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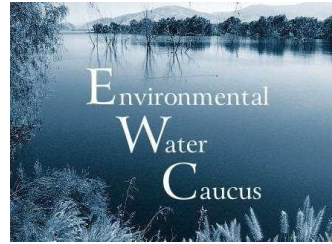
**FINAL ENVIRONMENTAL ASSESSMENT (13-023)**

*CENTRAL VALLEY PROJECT INTERIM RENEWAL CONTRACTS FOR WESTLANDS  
WATER DISTRICT, SANTA CLARA VALLEY WATER DISTRICT, AND PAJARO  
VALLEY WATER MANAGEMENT AGENCY 2014-2016*

**Appendix E**  
**Comment Letter and Reclamation's Response to Comments**

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February 2014



NORTH  
COAST  
RIVERS  
ALLIANCE



*South Delta Water Agency*

*CA Save Our Streams Council*



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2907 Jones Street  
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January 14, 2014

Rain Emerson  
Bureau of Reclamation  
1243 N Street  
Fresno, CA 93721

Subject: The Environmental Assessment [EA] for Westlands Water District et. al. Central Valley Project Interim 6 Contract Renewals for Approximately 1.2 MAF of water.<sup>1</sup>

Dear Ms. Emerson:



Coalition-1 On behalf of the undersigned groups and the hundreds of thousands of members they represent we respectfully request these comments be included in the record regarding the Reclamation's six interim contract renewals for delivery of water of 1,192,948 million acre feet from the Central Valley Project referenced above. The EA is inadequate and a full Environmental Impact Statement is required by law.

Coalition-2 As explained below and as reflected in the attached materials, the proposed interim renewal contracts are a threat to California's environment and constitute misguided federal policy. Furthermore, the contracts and their supporting environmental documents have numerous legal deficiencies. Specifically, the proposed interim contracts and their supporting Environmental Assessments and other environmental documents violate the Administrative Procedure Act (APA), the Central Valley Project Improvement Act (CVPIA), the Reclamation Reform Act (RRA), the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the Coordinated Operations Act of 1986, the California Environmental Quality Act (CEQA), and the California Endangered Species Act. Accordingly, we urge the Bureau to withdraw the proposed renewal contract and reinitiate negotiations after adequate environmental review and consultation have been completed.

Below, we have summarized our primary concerns with the Environmental Assessment, Finding of No Significant Impact [FONSI], and the related contract renewals. These comments supplement our previous comments provided to the Bureau in 2010 and 2012, which we submit by reference. [See Exhibit A].

Coalition-3 **1. Violation of Federal Law: Reclamation's Claim that They Must Renew Interim Water Supply Contracts, and Thus Cannot Weigh Alternatives.**

Coalition-3 The most fundamental deficiency of the EA is the utter lack of alternatives considered, which once again, as it did in previous renewals, continues the failure to comply with NEPA. The EA contains only two alternatives, the Proposed Action and the No Action Alternative. The No Action Alternative, however, is the *same project* as the Proposed Action with only one small pricing difference.

Coalition-4 The interim contract renewals violate Reclamation's duties to comply with NEPA.<sup>2</sup> Reclamation's commitment to renew the contracts before environmental review takes place renders that review a meaningless charade. Pre-deciding an action precludes meaningful analysis and weighing of project alternatives. [EA@pg 6] Moreover, compliance with other environmental laws such as the ESA, CESA, CEQA, MBTA and the Fish and Wildlife Coordination Act is likewise rendered meaningless because approval of the action is preordained. Some of the undersigned have already commented on the failure of the EA to sufficiently analyze the full range of alternatives. We reiterate those comments, which are attached, and incorporate them by reference. [See Exhibit A]

Coalition-5 In its responses to previous comments, the Bureau continues to ignore its duty to prepare an EIS for the present contract renewals. First, the Bureau attempts to argue that it has no discretion to modify or refuse entry into the interim contracts, citing the Reclamation Project Acts of 1956 and 1963. Nothing in these acts, however, addresses serial renewal of interim contracts or otherwise negates the CVPIA's explicit grant of discretion to the Bureau to reduce the contract amounts or refuse to enter into the contracts altogether, as discussed above. Indeed, the CVPIA, as the most recent and specific statutory directive, is given much more weight than the Reclamation Project Acts cited by the Bureau. *Simpson v. United States*, 435 U.S. 6, 15 (1978) (later statutes receive precedence over earlier statutes); *Busic v. United States*, 446 U.S. 398 (1980) (specific statutes receive precedence over general statutes); *Kidd v. United States Dept. of Interior*, 756 F.2d 1410 (9th Cir.1985) (same). The use of the term "may" in Section 3404(c) of the CVPIA demonstrates that Congress intended to make entry into interim contracts a completely discretionary action. The Bureau ignores this statutory language. Moreover, the Bureau's preparation of the EA in the first place is an admission of its discretion to modify or refuse to enter into the contracts – because NEPA only applies to discretionary acts.

Coalition-6 Reclamation also fails to address section 3404(c)(1) of the CVPIA, which provides that "interim renewal contracts *shall be modified to comply with existing law*, including provisions of this title." *Id.*, emphasis added. This provision directs the Bureau to determine the environmental protection required by all the existing laws that apply to these contracts and their impacts, including, *inter alia*, ESA, NEPA, CWA, and MBTA, and then to *modify* the contracts – including the quantities of water delivered thereunder -- to bring them into compliance with those laws. Thus, section 3404(c)(1) not only invests the Bureau with the very the discretion it claims it lacks, but also *requires* the Bureau to *exercise* that discretion to bring the contracts into compliance with existing laws.

Coalition-7 Further Reclamation has a duty to enforce and administer the provisions of the CVPIA. There is no discretion. And yet, Reclamation fails to address the requirements of 3403(c) (2) of the CVPIA, which provides "*The Secretary shall also **administer** all existing, new, and renewed contracts in conformance with the requirements and goals of this title.*" [Emphasis added] In accordance with the provisions of the CVPIA, the Interior Secretary has a mandate not only to make the contract amendments to conform to the CVPIA, but additionally to administer and enforce the provisions. Reclamation proposes to execute these six interim contracts for 1,192,948 acre feet, listing new provisions of the CVPIA without documentation as to how the execution and administration of these contract renewals will comply with and enforce the provisions of the CVPIA. [EA @ pg 2] It is a matter of simple arithmetic. As of November 2013, according to WWD [See Exhibit F] there are 568,003 acres of irrigated land. Clearly under the proposed contracts more than the allotted 2 acre feet per acre or in some cases 1.3 acre feet per acre provided are being applied. Impacts of this increased water application are not provided.

Coalition-8 Reclamation relies on the "short term nature" of these interim contracts. However, as discussed above, the auto-renewal clauses in the present contracts raise the specter of many more years of interim contract renewals with no further progress on completion of

↑ the Final EIS for the long-term, renewal contracts. The CVPIA did not contemplate 20-30 years of unstudied water diversions and use by the contractors, particularly in the context of the accelerating decline in the ecosystem health of the San Francisco Bay-Sacramento – San Joaquin Delta estuary and impending extinction of imperiled species including the Delta Smelt, Spring-run Chinook, and Winter-run Chinook. Thus, the Bureau cannot claim that the impacts of these contracts are *de minimis*, or otherwise inconsequential, because of the so-called short term nature of these contracts.

Coalition-8 cont.

