental documents 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 how 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, water contract provisions, or changes in water contract amounts and location of water applied, which will reduce groundwater pollution and selenium mobilization.

Coalition-12

Such alternatives and mitigation 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 obligations under the Bureau's water right permits.

2. The FONSI for this water contract renewal narrowly defines the project and assumes the impacts of importing water and exporting pollution does not extend to the San Francisco Bay Estuary and Sacramento-San Joaquin Delta.

Coalition-13

Exporting 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 FONSI and supporting environmental documents exclude any analysis of these impacts from the proposed action. Further the FONSI and environmental documents exclude 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.⁷

Coalition-14

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 sufficient 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 until January 1, 2020.

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.

Coalition-15

Financial Assurances based on exaggerated water supplies are false and lead to increase risks to bondholders. The quantity of the interim contract renewals should be based on existing, developed project supplies. The needs assessment contained in the draft FONSI and environmental documents do not accurately reflect environmental needs, Indian Trust obligations, and Public Trust obligations. The environmental documents readily admit relying on a 2007 needs assessment that is faulty. In the environmental documents "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".

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. The San Luis Delta Mendota Water Authority and its member districts, including the San Luis Water District and Panoche Water District, have already leveraged these federal water contracts to borrow from the financial markets in 2009 over \$50 million dollars.⁸ Even the environmental documents suggest retaining these inaccurate water quantities in the contracts provides assurances for investments. These are false assurances and could lead to substantial financial dislocations to bond holders and financial markets. These impacts have not been analyzed or disclosed.

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 FONSI and supporting draft environmental assessment suggest 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.] These exaggerated contract amounts lead to false assurances to financial institutions and bond holders.⁹ These false assurances by the San Luis Water District and Panoche Water District use exaggerated water contract amounts as collateral claiming the water can be marketed outside of the district boundaries to buyers in Southern California and San Francisco.¹⁰ 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 draft FONSI and environmental documents allow 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 Francisco Bay-Delta.¹¹ 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.

5. Despite completion of the Programmatic EIS for the Central Valley Project Improvement Act (CVPIA PEIS), the Draft FONSI and environmental documents do not adequately address site specific impacts of the Proposed Action. These proposed environmental documents do 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 Water District and Panoche Water District 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 draft FONSI and environmental documents, consultation should be reinitiated 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 River¹² 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 as Operation and Maintenance costs pursuant to CVPIA Section 3406(b)(23) should have been included in the Proposed Action.

¹ We incorporate by reference: Comments of the Bay Institute and NRDC on Draft EA and Draft FONSI for the San Luis Unit interim renewal contracts (Central Valley Project, California); Sierra Club California, Friends of the River and the Planning and Conservation League January 29,2010; and California Water Impact Network and California Sportfishing Protection Alliance January 29,2010.

² Oppenheimer and Groeber 2004 noted, *The Grassland Subarea contains some of most salt-affected lands in the LSJR watershed. This subarea is also the largest contributor of salt to the LSJR (approximately 37% of the LSJR's mean annual salt load). Previous studies indicate that shallow groundwater in the LSJR watershed is of the poorest quality (highest salinity) in the Grassland Subarea (SJVDP, 1990).* The authors further found that, *The Grassland Subarea contributes approximately 400 thousand tons of salt and 490 tons of boron per year to the LSJR, which accounts for approximately 36 percent of the rivers total salt load and 50% of the rivers total boron load at Vernalis... Subsurface agricultural drainage from the DPA in the Grassland Subarea represents the most concentrated source of salt and boron in the LSJR Watershed.*"

References: **Oppenheimer, E.I. and L.F. Groeber. 2004a. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Salt and Boron Discharges into the Lower San Joaquin River. Draft Final Staff Report of the Central Valley Regional Water Quality Control Board, San Joaquin River TMDL Unit, Sacramento, CA, 121 pp.**
Available at:

http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/vernal盐_boro

[n/index.shtml](#)

and

Oppenheimer, E.I. and L.F. Groeber. 2004b. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Salt and Boron Discharges into the the impacts associated with this drainage discharge allowance for the GBP go beyond selenium Lower San Joaquin River. Draft Final Staff Report Appendix 1: Technical TMDL Report. Central Valley Regional Water Quality Control Board, San Joaquin River TMDL Unit, Sacramento, CA, 109 pp. Available at:

http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/vernalissaltboron/index.shtml

Also see: G Fred Lee at the Bay Delta Science Conference in September 2010 suggested that discharges from the Grasslands Bypass Project to Mud and Salt slough were a significant source of nutrients contributing to the low dissolved oxygen (DO) and fish die-offs at the Stockton deepwater ship channel.

He stated that high phosphorus and algal "seeding" from the drainage resulted in algal blooms further downstream that strips the San Joaquin River of DO in Stockton. He also noted that the low DO at Stockton could impair fall run salmon migration. A copy of Dr. Lee's presentation is available at:

<http://www.gfredlee.com/psjriv2.htm>

With respect to mercury pollution of the San Joaquin River and Delta from Westside irrigation practices see **Reference: Wood, M.L., C. Foe, and J. Cooke. 2006. Sacramento – San Joaquin Delta Estuary TMDL for Methylmercury. Draft Staff Report for Scientific Peer Review. Central Valley Regional Water Quality Control Board, Rancho Cordova, CA, 177 pp.** Available at:

http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/delta_hg/scientific_peer_review/delta_hg_rpt.pdf

³ "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.]

⁴ EPA Detailed comments for the DEIS and Supplemental Information for Renewal of Long-Term Contracts for San Luis Unit Contractors, CA, April 17, 2006.

⁵ Ibid.

⁶ 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.

⁷ See Public Hearing 1998 Bay-Delta Water Rights Hearing, Wednesday, April 7, 1999 pp 13231-32
"Mr. Sagouspe [President of San Luis Water District]: ..Or another alternative was to transfer water from other districts or purchase other supplies that landowners individually could do or the district could do....A lot of farmers in all the west side districts farm in more than one district. So, they will transfer water between districts...There has been water available on certain occasions from some of the state contracting districts. There has been various means of and ways to get certain amounts of water..."

⁸ 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."

⁹ See Public Hearing 1998 Bay-Delta Water Rights Hearing, Wednesday, April 7, 1999 pp 13208-09

“Mr. Sagouspe [President of San Luis Water District]: In the years since 1977, the district has borrowed money a number of times. In each case, but one, the bonds were certificates of participation, were sold to the public at large and the debts were secured by the district's ability to bill these lands for water deliveries into successive lands based on the value of irrigated farmland.”