Coalition-9

Finally, Reclamation invokes the concept of tiering and attempts to rely on the CVPIA Programmatic Environmental Impact Statement (“PEIS”), prepared over 13 years ago. However, many important changes to the CVP, its operations, and the affected environment have occurred since the preparation of the CVPIA PEIS. Further, “tiering does not eliminate the EIS requirement when a proposed project significantly affects the environment.” *Western Watersheds Project v. Bureau of Land Management*, 774 F.Supp.2d 1089, 1095 (D.Nev. 2011), *citing* 40 C.F.R. §§ 1502.20, 1508.28. Here, as discussed in previous comments, Reclamation’s entry into the interim contracts causes direct harm to endangered fish species and degrades the water quality in many water bodies throughout much of the state. Thus, Reclamation’s attempt to rely on tiering to obsolete and superseded documents is unavailing.

## **2. Violation of Federal Law: Failure to Adhere to Conservation Measures and Consult USFWS Regarding Endangered Species.**

Coalition-10

The EA fails to comply with the Endangered Species Act and fails to enforce existing conservation measures required under biological opinions. No Biological Assessment, or the required consultation, is provided in the EA. No evidence is contained in the EA to indicate that the mapping, monitoring and data gathering required by the USFWS has been accomplished. There is no evidence of compliance with reasonable and prudent management requirements. [See Exhibit E]

Coalition-11

In the 2012 water supply interim contract renewals, “the Biological Assessment [BA] made the determination that the proposed action will adversely affect all the federally-listed species considered in this BO.”<sup>3</sup> Now in 2014, the EA fails to provide needed analysis and evidence of compliance with reasonable and prudent measures, which in and of itself warrants a full environmental review rather than the continued piecemeal, segmented interim contract project renewals with various baselines for some twenty years. Without analysis or data, the FONSI and EA contend there are no significant impacts. This is an unsupportable conclusion.

Coalition-12

Furthermore, the EA contends incorrectly [EA@pg4] that renewal of these contracts is not a “major action” and that the execution of the contracts is “in essence a continuation of the “status quo.” And, it contends that there are merely “financial and administrative changes to the contracts” .....This EA, therefore, is focused on the .... “effects resulting to proposed changes to the contract as compared to the No Action alternative.” The undersigned and the USFWS do not agree that the proposed action does not need to be

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↑ evaluated in its entirety, nor that impacts are limited. In 2012, USFWS stated clearly that, despite USBR's current contentions to the contrary, the CVPIA BO is insufficient evaluation for the site specific impacts of interim contract renewals, *"Because the CVPIA BO is a programmatic document, subsequent site-specific evaluations are being prepared to analyze the effects of implementing specific actions of the CVPIA on listed species, and the Interim water service contract renewals are an action requiring site-specific evaluation."*<sup>4</sup>

In addition, the baseline in the various documents is different, which renders the analysis of impacts incomplete. Actions taken under this EA that are not consistent with the project description in the various ESA consultations could render the analysis of impacts on the survival and recovery of proposed and listed species invalid for the proposed action. For example, 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 no consultation has occurred for this action and no updated biological assessments have been completed, nor have existing Biological Opinions been enforced. Specific to this project, required mapping of habitat has not been done. Further any lands fallowed more than 3 years requires consultation before water is delivered and soil disturbance commences. There is no documentation or information provided to indicate compliance.

### **3. Violation of Federal Law: Impacts to Water Sources of the Water Supply Contracts, including impacts to Areas of Origin & Sacramento, American and Trinity Rivers, and Groundwater Pollution Are Ignored.**

#### **A. Impacts to Areas of Origin are Not Analyzed.**

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, impacts to the sources of water such as the Delta, the Sacramento, Trinity and American rivers, and Indian Water Rights. [See Exhibit A] These interim contracts perpetuate these impacts without sufficient analysis and mitigation of the impacts to the areas being dewatered—the American, Trinity, and Sacramento rivers, and the Delta. Under the latest EA, water transfers from other watersheds, third party impacts, and impacts within contracting districts are once again not analyzed along with the impacts of diversions from the San Joaquin River. Nor are the impacts assessed of transfers of CVP water outside of existing CVP service areas.<sup>5</sup> Limiting the study area and analysis to the lands receiving the water deliveries precludes meaningful analysis of the impacts to the watersheds where the water is being diverted and extracted. Reclamation's decision to enter into a contract to deliver water *by taking it from these watersheds and water sources* has significant impacts on fish and wildlife and third parties. These cumulative impacts will be compounded by this "forever renewing", "interim" contract for water diversion and delivery. Reclamation's deficient review and failure to disclose its "will renew" commitment to the public most impacted by the water diversions renders Reclamation's proposal to execute these flawed contracts to be illegal.

Coalition-15 The defects in the quantity terms of the interim contract renewals are part of a larger problem in that the contracts fail to make adequate provision for environmental protection and mitigation required to restore fish and wildlife impacted by these water diversions and extractions. The diversions and extractions have left source areas with lethal temperatures, poor water quality, and insufficient water to serve area of origin and public trust needs. This defect is compounded by the adoption of contract language that states the federal government “will” renew the contracts for these exaggerated quantities of water, which are simply not deliverable without devastating impacts. The interim contracts fail to ensure that existing standards under the ESA, CVPIA, Clean Water Act, and State water law will be met and implemented as part of these new contract commitments. Specifically the export contracts have not considered the potential impacts to the Delta, the San Joaquin River, Sacramento River, American River and Trinity River. *Reclamation’s failure to provide for adequate environmental protection in the contracts or even to adequately consider and evaluate the environmental impacts of the proposed contracts, means that Reclamation cannot legally execute the proposed contracts.*

Coalition-16 A mechanical rollover of all pre-existing and, in the case of Westlands Water District, ever expanding amounts does not meet the state and federal requirements of reasonable and beneficial use. The cursory “water needs” added to the final EA (without public review) suggests that the analysis is little more than a rubber stamp to justify a predetermined decision to commit the identical inflated quantity for virtually all these contracts indefinitely.

### **B. Irrigation of Toxic Soils and Resulting Pollution Impacts Are Ignored.**

Coalition-17 There is little or no information provided on the direct, indirect and cumulative impacts of the proposed actions, including subsurface drainage pollution and down-slope movement from the irrigation of upslope lands. Subsurface agricultural drainage can contain extremely elevated levels of selenium, salt, boron and other toxic constituents that can migrate and/or adversely affect surrounding domestic wells, downslope agricultural farmlands, and surface waters and associated wetlands receiving drainage inputs, ultimately including the San Joaquin River and Delta. [See Exhibits B-D] Selenium is a potent reproductive toxicant to vertebrate species and can readily bio-accumulate to toxic concentrations in the food chain. We are particularly concerned with adverse selenium impacts to salmonids. No monitoring data of existing evaporation ponds, the standing water in the San Luis Drainage Ditch, or of migrating polluted ground water is provided to support the FONSI and EA conclusions that the environment, fish, wildlife and water quality are not being harmed by the continued importation of water to irrigate these toxic soils—particularly in amounts that have in some cases more than doubled since the last interim contract renewals. While the EA contends, “*Under the No Action and Proposed Action alternatives, renewal of interim contracts obligate the delivery of the same contractual amount of water to the same lands without the need for additional facility modifications or construction. Thus, the renewal of interim contracts under either alternative, together with reasonably foreseeable future actions, would not incrementally contribute to any additional physical impacts to biological resources within the contractors’ service areas. The only impacts*

Coalition-17  
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↑ are those associated with the interrelated Delta pumping and routine O&M, and these actions have been previously addressed.” EA @ pg 33. This statement is not supported by facts and utterly fails to address the *increased application of water within Westlands Water District and impacts to down-slope areas*. Specifically, the amounts of water to irrigate permanent crops have doubled to support the shift from cotton crops to almonds.<sup>6</sup> This in turn causes further pollution impacts to down-slope farms and groundwater supplies.

### **C. Costs are Ignored of Irrigating Toxic Soils and Impacts to Down-slope Farmers, Groundwater and the San Joaquin River.**

“This EA acknowledges ongoing trends associated with the continued application of irrigation water and production of drainage related to that water. It does not analyze the effects of Reclamation’s providing agricultural drainage service to the San Luis Unit. The provision of drainage service is a separate federal action that has been considered in a separate environmental document, the *San Luis Drainage Feature Re-Evaluation Final Environmental Impact Statement* [SLDFR FEIS] (Reclamation2005h).” EA @ pg 8. The EA’s Reliance on a decade old analysis, where the biological opinion assumes no discharge of selenium and other contaminants from the project into the San Joaquin River, is insufficient especially given new delays and information.

On October 8, 2013 Westlands filed several court documents, including a “Notice of Motion and Motion for Order Temporarily Suspending Federal Defendants’ Drainage Activities within Westlands Water District” (Motion). Westlands’ Motion was granted to suspend Reclamation’s drainage activities within Westlands for six months. Westlands suggests that “Temporarily suspending drainage activities within Westlands would facilitate settlement negotiations between Federal Defendants and Westlands relating to the provision of drainage service within Westlands.” EA @pg 9

Coalition-18

The impacts of this suspension of drainage activities are potentially significant. As noted in the EA, in 2005, Reclamation Record of Decision (ROD) considered several different solutions. One solution, which could cost \$2.6 billion, called for retiring 140,894 salted up acres of Westlands acreage and another 14,467 acres in the federal water districts north of Westlands, an area known as the Grasslands. Economic losses of this proposal were estimated at \$10.2 million a year. A second option, bitterly opposed by Westlands, called for retiring all 253,894 selenium-tainted acres in Westlands and construction of drainage and treatment facilities for 66,533 acres of impaired land in the Grasslands area. [See Exhibits B-D] The economic gain would be \$3.6 million a year. Down-slope water districts and adjacent farmers have protested the unmanaged pollution caused by Westlands application of water to these toxic soils. Impacts to adjacent landowners from the buildup of toxic pollutants due to importing water, and now doubling the amounts applied to acreage within Westlands, has significant impacts that need to be evaluated. Recent 2013 proposed reductions in monitoring this toxic selenium pollution by Reclamation and Westside irrigators hides the impacts and pollution it does not mitigate the impacts.<sup>7</sup>



Water districts to the north have opposed the delays sought by Westlands and the move of drainage treatment farther away from the polluted groundwater that is contaminating their lands:

*"As Paul Minasian, attorney for the federal districts to the north of Westlands argued in his written opposition, the Bureau of Reclamation had committed to eliminating drainage discharges "to the San Joaquin River as soon as practicable" and switching the starting point for the drainage facilities' construction would further degrade his districts' farmlands and allow drainage degradation of the lower river to continue.*

*Minasian also argued that "[w]hether the lands within the northern subunit of Westlands are currently irrigated or were irrigated in the past and have been retired, the subsurface aquifers are saturated and poor quality water and pressure are moving down-slope in the shallow aquifers and contributing to the drainage loads in the San Joaquin River."*

*Minasian added "the Northerly area down-slope of portions of the northern subunit of Westlands receives this subsurface water from higher elevation lands within the northern subunit of Westlands. These combined drainage waters pass through the Grassland Bypass system into the San Joaquin River. Abandoning the drainage efforts in the northern subunit of Westlands will eviscerate the Bureau's stated goal to eliminate discharges to the San Joaquin River as soon as practicable."*

*Minasian pointed out the Bureau's regional director had stated "the principle reason we chose to initiate construction in the northern subunit of Westlands is because our existing feasibility design provides a fully-functional drainage system within the cost ceiling limitations, which enables us to proceed with the final design and construction with minor modifications to the existing feasibility design. However, the existing feasibility design for a fully functional drain system in another subunit of Westlands covers a much larger service area, includes significantly more facilities and exceeds the existing cost ceiling limitations."*<sup>8</sup>

#### **4. Renewal of Interim Contracts Fails to Address Inspector General's Report of Ballooning Costs to Taxpayers and Power Users from Westlands' Unpaid Bills, and the Predicted Failure to Comply with the Coordinated Operations Act of 1986.**

Merely brushing aside "financial" impacts of the interim contract renewals without evaluation raises serious questions as to the adequacy of the contracts and the substantial financial impacts to power contractors and taxpayers. As noted in March 2013 by the Department of Interior's Inspector General's report;

*"When actual water deliveries exceed projected deliveries, however, existing contract provisions stipulate that excess revenues collected by USBR must be refunded to the contractors. As a result, USBR has not demonstrated steady progress toward recovery of Federal investments in the CVP. With 18 years left to fulfill Congress' repayment*

mandate of 2030, USBR has an opportunity to address its current ratesetting policies that are dependent on annual water deliveries.....

*In addition, USBR compounds the uncertainty of the water rate-setting process by using more than one method to estimate the coming year's water deliveries....The differences in these estimates are significant. For example, in developing the 2012 rate for irrigation water delivered to the Westlands Water District via the San Luis Canal, USBR used estimated water deliveries of 594,233 acre-feet to calculate the O&M component and 776,389 acre-feet to calculate the capital repayment component. Had USBR used the 5-year average to calculate Westlands' capital component, that rate would have been \$7.44 per acre-foot higher (30 percent) than the rate actually charged, which was \$24.25....*

*According to USBR, this negotiated contract language was included in all of the long-term CVP renewal contracts that USBR executed in 2005, as well as interim contracts that were negotiated with Westlands Water District ..... USBR officials believe that, absent the contract language in Article 10, the CVP rate-setting methodology would be sufficient to recover CVP construction costs because overpayments in high water years would offset underpayments in low water years. These officials acknowledged that the refund language of Article 10 defeats the design of the CVP rate-setting methodology and adversely impacts repayment of CVP construction costs.”<sup>9</sup>*

These are not abstract impacts. The EA and interim contracts ignore compliance payment deadlines mandated by the Coordinated Operations Act of 1986. The IG, states clearly, “Current CVP water service contracts include a provision that prevents USBR from using excess annual revenues to repay the Federal investment.” The IG goes on to indicate that water and power rate surcharges would have significant impacts and “Allowing continued repayment uncertainty—or worse, missing the repayment deadline set by Congress—would mean that USBR has failed to effectively implement the Coordinated Operations Act of 1986 and fulfill its responsibility to obtain required, complete project repayment by 2030.” [IG 2013 @pg 9].

The financial implications stemming from the perpetual renewal of the interim renewal contracts is not addressed in the EA. These are significant and warrant a full analysis so decision makers can understand the impacts from repeating these financial mistakes will result in a failure to comply with federal laws.

Thus, as they are currently written, the contracts will perpetuate the large financial burden the Central Valley Project has placed on taxpayers, and make it virtually impossible for the approximately 350 Westlands' beneficiaries<sup>10</sup> of the project to repay the outstanding debt still owed the government before the 2030 deadline mandated by the Coordinated Operations Act of 1986.

Reclamation's decision to set water prices at the lowest possible level and to perpetuate federal taxpayer subsidies for the maximum possible time flies in the face of

Coalition-19  
cont.

↑ federal reclamation law and applicable court decisions. Under Reclamation policy, repayment requirements must be met even in the face of inflated contract totals and drainage repayment contracts. By policy and law the Secretary must establish the rates to ensure prompt and adequate repayment, full cost recovery, and encouragement of additional conservation.