¹⁰ 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.”

¹¹ 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)

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

**San Luis Water District and Panoche Water District's Water Service Interim Renewal Contracts 2011-2013
Document Comment Form**

Document: Draft EA and FONSI

Item	Document (e.g. main document, Appendix A)	Chapter/Section	Page #	Line Number(s)	Reviewer	Comment	
NMFS-1	1	Draft EA and FONSI	3.1.1.3	15	Table 3-1	Leslie Mirise	This table shows a decline in salt and selenium discharge, with marked decreases in 2008 and 2009. Those were dry years, and irrigation allocations may have been less than previous years. If this new action is to continue as "status quo" (i.e., similarly with previous years and incorporating the 2008 NMFS Biological Opinion on the previous Interim Renewal Contract), then is it expected that salt and selenium levels are to remain consistent with or less than the 2008-2009 values?
NMFS-2	2		3.1.2.1	17	3rd paragraph	Leslie Mirise	"Reclamation does not anticipate that the No Action Alternative would cause any changes from historical values..." Which historical values? A huge range is presented just in Table 3-1. If this new action could operate using any of those discharge levels, there could be impacts to listed species and/or their habitat. Those ranges must be analyzed.
NMFS-3	3		3.1.2.2	17	3rd paragraph in section	Leslie Mirise	"The Proposed Action would, in essence maintain the environmental status quo, i.e., the same amount of water would go to the same areas..." How much is "the same amount of water"? Does this guarantee that the quantity, use, volume of drainage, and drainage components will be identical with levels recorded in 2008-2009? The analysis presented in this section is insufficient to conclude that there are no adverse effects. Keep in mind that the ESA baseline is not identical to conditions present in 2008. For example, the San Joaquin River Restoration Program (SJRRP) is currently releasing interim flows and salmonids will be introduced into the San Joaquin River above the confluence of the Merced River no later than the end of 2012. In the 2008 ESA consultation, NMFS stated that Essential Fish Habitat (EFH) would be adversely affected by the previous IRC. This section does not provide reasoning why there is no adverse effect to EFH.
NMFS-4	4		3.1.2.3	18	2nd full paragraph	Leslie Mirise	"Because the renewals of interim renewal contracts maintain the status quo...they do not contribute to cumulative impacts in any demonstrable manner." This logic misses that there can be an additive temporal effect of the action. By incorporating previous documents, one cannot assume the same effects and/or the same consultation outcome. Previous effects analyses only considered the previously specified timelines of the proposed action. There are uncertainties as to the volume and contents of agricultural runoff contributed by this proposed action. Also, there have been changes in the environmental baseline since 2008.

Item	Document (e.g. main document, Appendix A)	Chapter/Section	Page #	Line Number(s)	Reviewer	Comment
NMFS-5		3.3	21	Last paragraph	Leslie Mirise	NMFS stated that the previous ICR (2008) would have adverse effects to EFH AND could potentially have adverse effects on listed species. Terms and conditions were provided in the 2008 BO for those potential impacts to listed species; however, this paragraph does not indicate Reclamation's implementation of those terms and conditions (i.e., water quality monitoring plan and reporting, new water quality stations, etc.). Because terms and conditions were written by NMFS in a previous consultation does not mean that there are no effects as a result of this new action. There must be a new analysis, determination, etc., for this new action.
NMFS-6		3.3	22	Table 3-3	Leslie Mirise	For salmonids and green sturgeon, potential to occur column: Because the terms and conditions for the GBP will be implemented does not mean there are no adverse environmental effects for THIS action. Please reiterate the terms and conditions of the GBP and/or provide a clear inclusion of those actions in the Project Description/Proposed Action, as well as language that identifies that the operational delivery of the water is an action covered under the NMFS BiOp on long term operations (OCAP).
NMFS-7		3.3.1.1	23	1st paragraph in the section	Leslie Mirise	This section fails to mention the USFWS Operations BO (2008) and the NMFS Operations BO (2009), as the courts remanded the 2004 opinions on CVP/SWP operations.
NMFS-8		3.3.2.3	25	1st paragraph on the page	Leslie Mirise	"...Reclamation expects that drainage production within the study area during the interim period would continue to be reduced, and discharges to the San Joaquin River would decrease." Where is the foundation for this statement? Quantities? Modeling?
NMFS-9		3.3.2.3	25	last paragraph of the section	Leslie Mirise	"Finally, as explained above, interim renewal contracts would be subject to regulatory constraints imposed pursuant to Section 7 of the ESA, regardless of whether those constraints exist today. Consequently, there would be no cumulative adverse impacts as a result of the Proposed Action." Please explain what the first sentence means. How does that first sentence lead to no cumulative adverse impact?
NMFS-10		4.2	35	3rd paragraph of the section	Leslie Mirise	Should this section also mention the Grasslands Bypass Project consultation? It was previously referenced in Table 3-3.

SAN LUIS WATER DISTRICT AND PANOCHE WATER DISTRICT

FINAL ENVIRONMENTAL ASSESSMENT

INTERIM CONTRACT RENEWAL

Appendix H
Response to Comments

February 2011

Response to Coalition Comment Letter, December 13, 2010

Coalition-1 Environmental Assessment (EA)-10-070 *San Luis Water District's and Panoche Water District's Water Service Interim Renewal Contracts 2011-2013* and its scope of analysis were developed consistent with National Environmental Policy Act (NEPA) regulations, guidance from the Council on Environmental Quality (CEQ). The analysis in EA-10-070 finds in large part that the renewal of the interim contracts is in essence a continuation of the “status quo”, and that although there are financial and administrative changes to the contracts, the contracts perpetuate the existing use and allocation of resources (i.e., the same amount of water is being provided to the same lands for existing/ongoing purposes).

The EA therefore focused on the potential environmental effects resulting to proposed changes to the contract as compared to the No Action Alternative. Using the No Action Alternative as a baseline for comparison is supported by CEQ's opinion concerning renewal of some Friant contracts that appeared in the Federal Register on July 6, 1989, and their guidance document addressing the 'NEPA's Forty Most Asked Questions' (Question 3).

Previous comments received by Reclamation for the two-year renewal of interim water service contracts for 11 San Luis Unit Contractors not including SLWD and PWD were addressed in Final EA-09-101 *San Luis Unit Water Service Interim Renewal Contracts 2010-2013*. Comment letters were included in the Final as Appendix G, changes to the Draft EA were made as needed, and responses to comments were included under Section 5 of the Final EA.

Coalition-2 In accordance with NEPA an EA is initially prepared to determine if there are significant impacts from carrying out the Proposed Action. Reclamation has followed applicable procedures in the preparation of EA-10-070 *San Luis Water District's and Panoche Water District's Water Service Interim Renewal Contracts 2011-2013*. The EA includes the required components of an EA as described in the CEQ's NEPA regulations: discussion of the need, alternatives as required, Environmental Impacts, and Listing of Agencies Consulted.

EA-10-070 analyzed the contract-specific impacts of short-term interim renewal contracts for San Luis Water District (SLWD) and Panoche Water District (PWD) all of which are related to the delivery of Central Valley Project (CVP) water within the service area boundaries of the contracts. The service area boundaries for SLWD and PWD are contained within portions of Fresno and Merced Counties as stated in EA-10-070. The EA does not analyze the operational aspects or impacts of other CVP actions. This EA tiers off the Programmatic Environmental Impact Statement (PEIS) to evaluate potential site-specific environmental impacts of renewing the interim water service contracts for SLWD and PWD. The project alternatives include the terms and conditions of the contracts and tiered water pricing. Operational protocols of other related Central

Valley Project Improvement Act (CVPIA) activities and the overall implications of these are discussed in the Biological Opinions for Coordinated Operations of the CVP and State Water Project (SWP).

The CVPIA PEIS provided a programmatic evaluation of the impacts of implementing the CVPIA. Four alternatives, 17 supplemental analyses, the Preferred Alternative, and a No Action Alternative were evaluated in the PEIS. In addition, the PEIS analyzed the region-wide and cumulative impacts of the CVPIA including the renewal of CVP water service contracts. The diversion of water is an on-going action and the current conditions of that diversion are discussed in the PEIS. The impacts of continuing the diversions through the implementation of CVPIA have been discussed in the CVPIA PEIS. Under the action of interim contract renewal, the Proposed Action is to continue delivering the water under contracts as described in the PEIS and Record of Decision (ROD) with the exception of tiered pricing.

The interim renewal contracts do not contain any requirements that dictate operational actions. CVP water operations are governed by a complex set of requirements including state and federal laws, regulatory requirements, and agreements. Operational decisions are made based on these requirements not on contract quantities. The existing Biological Opinions for the Coordinated Operations of the CVP and SWP analyzed the impacts to listed species from the continued operations of the CVP. The interim renewal contracts contain provisions that provide for delivery adjustments related to CVP operations resulting from new laws, regulatory requirements or any successor or future requirements therefore any required changes to CVP operations would be implemented as required in the administration of these interim renewal contracts. Reclamation acknowledges that litigation is currently ongoing, in relation to the application of NEPA to operations in the Delta. Reclamation will not predict the outcome of that litigation, but will comply with any appropriate court opinions or orders to the extent of our authority.

It is the ongoing litigation that requires Reclamation to enter into interim renewal contracts since long-term contracts and associated measures to minimize and/or mitigate environmental impacts cannot be processed until settlement of that litigation.

Site-specific environmental issues are being addressed through separate programs such as the Bay-Delta Conservation Plan, Trinity River Restoration Program, CVP Conservation Program, the Habitat Restoration Program, the Grasslands Bypass Project, San Joaquin Valley Drainage Program, and the San Luis Drainage Feature Reevaluation. CVPIA required CVP to institute environmental management as part of the CVP operations, such as allocation of 800,000 acre-feet, refuge water supply, and acquisition of water from willing sellers. These requirements in addition to existing Federal and State for CVP operations (including the CVPIA, SWRCB Order 95-06, and compliance with Biological

Opinions on CVP operations) constrain the actual delivery amounts. These existing legal constraints provide for environmental use of CVP water.

Coalition-3 The comment on selenium and other pollutant discharges to the San Joaquin River does not take into account the success of actions taken to reduce these discharges. In March 1996, the Grassland Area Farmers formed a regional drainage entity under the umbrella of the San Luis and Delta-Mendota Water Authority (Authority) to implement the Grassland Bypass Project (GBP) and manage subsurface drainage within the Grassland Drainage Area (GDA). Participants included the Broadview Water District, Charleston Drainage District, Firebaugh Canal Water District, Pacheco Water District, Panoche Drainage District, Widren Water District, and the Camp 13 Drainers (an association of landowners located in the Central California Irrigation District). The Grassland Area Farmers' drainage area consists of approximately 97,400 gross acres of irrigated farmland on the west side of San Joaquin Valley and is known as the GDA. The soils in the GDA are fertile and productive, but the area is underlain by a clay layer, which creates a perched water table when irrigation water percolates downward. To keep the lands productive, GDA farmers manage the perched water table using a system of subsurface drains that carry irrigation drainage waters to a network of open ditches and channels, which assimilate surface runoff flows and ultimately discharge into the San Joaquin River. Discharges of subsurface drainage from this area contain salt, selenium, and boron.

The GBP consolidates regional subsurface drainage flows and utilizes a portion of the federal San Luis Drain (Drain) to convey those flows around wildlife habitat areas to Mud Slough and ultimately the San Joaquin River (see Figure 1). The GBP is a unique example of agricultural interests working with state and Federal agencies to address an environmental problem, and has successfully achieved compliance with discharge standards established by regulatory agencies.

Lengthy negotiations between Reclamation, the Authority, and the stakeholders resulted in the execution of the first Agreement to Use the San Luis Drain in 1995. Discharge from the GDA into the Drain began in late September 1996. Upon initiation of the first Use Agreement, agricultural drainage water was removed from more than 93 miles of wetlands water supply channels. The second Use Agreement was executed in 2001 that allowed the GBP to continue through December 2009. The third Use Agreement, extending the GBP through 2019, was executed on December 18, 2009. All three agreements were subject to NEPA/California Environmental Quality Act review, and resulted in the issuance of Biological Opinions under the Endangered Species Act (ESA). The Use Agreements described the interagency oversight committees that monitor and enforce penalties to ensure the success of the GBP.

The GBP is extensively monitored to assess changes in water quality, sediment, fish, invertebrates, and plants. Monitoring reports published by the San Francisco Estuary Institute, an independent data management agency, confirm that the GBP

has consistently achieved its goals to reduce selenium levels in the San Joaquin River and adjacent wetlands (see Figure 1 for monitoring locations).