## **7. Contracts for Paper Water Create ‘Liar Loans’ Backed By Non-Existent Water Supplies.**

Coalition-20

The analysis of the impacts from the exaggerated contract quantities promised for delivery do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPIA, and Endangered Species Act are considered. This unrealistic “over commitment” of CVP supplies has adverse impacts that are not fully disclosed.<sup>11</sup>

Coalition-21

The EA @ pg 7 suggests, “*The Bay Delta Conservation Plan is a long-term conservation strategy that addresses species, habitat and water resources that drain to the Delta.*” Federal scientists from both USFWS and NMFS have raised red flags regarding the impacts of continued excessive CVP diversions from the Sacramento-San Joaquin Delta Estuary and San Francisco Bay. And yet Westlands to fund the peripheral tunnels conveyance facility to obtain take permits to export more water has pledged ‘these exaggerated quantities’ of CVP water supplies as collateral in municipal loan documents.<sup>12</sup> Recent WWD documents show the expected costs of these new conveyance facilities are likely to be \$51-\$67 billion.<sup>13</sup> Federal law requires financial assurances and measures to ensure recovery of species before such take permits can be issued. Inflating water supplies and thus water sales as a basis to issue more debt using this paper water as collateral can have serious financial impacts. Impacts that need to be disclosed and evaluated.

Coalition-22

Reclamation relies on the outdated and unrealistic quantity terms of the old 1940’s and 1950’s CVP contracts that exaggerate water supplies and fail to consider the environmental impacts of continuing to irrigate toxic soils that poison lands and waters downstream, while deforming migratory birds and other wildlife. Reducing these inflated quantities to reflect these factors is clearly required by the reasonable and beneficial use requirements of federal and state law. Therefore, Reclamation’s decision to roll over all previous maximum water quantity terms, regardless of Reclamation’s ability to provide such water quantities, and then by contract to obligate the federal government to such renewals, is a fundamental policy mistake and an illegal agency action.

Coalition-23

The amounts still owed to federal taxpayers by Westlands and the San Luis Unit of the CVP after some 50 years are estimated to be more than \$500 million.<sup>14</sup> Thus, with no federally authorized ‘BDCP’ or Delta Habitat Conservation and Conveyance Project (DHCCP), it is unclear why operation and maintenance fees are being credited back to Westlands under the DHCCP program. This diversion of federal funds to Westlands appears to circumvent Congressional appropriations and Reclamation appropriation policy.<sup>15</sup>

## Conclusion

In short, the duty to study the effects of these interim contracts is critically important because of the auto-renewal nature of the 2014-2016 interim contracts, seems to set the stage whereby Reclamation decision makers may in the future to forego NEPA review altogether when faced with the next round of interim renewals. Indeed, it seems that Reclamation's continuing efforts to evade its duties under the CVPIA to analyze the impacts of the contracts have produced 15 years of meaningless paperwork and no solutions to the ever-mounting environmental destruction are directly attributable to the contracts and diversions of excessive amounts of water from these imperiled watersheds.

For all of these reasons we urge Reclamation to fully comply with the National Environmental Policy Act, the Endangered Species Act and existing Biological Opinions, and the Clean Water Act, and to rescind these interim contracts. This is what needs to be done to meet the requirements of federal and State law. A full Environmental Impact Statement is required to address the impacts of these renewals.

Thank you for your consideration.



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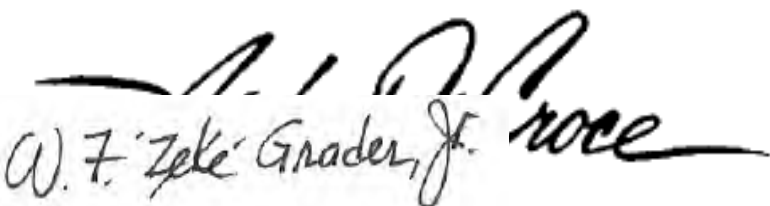


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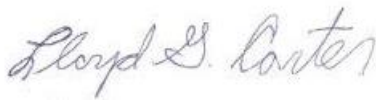
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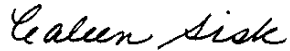


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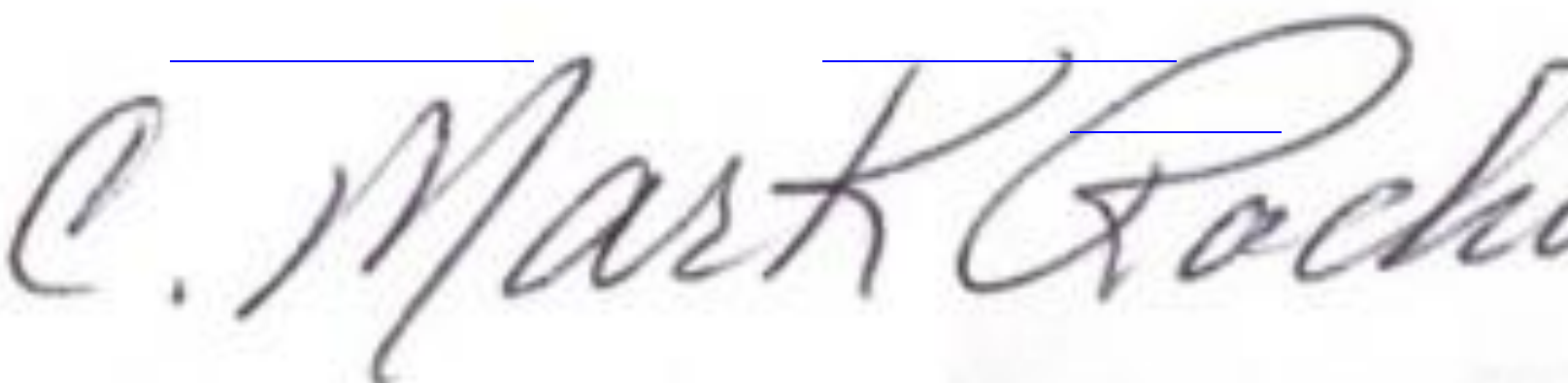
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## **Exhibit A: Documented Public Interest & Comments Incorporated by Reference**

- 1. 1-29-10 “ Draft Environmental Assessment and Finding of No Significant Impact for the San Luis Unit Water Service Interim Renewal Contracts” To Rain Healer from Joseph Membrino for Hoopa Valley Tribe.**
- 2. 1-29-10 “Comments on Draft EA/FONSI on San Luis Interim Contract Renewal” To Rain Healer From PLC, Friends of the River & Sierra Club**
- 3. 1-29-10 “Comments on Draft EA/FONSI on San Luis Interim Contract Renewal” To Rain Healer From CWIN and CSPA**
- 4. 1-29-10 “Comments of The Bay Institute and NRDC on Draft Environmental Assessment (EA) and Draft Findings of No Significant Impact (FONSI) for the San Luis Unit interim renewal contracts (Central Valley Project, California)” To Rain Healer from Hamilton Candee**
- 5. 2-18-2010 “Comments Re Two Year Interim Renewal Central Valley Project Water Service Contracts: Westlands Water District [WWD] Contracts 14-06-200-8237A-IR13; 14-06-200-8238A-IR13; WWD DD1-Broadview 14-06-200-8092-IR12; WWD DD1 Centinella 7-07-20-W0055-IR12-B; WWD1 Widren 14-06-200-8018-IR12-B; WWD DD2 Mercy Springs 14-06-200-3365A-IR12-C. To Karen Hall, USBR, from 11 Conservation, Fishery and Community Organizations.**
- 6. 3-2-2010 “Final Scoping Comments for Westlands Water District [Westlands] Proposed “Conveyance of Nonproject Groundwater from the Canal side project using the California Aqueduct”. The project proposes to discharge up to 100,000 acre feet of groundwater into the State Water Project California Aqueduct, a Drinking Water Supply for Approximately 20 Million People”. To Russ Freeman from 14 Conservation, Fishery and Community Organizations.**
- 7. 5-19-10 Letter to Donald Glaser, USBR From David Ortmann, Pacific Coast Management Council**
- 8. 7-3-10 Letter to Brad Hubbard Bureau of Reclamation, “Comments on Draft DEIS/EIR for proposed new transfer program that would provide for the transfer and/or exchange of up to 150,000 acre-feet of water from the San Joaquin River Exchange Contractors Water Authority [SJEC]1 to several potential users— Westlands Water District, SWP Contractors, Kern Water Bank and other users for over 25 years—2014-2038.” Adam Lazar Center for Biological Diversity et. al. and 11 Conservation, Fishery and Community Organizations.**
- 9. 7-16-10 Letter to Tom Glover, Westlands Deputy District Manager, Re RE: Opposition to Negative Declaration for the Westlands Water District and San Luis Water District Transfers and Related Exchanges Project. Eastside to Westside**