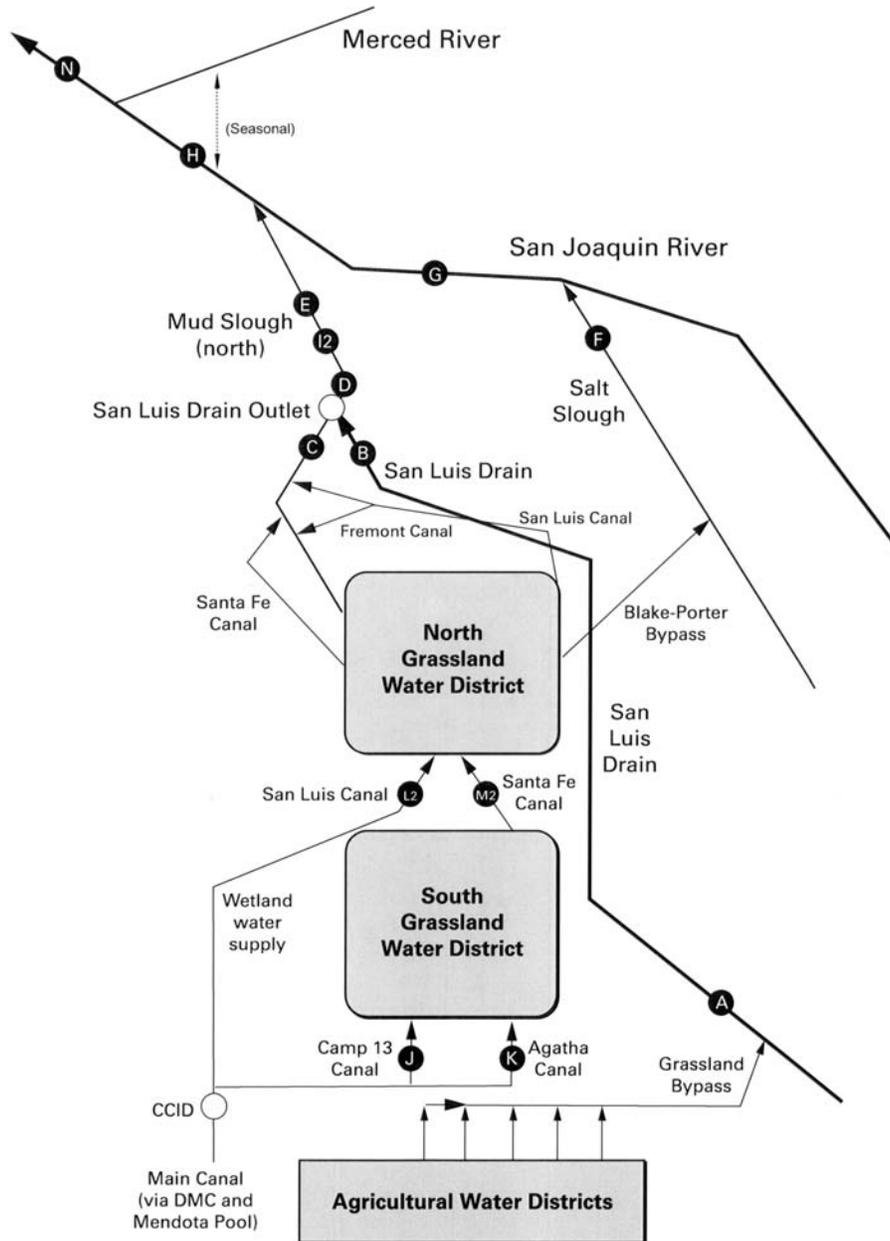


Figure 1. GBP Monitoring Locations

Farmers in the GDA have significantly reduced the volume of agricultural drainage that reaches Mud Slough and ultimately the San Joaquin River through on-farm water conservation, more efficient irrigation practices, and recycling drainage waters to irrigate a variety of salt tolerant grasses and crops like pistachios and asparagus. The recycling of drainage waters occurs within a 6,000-acre portion of the GDA, which was developed with Federal grants as part of the San Joaquin River Water Quality Improvement Project (SJRIP). The SJRIP has been a crucial tool for the GDA farmers to reduce the discharge of drainage (including selenium, boron, and salts) as specified in the Use Agreements and WDR. Table 1 lists the volume of drain water that has been displaced through the SJRIP – i.e., used to irrigate salt tolerant plants rather than be discharged to the San Joaquin River or surrounding wetlands water supply channels.

Table 1 San Joaquin River Improvement Project Displaced Drain water

Water Year	Reused Drain Water (acre-feet)	Displaced Selenium (pounds)	Displaced Boron (pounds)	Displaced Salt (tons)
1998*	1,211	329	Not available	4,608
1999*	2,612	321	Not available	10,230
2000*	2,020	423	Not available	7,699
2001	2,850	1,025	61,847	14,491
2002	3,711	1,119	77,134	17,715
2003	5,376	1,626	141,299	27,728
2004	7,890	2,417	193,956	41,444
2005	8,143	2,150	210,627	40,492
2006	9,139	2,825	184,289	51,882
2007	11,233	3,441	210,582	61,412
2008	14,955	3,844	238,435	80,900
2009	11,595	2,807	198,362	60,502
Total	80,735	22,327	1,516,531	419,103

*Panoche Drainage District drainage reuse project prior to SJRIP

Table 1 also lists the loads of selenium, salts, and boron that have been removed from the river and wetlands. Selenium is a naturally occurring metal that is highly toxic to wildlife. The SJRIP has removed over 22,300 pounds of the element that would otherwise have been discharged from the Drain to Mud Slough and the San Joaquin River.

The current GBP Use Agreement included fee incentives to remove all discharges from the GDA by 2015 and was subject to an Environmental Impact Statement/ Environmental Impact Report. The U.S. Fish and Wildlife Service issued a non-jeopardy Biological Opinion for the continuation of the GBP and execution of the third Use Agreement (File No. 2009- F-1036). The National Marine Fisheries Service issued a Not Likely to Adversely Affect memo for continuation of the GBP and execution of the third Use Agreement (File No. 2009/04097) based on Reclamation’s compliance to terms and conditions in Biological Opinion for the first PWD and SLWD Interim Renewal Contracts (File no. 2008/04445), which have been met by Reclamation.

The ultimate goal of the GBP is to eliminate agricultural drainage discharge from the GDA using various water treatment technologies. As part of Reclamation’s

commitment to the Court to implement drainage service, Reclamation intends to construct and operate a demonstration treatment plant at the SJRIP site to finalize designs for a reverse osmosis and bio-treatment plant to separate salts and selenium from agricultural drainage water. The demonstration plant will also have the capability to test other treatment technologies of interest to the GDA districts in order to meet the goal of eliminating all agricultural discharges. The demonstration treatment plant will provide valuable cost and performance data and will facilitate the design and implementation of full scale drainage treatment facilities.