**57,500 acre feet.[Updated] From Zeke Grader et.al. From 13 Conservation, Fishery and Community Organizations.**

- 10. 7-30-2010 “San Joaquin River Central Valley Selenium Basin Plan Waiver, 303 (d) Delisting of San Joaquin River for Selenium and the California Toxics Rule” To Jared Blumenfeld, EPA from 16 Conservation, Fishery and Community Organizations.**
- 11. 9-22-2010 USFWS “Comment Letter – San Joaquin River Selenium Control Plan Basin Plan Amendment” To: Ms. Jeanine Townsend, Clerk to the Board from Susan K. Moore.**
- 12. 11-16-2010 “Letter to Senator Feinstein on Long Term Solution to Westlands Drainage Problem” To Commissioner Connor from Environmental Working Group.**
- 13. 12-13-2010 Comments on the Draft Finding of No Significant Impact [FONSI] San Luis Water District’s [SLD] and Panoche Water District’s [PWD] Water Service Interim Renewal Contracts 2011-2013 FONSI-10-070. To Rain Healer, USBR, From 8 Conservation, Fishery and Community Organizations.**
- 14. 2-28-2011 “Scoping Comments Proposed Ten Year North to South Water Transfer of CVP and Non CVP Water Using State Water Project (SWP) and Central Valley Water Project (CVP) Facilities” To Brad Hubbard, USBR et. al from 10 Conservation, Fishery and Community Organizations.**
- 15. 5-5-11 “Request for Revised Notice of Intent for the Bay Delta Conservation Plan (BDCP) that Recognizes Water Supply Realities” To Deputy Interior Secretary Hayes from 16 Conservation, Fishery and Community Organizations.**
- 16. 8-11-2011 “Opposition to the Proposal to Curtail Monitoring at the Grassland Bypass Project.” To Michael C. S. Eacock (Chris), Donald R. Glaser, USBR and Ren Lohofener USFWS et. al from 7 Conservation, Fishery and Community Organizations.**
- 17. 10-17-2011 “Comments on Draft EA/FONSI (DEA) for the San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche Drainage District’s San Joaquin River Improvement Project (SJRIIP) FONSI-10-030” To Rain Healer, USBR from 8 Conservation, Fishery and Community Organizations.**
- 18. 11-15-2011 “Full Environmental Impact Statement Needed for San Luis Drainage Feature Reevaluation Demonstration Treatment Facility at Panoche Drainage District [FONSI-10-030]” To Donald Glaser from 13 Conservation, Fishery and Community Organizations.**

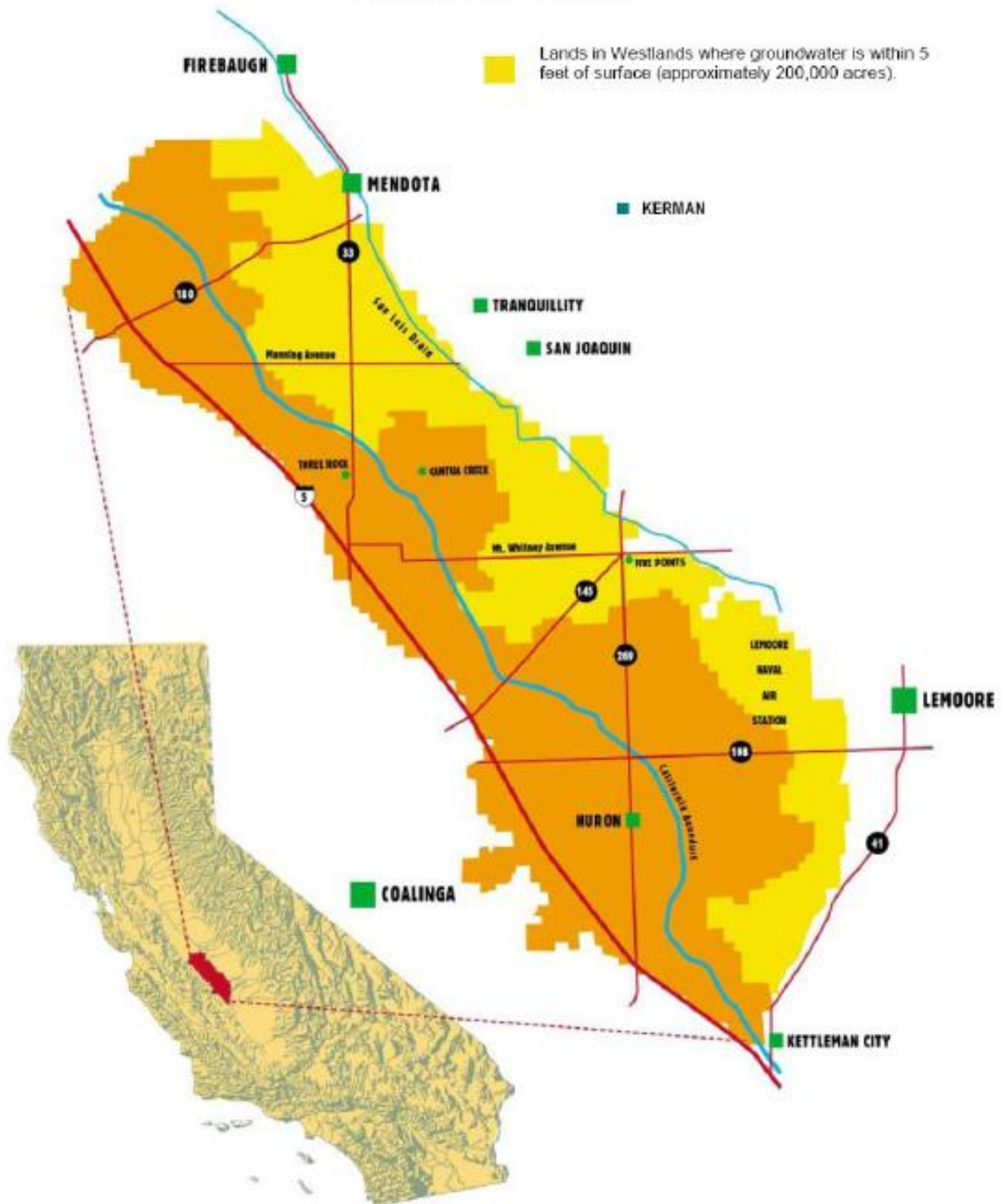
19. 11-16-2011 Notice Inviting Public Comment on BDCP MOA to Hon. Kenneth Salazar, Secretary John Laird, Secretary from 190 Conservation, Fishery and Community Organizations.
20. 1-5-2012 “Comments on Draft EA/FONSI for Three Delta Division and Five San Luis Unit Water Service interim Renewal Contracts 2012-2014” To Rain Healer from Stephan Volker on behalf of 4 Tribal, Conservation, Fishery and Community Groups.
21. 1-18-2012 “Comments on Draft EA/FONSI for Oro Loma Water District Partial Assignment of Central Valley Project Water to Westlands Water District FONSI-11-092” To Rain Healer, USBR from 12 Conservation, Fishery and Community Organizations.
22. 1-20-2012 “Delta Division, San Luis Unite and Cross Valley CVP Interim renewal contracts—Comments of the Hoopa Valley Tribe on draft EA-11-049 and EA-11-011 and FONSI 11-049 and FONSI 11-011” To Rain Healer, USBR from Leonard E. Masten Jr. Chariman.
23. 2-13-2012 “Comments on FONSI-070-103 Long-term Warren Act Contract and License for Delta Lands Reclamation District No. 770 EA-07-103.” To Rain Healer, USBR, From 11 Conservation, Fishery and Community Organizations.
24. 3-26-2012 “Comments on CVP Interim Renewal Contracts for three Delta Division and five San Luis Unit interim water service renewal contracts for: Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and Westlands Water District (five contracts) 2012 to 2014 and Environmental Documents.” To Hon. David J. Hayes, Donald R. Glaser, Michael L. Connor, Hilary Tompkins and Michael Jackson from PCFFA et. al [13 Conservation, Fishery and Community Organizations.]
25. 11-26-13 “Grasslands Bypass Project -- Violations of the Endangered Species Act and Reduced Monitoring Threaten Endangered Species and Public Health” To Secretary of Interior Sally Jewell, Rod McInnis Regional Administrator, National Marine and Fisheries Service; Jared Blumenfeld Regional IX Administrator, EPA. [From CWIN et. al. and 15 Conservation, Fishery and Community Organizations.]
26. 12-21-13 “Comments On the Draft Environmental Assessment (DEA 13-026) for the 10 year 100,000 Acre Feet of Proposed Water Transfer/Exchange Program from the Arvin-Edison Water Storage District (AEWSD) to Metropolitan Water District (MWD) & Draft Finding of No Significant Impact (FONSI 13-026)” To Chuck Siek, Bureau of Reclamation From PCL et. al. [13 Conservation, Fishery and Community Organizations.]

**Other Historical Documents adopted by reference:**

- A. 12-7-2000: NRDC, Hamilton Candee, Comments to Mr. Al Candlish, USBR, Comments on the Draft EA on long-term renewal of Central Valley Project water service contracts prepared by the Bureau of Reclamation.**
- B. 1-9-2001: NRDC, Hamilton Candee, Comments on Proposed CVP long Term Renewal Contracts for Friant, Hidden Buchanan, Cross-Valley, Feather River and Delta-Mendota Canal Units. To David Hayes, Deputy Secretary of Interior et. al.**
- C. 8-4-2005 NRDC, Hamilton Candee to Richard Stevenson, USBR “Comments on Proposed CVP Long Term Water Service Renewal Contract for Westlands Water District.”**
- D. 9-14-2005: NRDC, Hamilton Candee to Richard Stevenson, USBR “Additional Comments on Draft Renewal Contract for Westlands Water District.”**
- E. 4-17-2006 NRDC, Hamilton Candee to Richard Stevenson, USBR: “Final NRDC-TBI Comments on Long-Term Water Service Renewal Contract for Westlands Water District.**
- F. 9-7-2007: California Water Information Network to Ms. Sheryl Carter, USBR “San Luis Unit Interim Renewal Contracts”**

Figure 2-1

## Westlands Water District

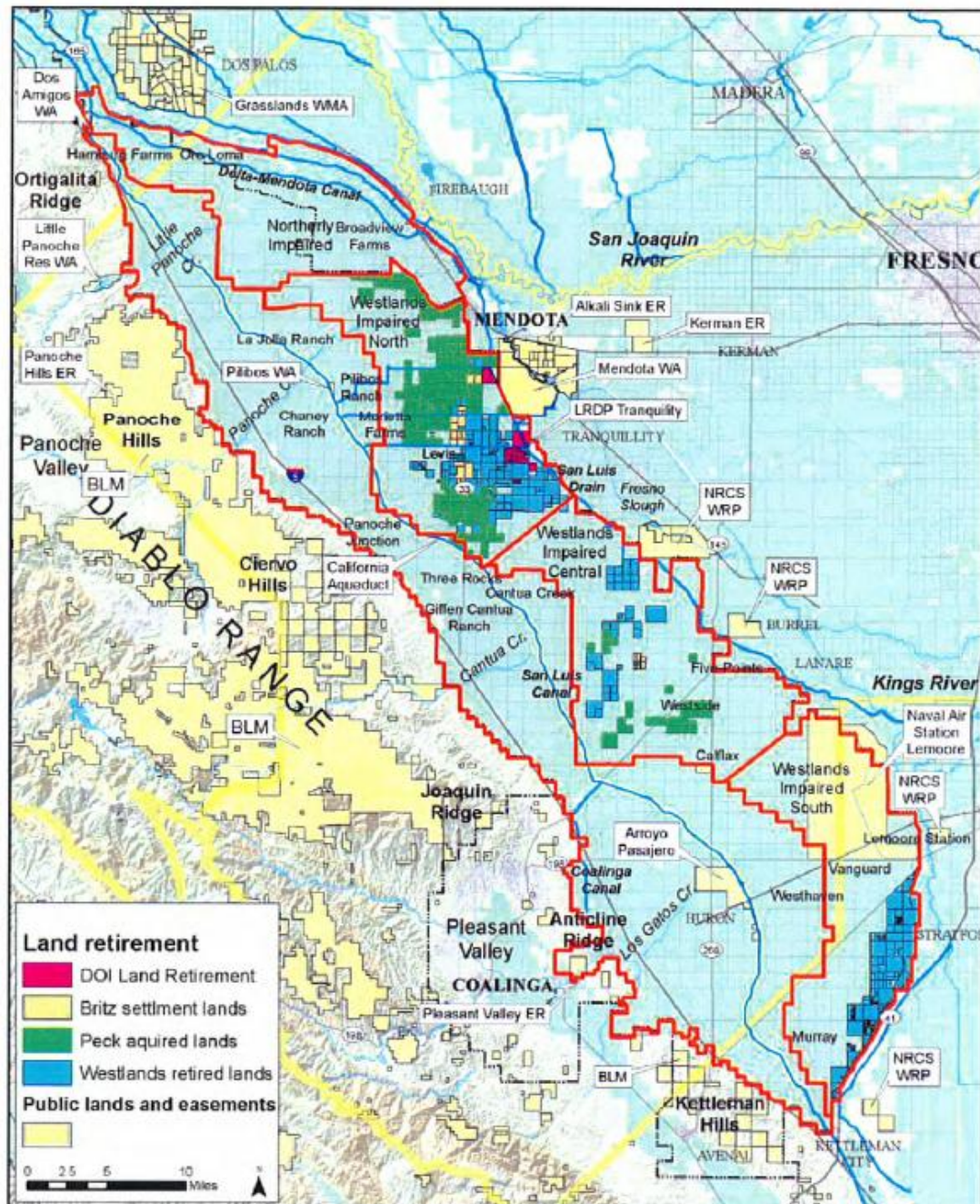








## Exhibit D



2006 Map of 77,130 acres of retired land in Westlands Water District (WWD), including 33,864 acres from the Sumner Peck settlement, 3,100 acres from the Britz settlement, 38,022 acres acquired by Westlands as part of the Saguospe settlement, and 2,144 acres retired through the CVPIA land retirement program. Map of retired lands in Westlands Water District. The numbers do not include Broadview Water District Source: Westside Resource Conservation District Source: Phillip, S.E. 2006 Draft Environmental Baseline of the San Luis Unit. Source: Unpublished Report to USBR. California State University Stanislaus, Endangered Species Recovery Program Fresno CA.