The discharge into Mud Slough from the Drain for the GBP is subject to Waste Discharge Requirements (WDR) issued by the Central Valley Regional Water Quality Control Board (Regional Board). The WDR specifies monthly and annual loads of selenium that may be discharged, based on selenium Total Maximum Monthly Loads listed in the Basin Plan for the Sacramento and San Joaquin Rivers (Basin Plan). The WDR also requires a monitoring program and emergency plan for storm induced flooding.

The Regional Board voted unanimously to amend the Basin Plan to delay the date of compliance with selenium standards in Mud Slough (north) and the San Joaquin River between Mud Slough and the Merced River. This decision was based on the progress by the Grassland Area Farmers to meet monthly and annual limits, and on the terms of the third Use Agreement that set a new compliance schedule on the loads of salts and selenium that could be discharged into Mud Slough from the Drain.

To date, the GBP has reduced the annual load of selenium discharged from the GDA by 86 percent (from 8,800 lbs to 1,240 lbs) as illustrated in Figure 2. Since October 2005, selenium concentration has been below the 5 parts per billion 4 day average water quality objective for the San Joaquin River below Merced at Crows Landing (see Figure 3). The annual salt load has been reduced by 75 percent (from 190,500 tons to 48,001 tons) as illustrated in Figure 4.

The proposed action addressed in EA-10-070 is renewal of interim water service contracts, not operational aspects of water conveyance. Operations of the CVP including the Trinity River Restoration Program were assessed in depth in the CVPIA PEIS and the Biological Assessment and Opinions of the Coordinated Operations of the CVP and SWP. Therefore, this comment is outside the scope of this document.