## **Exhibit E: USFWS Conservation Measures for the San Luis Unit 2010 & 2012**

See Appendix F San Luis Unit Interim Contract Biological Opinions February 2010 and continued Consultation for San Luis Unit Water Service Interim renewal Contracts 2012-2014

*“The Service has reviewed and considered the conservation measures that Reclamation has proposed and implemented to minimize adverse effects of continued water delivery under the IRCs, including the assurance that Reclamation will monitor land use changes and ongoing activities to ensure project water is not used in a manner that adversely affects listed, proposed or candidate species (see Conservation Measures from Previous IRC Consultations). The Service considers the scope of this conservation measure to include the assurance that project water will not be used in whole or in part to facilitate the conversion of existing natural habitat to agricultural or other purposes.” Ibid USFWS 2012@pg2*

### ***“Conservation Measures from Previous IRC Consultations***

*As described in previous IRC consultations, Reclamation developed and implemented a short term conservation program for IRC Service Areas. The proposed action includes a commitment to develop and implement a long-term program to address the overall effects of the continued operation of the CVP on listed, proposed, and candidate species, and a short-term program to minimize the adverse effects on these species in any areas affected by CVP water deliveries, other than those effects addressed here.*

*The short-term program to minimize adverse effects of continued water delivery to the IRC water districts included the following measures:*

*1(b) Develop information on distribution and habitat of listed, proposed and candidate species (Ongoing);*

*1(c) Map and distribute information in 1(b) above (Ongoing);*

*1(d) Monitor land use changes and ongoing activities to ensure project water is not used in a manner that adversely affects listed, proposed or candidate species. Coordinate with the Service on any activities adversely affecting these sensitive species (Ongoing);*

*3(a) Identify lands critical to listed and proposed species (Ongoing);*

*3(b) Identify land and water use activities critically impacting listed and proposed species (Ongoing);*

*3(c) Develop and implement critical need plan (Ongoing);*

*4 Develop a long-term program to address overall effects of the CVP and Implementation of the CVPIA (Ongoing).*

### ***New Conservation Measure***

*Reclamation commits to seeking from the cities of Avenal, Coalinga, and Huron, and from Westlands WD, a letter from the City/District to Reclamation, confirming that CVP water will not be used to develop or convert habitat without confirmation from the Service that compliance with the ESA has occurred with respect to the subject land either through Section 7 or Section 10 of the Act. Reclamation will seek these letters by September 1, 2010, and will provide copies to Service upon receipt (Kinsey in litt., 2.22.2010).”*



**EXHIBIT F—WWD General Manager's Report 11-19-2013--Irrigated Lands are 568,003 Acres & Approximately 131,048 Lands Retired Are Listed As Fallowed.**

BOARD MEETING of November 19, 2013

11/12

ITEM: 2.a. GENERAL MANAGER'S REPORT

SUBJECT: Water Use and Supply - - 2013/14 Water Year

DISCUSSION: Available Supply and Total Estimated Use Through October 2013

AVAILABLE SUPPLY	CURRENT MONTH (AF)	2013-14 Y-T-D (AF)	2013-14 TOTAL SUPPLY (AF)	2013-14 FORECAST (AF)	2012-13 Totals (AF)	2009-2013 Average (AF)
WATER YEAR ALLOCATION		20%	20%	20%	40%	56%
INTERIM CONTRACT - AG [1]	0	39,182	228,773	228,773	458,516	644
RESCHEDULED CONTRACT 2012	0	139,290	139,290	139,290	89,954	130
REASSIGNMENT: DOW1 / DOW2 / MERCY SPRINGS / DOW LOMA / BROADVIEW	0	0	8,151	8,151	16,284	
RESCHEDULE 2012 REASSIGNMENT	0	4,247	4,247	4,247	2,750	
CONTRACT - INCIDENTAL NON - AG M & I [2]	272	1,920	2,600	2,600	2,446	
ARTICLE 215 SURPLUS WATER	0	0	0	0	-	
TOTAL CONTRACT		184,639	383,061	383,061	549,950	780
TRANSFERS / EXCHANGES IN/(OUT)	20,759	221,543	236,969	249,500	231,977	
DISTRICT PUMPED GROUNDWATER CREDIT (DIP)	262	3,328	3,328	5,000	1,530	
WATER USER PUMPED GROUNDWATER CREDIT (GWMP)	13,128	175,855	175,855	220,000	163,049	
USER MP RECAPTURE (SUPPLEMENTAL)	0	1,731	1,731	7,500	2,813	
TOTAL SUPPLY	34,421	587,096	800,944	865,061	949,319	1,010
CONTRACT CUSHION			-	-	-	
OTHER CUSHION					-	
TOTAL AVAILABLE SUPPLY	34,421	587,096	800,944	865,061	949,319	1,000
WATER USE						
AGRICULTURAL	17,846	413,303	413,303	657,451	647,373	
WATER USER PUMPED GROUNDWATER CREDIT (GWMP)	13,128	175,855	175,855	220,000	163,049	
DISTRICT PUMPED GROUNDWATER CREDIT (DIP)	262	3,328	3,328	5,000	1,530	
NON-AG M&I	272	1,920	1,920	2,600	2,446	
TOTAL USE [3]	31,508	587,096	587,096		805,782	695
SYSTEM LOSS/(GAIN) (calculated estimate)			(7,679)	(8,000)		
TOTAL REMAINING SUPPLY			213,848			315

NOTES:

Total net cropped acreage in Westlands	2013/14	568,003
Fallowed acreage	2013/14	131,048

[1] 20% CVP supply.

[2] Includes Widren and Centinella M&I replacement supplies.

[3] Total Supply column includes close-adjustment with system gain together for complete actual use.

## ENDNOTES

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<sup>1</sup> [http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=15981](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=15981)

The Finding of No Significant Impact (FONSI) is supported by Reclamation's Environmental Assessment (EA) Number EA-13-023 and FONSI-13-023 *Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2014 – 2016*

1. Pajaro Valley Water Management Agency, Santa Clara Valley Water District, and Westlands Water District Distribution District # 1(3-way assignment from Mercy Springs Water District) 14-06-200-3365A-IR13-B 6
2. Westlands Water District 14-06-200-495A-IR3
3. Westlands Water District Distribution District #1 (full assignment from Broadview Water District) 14-06-200-8092-IR13
4. Westlands Water District Distribution District #1 (full assignment from Centinella Water District) 14-06-200-W0055-IR13-B 2
5. Westlands Water District Distribution District #2 (partial assignment from Mercy Springs Water District) 14-06-200-3365A-IR13-C 4
6. Westlands Water District Distribution District #1 (full assignment from Widren Water District) 14-06-200-8018-IR13-B 2

<sup>2</sup> When entering new, renewed, supplemented, or amended contracts, appropriate environmental compliance will be performed. See Reclamation Manual Policy ENV P03 (NEPA) and ENV P04 (ESA); Departmental Manual 516 DM 14; and see Pub. L. 91-190; 42 U.S.C. § 4321, et seq. (NEPA); Pub. L. 93-205; 16 U.S.C. § 1531, et seq. (ESA). See Reclamation Manual Directive and Standard WTR 02-01. Pgs 3-4

<sup>3</sup> USFWS, February 2, 2012, Correspondence to USBR Chief Resource Management Division from the Field Supervisor, Sacramento Fish and Wildlife Office RE: Consultation on One Delta and Five San Luis nit Water Service Interim Renewal Contracts 2012 - 2014 (EA-11-049) for a Two-Year Period from March 1,2012 through February 28, 2014. Pg 2.

<sup>4</sup> Ibid. USFWS February 2012 and Exhibit E.