Figure 2. Comparison of Annual Loads of Selenium

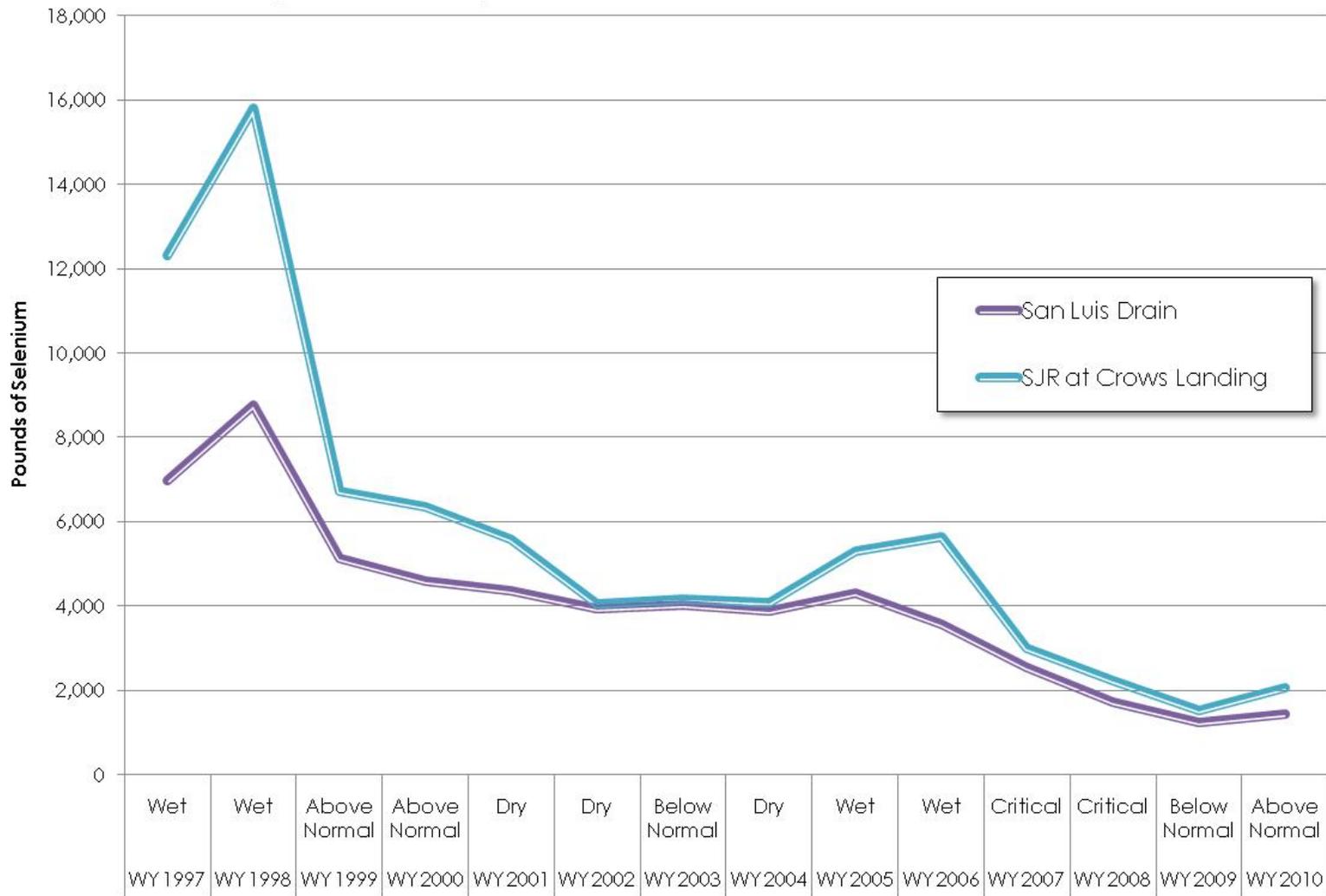


Figure 3. 4-Day Average Concentration of Selenium

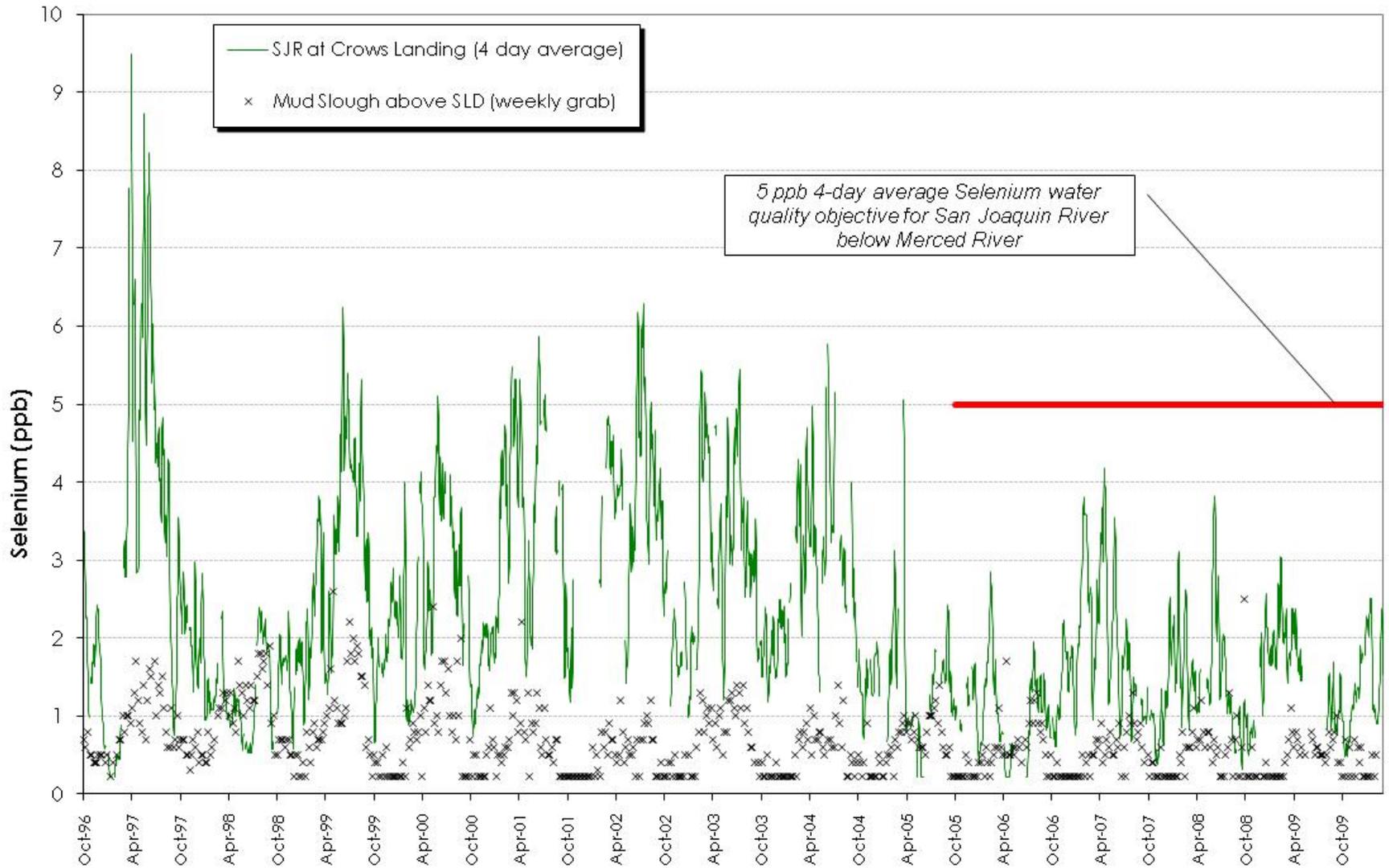
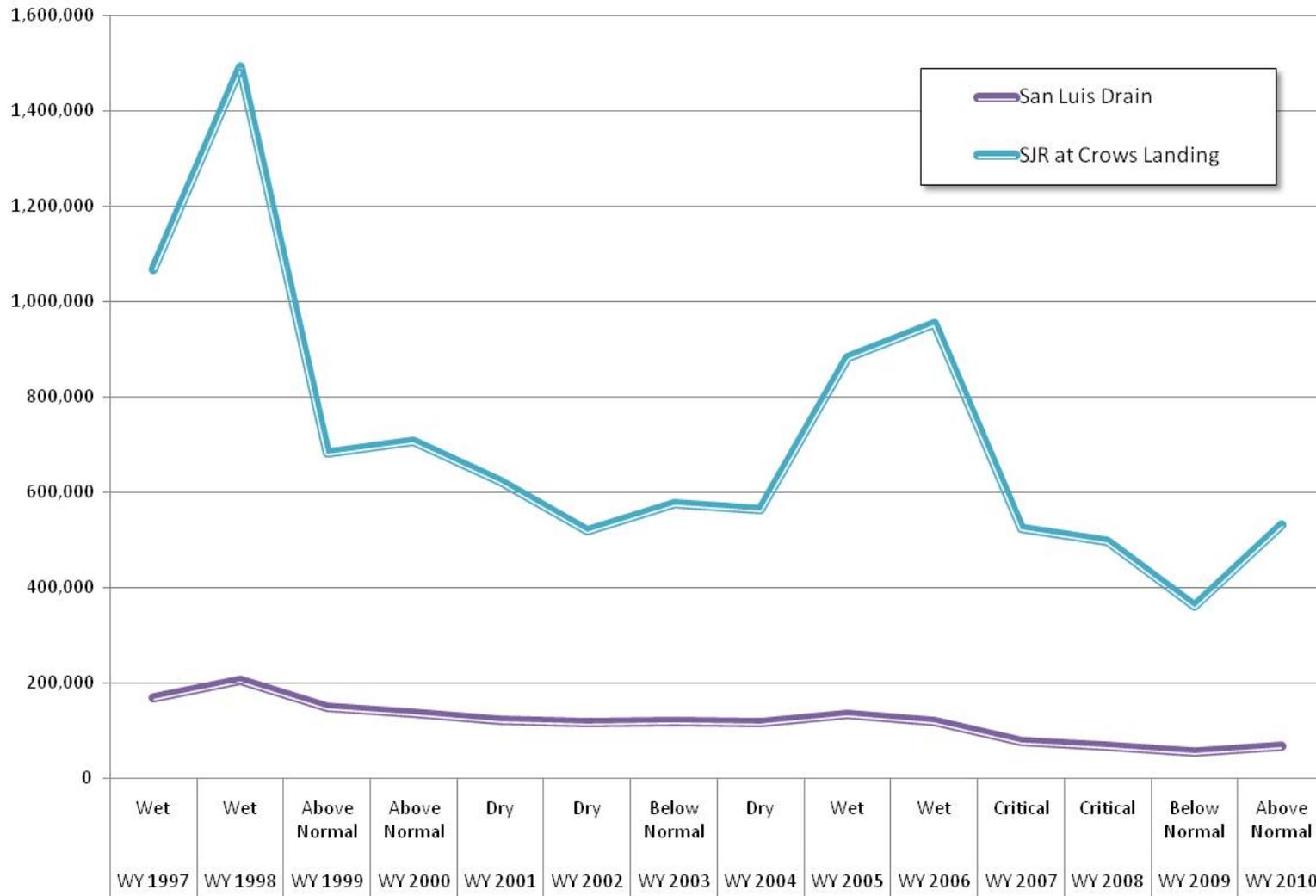


Figure 4. Comparison of Annual Salt Loads



Coalition-4 The Reclamation Project Acts of 1956 and 1963 provide for the renewal of existing contracts upon request under terms and conditions mutually agreed upon. Such terms and conditions provide for increases or decreases in rates or charges and, subject to fulfillment of all obligations, provide for a first right to a stated share or quantity of the project's available water supply for beneficial use on the irrigable lands within the boundaries. Additionally, Section 3404(c) of the CVPIA states that the "...Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each." The purpose of this EA was to evaluate the renewal of interim contracts. Given legal and regulatory constraints, the two action alternatives in the EA provide a reasonable range of alternatives for this action. The interim renewal of the San Luis Unit contracts discussed in this EA represents a portion of the continuing operations of the CVP and as noted, was an action considered in the PEIS. The environmental impacts of diversions for deliveries to the San Luis Unit contractors under the ESA are considered in the Biological Assessment and Opinions of the Coordinated Operations of the CVP and SWP. The No Action Alternative of this EA describes the effects of continuing deliveries in quantities not exceeding the quantities historically delivered under existing long-term contracts. The primary differences in the alternatives relate to the contract term, water rates and water charges, including tiered pricing, rather than to water deliveries and as such the Proposed Action will not cause impacts to water quality, aquatic resources or downstream uses, as compared to the No Action conditions. Under each alternative, annual water supplies vary based upon contract Articles 3, 11, and 12, primarily as the result of either hydrological conditions or regulatory constraints that exist to protect water quality, aquatic resources, and downstream uses.

Reclamation is unaware of any provision within the CVPIA that modified pre-existing law concerning the rights of contractors to a stated quantity of the project yield for the duration of their contracts and any renewals thereof provided they complied with the terms and conditions of those contracts and Reclamation law. Section 1(4) of the "Administration of Contracts under Section 9 of the Reclamation Project Act of 1939" dated July 2, 1956 provided this for irrigation contractors and Section 2 of the "Renewal of Water Supply Contracts Act of June 21, 1963" provided this for M&I contractors. The CVPIA only altered the 1956 Act with respect to the automatic right of renewal for irrigation contracts, not the provision related to contract quantity. The Water Needs Assessment demonstrates a need for water beyond the contract amounts, even with full allocation. Reclamation therefore believes the agency is legally constrained to not consider such an alternative when a water needs analysis has demonstrated a need for such water for beneficial use, another requirement of Reclamation law. Reclamation therefore does not believe the contract quantities to be unrealistic from the demand side. The contract has provided ample notice to contractors that Interior will operate the CVP for all Project purposes and will not be biased going forward in its role working to address the future water needs of California.

Coalition-5 Both the GBP and the SJRIP operate under discharge permits from the Regional Board (see Coalition-3).

Reclamation has analyzed the Proposed Action in accordance with NEPA. An EA tiered to the PEIS is the appropriate level of documentation. Because the Proposed Action will, in essence maintain the environmental status quo, i.e., the same amount of water will go to the same areas for the same uses (albeit under a different legal arrangement), Reclamation has found that there are no significant environmental impacts associated with the Proposed Action.

Coalition-6 Changes to a contractors' service area, transfers, exchanges, assignments, and Warren Act contracts are approved individually as separate actions. The contracts do not cover these specific actions; they merely provide for these actions under applicable law. A history of these short-term actions does not guarantee future actions. Specific changes, transfers, exchanges, assignments and Warren Act contracts are not addressed in this EA. Such actions would require separate analysis before Reclamation could approve them.

Coalition-7 As described previously, EA-10-070 analyzed the contract-specific impacts of changes associated with short-term interim renewal contracts for SLWD and PWD all of which are related to the delivery of CVP water within the service area boundaries of the contracts which is in essence a continuation of the "status quo". Reclamation is undergoing site specific ESA consultation for renewal of these interim contracts with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Coalition-8 See Coalition-2, Coalition-4, Coalition-6, and Coalition-7

Coalition-9 See Coalition-3

Coalition-10 Potential environmental effects to birds protected by the Migratory Bird Treaty Act were analyzed under the GBP.

Coalition-11 See Responses Coalition-1, Coalition-2, and Coalition-4

Coalition-12 EA-10-070 included information regarding delivery of water to SLWD and PWD as members of the San Luis Unit as well as use of the GBP for removal of drain water from district lands contaminated with selenium (see Section 3.1 and 3.3 in EA-10-070). See also Response Coalition-3.

The ROD for the current GBP Use Agreement included mitigation measures as well as reasonable and prudent measures and terms and conditions of the Biological Opinion issued by the U.S. Fish and Wildlife Service for the GBP Use Agreement.

Coalition-13 See Responses Coalition-1, Coalition-2, and Coalition-6

Coalition-14 See Response Coalition-3

Coalition-15 See Responses Coalition-1 and Coalition-4

Coalition-16 Site-specific environmental issues are being addressed through separate programs such as the Bay-Delta Conservation Plan, CVP Conservation Program, the Habitat Restoration Program, the GBP, San Joaquin Valley Drainage Program, and the San Luis Drainage Feature Reevaluation. CVPIA required CVP to institute environmental management as part of the CVP operations, such as allocation of 800,000 acre-feet, refuge water supply, and acquisition of water from willing sellers. These requirements in addition to existing Federal and State for CVP operations (including the CVPIA, SWRCB Order 95-06, and compliance with Biological Opinions on CVP operations) constrain the actual delivery amounts. These existing legal constraints provide for environmental use of CVP water.

Interim Renewal Contracts are temporary by design and do not provide the opportunity “to fill gaps” in a document that is designed to address long-term programmatic requirements.

Coalition-17 See Responses Coalition-1, Coalition-4, and Coalition-7

Coalition-18 Additions to contract terms and conditions would be approved individually as separate actions. These contracts do not cover these specific actions; they merely provide for these actions under applicable Reclamation law.

National Marine Fisheries Service Comment Letter, December 13, 2010

NMFS-1 As described in Section 3.3 of Environmental Assessment (EA)-10-070, Panoche Water District (PWD) and a portion of San Luis Water District (SLWD) are located within the Grassland Drainage Area (GDA) and participate in the Grassland Bypass Project (GBP) for management of subsurface drainage. The GBP has been in operation since October 1996, and has reduced the volume of agricultural drainage water discharged, resulting in significant reductions in selenium and salt contamination in local wetland water supply channels and the San Joaquin River (Figures 1). A third Use Agreement, extending the GBP through 2019, was executed on December 18, 2009. The new Use Agreement includes economic incentives to end selenium discharges by 2015. Both PWD (through Panoche Drainage District) and the portion of SLWD within the GDA (through Charleston Drainage District) will continue to participate in the GBP regardless of the Proposed Action.

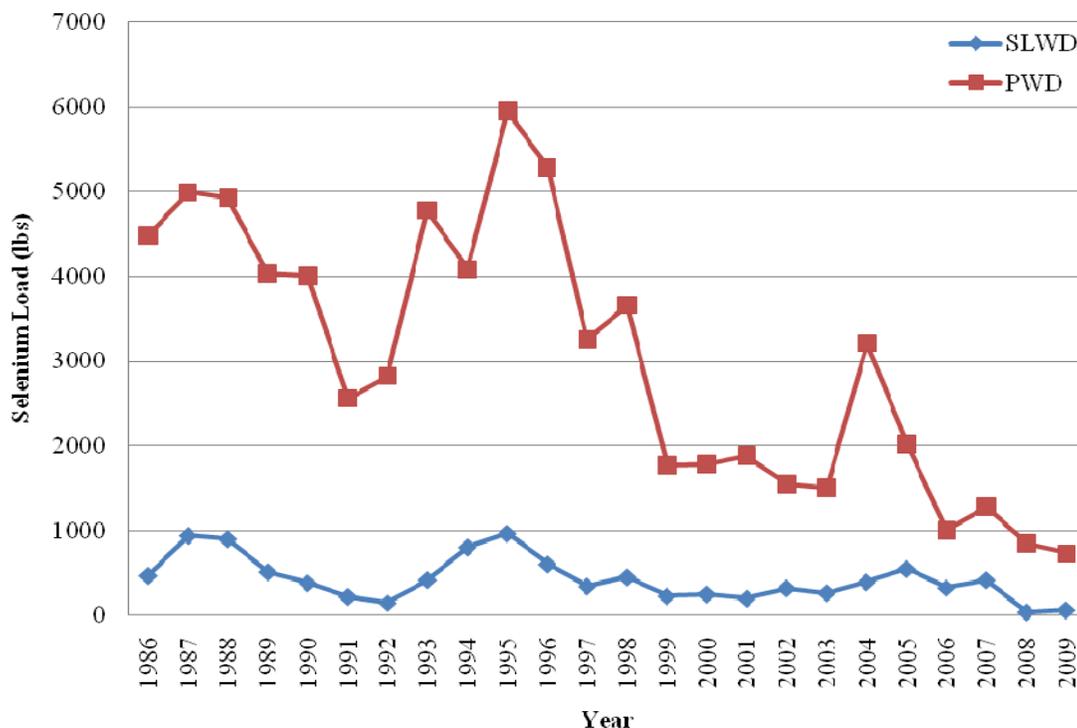


Figure 1. Selenium Discharged from Panoche and San Luis Water Districts

In addition, pursuant to its commitment to the Court regarding drainage litigation, Reclamation is planning and designing a selenium biotreatment pilot project to be located at the San Joaquin River Water Quality Improvement Project (SJRIP) within Panoche Drainage District. The SJRIP is a drainage management and reuse project which serves the land in PWD and SLWD lands within Charleston Drainage District prior to drainage discharge to the GBP.

Reclamation anticipates that salt and selenium levels discharged from PWD and SLWD would continue to decrease with the continued participation in the GBP and associated programs.

NMFS-2 See NMFS-1

NMFS-3 Reclamation recognizes that the capacity to deliver CVP water has been constrained in recent years because of several hydrologic, regulatory, and operational uncertainties, and that these uncertainties may exist or become more constraining in the future as competing demands for water resources intensify. Therefore, the likelihood of contractors receiving the amount of water set out in the draft interim renewal contracts in any given year is uncertain, but likely similar to, or less than levels of historic deliveries.

PWD and SLWD participate in the GBP. The third Use Agreement for the GBP includes economic incentives for reducing selenium discharge to 0 by 2015.

Reclamation has made a no effect determination to Essential Fish Habitat (EFH) because the recommended Conservation Measures from the SLWD and PWD December 29, 2008 Biological Opinion [ARN#151422SWR2008SA00269] (File no. 2008/04445) have been incorporated into the project description for the Proposed Action.

NMFS' concern with insufficient information presented in EA-10-070 to support a "no adverse effects" to EFH, fails to take into account the success of actions taken by PWD's and SLWD's continued participation in the GBP. This program is not solely a conveyance system but a process to reduce drainage discharged into the San Joaquin River and other natural tributaries. The Proposed Action of executing Interim Renewal Contracts with PWD and SLWD is an administrative action, with itself no direct effect on listed species or designated critical habitats, including EFH because these features are absent for the action area.

Please see Reclamation's Response to Comments for Coalition-3 for a further discussion on the GBP.

NMFS-4 Please see Reclamation's Response to Comments for Coalition-3 for a discussion on the GBP which includes water quality, sediment, fish, invertebrates, and plant monitoring to detect potential bioaccumulation in the ecosystem. Current data published by the San Francisco Estuary Institute supports there are no cumulative impacts.

NMFS-5 A memo was sent to Leslie Mirise of the National Marine Fisheries Service on December 20, 2010 detailing Reclamation's compliance with the Terms and Conditions of the Biological Opinion [ARN#151422SWR2008SA00269] (File no.

2008/04445). Reclamation will continue to comply with these Terms and Conditions and the GBP third Use Agreement.

- NMFS-6 EA-10-070 has been updated to include specific reference to continued compliance with the Terms and Conditions of the GBP. EA-10-070 already explicitly states that the operation of the CVP is not part of the Proposed Action. Impacts relating to operation of the CVP are covered under the CVP/State Water Project Coordinated Operations Criteria Plan consultations as described in Section 4.3 of EA-10-070.
- NMFS-7 Section 3.3 has been updated to include this information.
- NMFS-8 See NMFS-1.
- NMFS-9 See NMFS-4
- NMFS-10 Section 4.2 has been updated to include this information.