<sup>5</sup> U.S. Bureau of Reclamation, Final Environmental Assessment, Westlands Water District, San Luis Water District and the Metropolitan Water District 2010-2011 Water Exchange and Transfer Program, November 2010. EA 10-71 [http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc\\_ID=6717](http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=6717) [http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc\\_ID=6716](http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=6716) Westlands Water District reported 80,692 acre feet transferred to MWD as of the beginning of January, 2011. Westlands Water District notice, Jan 20, 2011. <http://www.westlandswater.org/short%5C201102%5Cnotice325.pdf>

<sup>6</sup> [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/applications/transfers\\_tu\\_notices/2008/17512\\_pet.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/transfers_tu_notices/2008/17512_pet.pdf) In the transfer of water from the Tulare Lake Basin to Westlands, Newton Farms and Hansen Ranches/Vista Verde Farms argues the need for the transfer is due the conversion of acreage from cotton to almonds and that almonds require a water application rate of “at least 4 acre feet per acre” thus increasing the demand for water. Pg 4.

<sup>7</sup> <http://calsport.org/news/wp-content/uploads/2013/12/Coalition-Letter-on-GBP-ESA-Violations-Monitoring-Reductions-LTR.Corrected-.pdf>

<sup>8</sup> [http://www.lloydgcarter.com/content/110704496\\_westlands-drainage-delay-no-389](http://www.lloydgcarter.com/content/110704496_westlands-drainage-delay-no-389)



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<sup>9</sup> See Office of Inspector General Report March 2013 <http://www.doi.gov/oig/reports/upload/WR-EV-BOR-0003-2012Public.pdf> See also Office of Inspector General, U.S. Department of the Interior, No. W-IN-BOR-0016-2004, "Central Valley Project Contract Renewal Process," (August 2004).

<sup>10</sup> Nicholas Brozovic et. al. "Trading Activity In An Informal Agricultural Water Market: An Example From California," Department Of Agricultural and Resource Economics University of California 2001.

<sup>11</sup> May 2011 Letter to Hayes from Sixteen Community, Environmental and Fishing Groups Subject: Request for Revised Notice of Intent for the Bay Delta Conservation Plan (BDCP) that Recognizes Water Supply Realities. [http://www.c-win.org/webfm\\_send/163](http://www.c-win.org/webfm_send/163)

<sup>12</sup> [http://www.lloydgcarter.com/files\\_lgc/LTR%20to%20Garamendi%20Seeking%20SEC%20Investigation%20Final.pdf](http://www.lloydgcarter.com/files_lgc/LTR%20to%20Garamendi%20Seeking%20SEC%20Investigation%20Final.pdf)

<sup>13</sup> [http://www.mercurynews.com/politics-government/ci\\_24795356/delta-tunnels-plans-true-price-tag-much-67](http://www.mercurynews.com/politics-government/ci_24795356/delta-tunnels-plans-true-price-tag-much-67) & [Bay Delta Westlands BDCP DWR Workshop 11-20-13 Powerpoint](#)

<sup>14</sup> "New government audit finds that the bulk of an interest-free loan from the 1960s is still unpaid by irrigation water contractors" according to 2008 GAO Report <http://georgemiller.house.gov/press-release/ca-private-water-contractors-owe-taxpayers-500> & <http://www.doi.gov/oig/reports/upload/WR-EV-BOR-0003-2012Public.pdf>

<sup>15</sup> San Luis Delta Mendota Water Authority Minutes, 9-26- 08 & Memo 1-8-09 See [http://www.cwin.org/webfm\\_send/148](http://www.cwin.org/webfm_send/148) and [http://c-win.org/webfm\\_send/149](http://c-win.org/webfm_send/149)

## Response to Coalition Comment Letter, January 14, 2014

**Coalition-1** Comment noted. The comment letter dated January 14, 2014 submitted during public review for Environmental Assessment (EA)-13-023, *Central Valley Project Interim Renewal Contracts for Westlands Water District, Santa Clara Valley Water District, and Pajaro Valley Water Management Agency 2014 – 2016*, has been included as an appendix to the EA and will, therefore, be part of the administrative record.

EA-13-023 and its scope of analysis were developed consistent with National Environmental Policy Act (NEPA) regulations, guidance from the Council on Environmental Quality (CEQ), and the Department of the Interior's NEPA regulations. In accordance with NEPA, an EA is initially prepared to determine if there are significant impacts on the human environment from carrying out the Proposed Action. Reclamation has followed applicable procedures in the preparation of EA-13-023 which includes the required components of an EA as described in the CEQ's NEPA regulations (40 CFR 1508.9): discussion of the need for the proposal, alternatives as required, environmental impacts of the proposed action and alternatives, and listing of agencies and persons consulted.

An EA is defined by CEQ as a "concise public document" that "briefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9). As described in Section 1.1, EA-13-023 tiers off the Central Valley Project Improvement Act (CVPIA) Programmatic Environmental Impact Statement (PEIS) to evaluate potential site-specific environmental impacts of executing five interim renewal contracts specific to Westlands Water District (WWD) and one interim renewal contract for the three-way partial assignment for WWD, Santa Clara Valley Water District (SCVWD), and Pajaro Valley Water Management Agency (PVWMA). Delta exports of CVP water for delivery under interim renewal contracts is an on-going action and the diversion of CVP water for export to South-of-Delta contractors are described in the PEIS (see Chapter III of the PEIS).

Further, as described in Section 1.2 of EA-13-023, the purpose of the Proposed Action is to execute six interim renewal contracts in order to continue delivery without interruption of CVP water to the contractors, and to further implement CVPIA Section 3404(c), until their new long-term renewal contract can be executed. As such, the analysis in EA-13-023 finds in large part that the execution of an interim renewal contracts are in essence a continuation of the "status quo", and that although there are financial and administrative changes to the contract, the contract continues the existing use and allocation of resources (i.e., the contract is for the same amount of water and for use on the same lands for existing/ongoing purposes). The EA therefore focused on the potential environmental effects resulting from proposed changes to the contracts 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). Further, on March 8, 2013, the Federal Court in the Eastern District of California found that Reclamation "appropriately defined the status quo as the 'continued delivery of CVP water under the interim renewal of existing contracts'" and that "[t]he indisputable historical pattern of use of the resource (water) further supports the Bureau's definition of the no-action alternative" (Document 52 for Case 1:12-cv-01303-LJO-MJS). On February 6, 2014, the Eastern District Court of California further stated that "agency actions that do not alter the status quo *ipso facto* do not have a significant impact on the environment" and that the "[a]n action that does not change the status quo cannot cause any change in the environment and therefore cannot cause effects that require analysis in the EA" (Document 88 for Case 1:12-cv-01303-LJO-MJS).

**Coalition-2** EA-13-023 was prepared in accordance with NEPA regulations and tiers from the CVPIA PEIS (see Response to Coalition-1). As described in Section 1.1 of EA-13-023, Reclamation analyzed the proposal to execute six interim renewal contracts as required by Section 3404(c) of the CVPIA. EA-13-023 also clearly documents Reclamation's compliance with the Endangered Species Act (ESA) and the Migratory Bird Treaty Act [MBTA] (see Section 3.3 and Section 4 of EA-13-023). Reclamation disagrees with the comment that it violates the Administrative Procedures Act, the Reclamation Reform Act, or the Coordinated Operations Act of 1986.

As a Federal Agency, Reclamation is not required to comply with the California Environmental Quality Act (CEQA) or the California Endangered Species Act (CESA).

**Coalition-3** In accordance with the Department of the Interior's NEPA regulations (43 CFR Part 46.310), EAs are not required to develop alternatives unless there are issues related to unresolved conflicts concerning alternative uses of available resources. As described in Section 1.1 of EA-13-023, Section 3404(c) of the CVPIA directs the Secretary of the Interior to renew existing CVP water service and repayment contracts following completion of a PEIS and other needed environmental documentation. Section 3404(c) of the CVPIA further provides for the execution of interim renewal contracts pending execution of these long-term renewal contracts. As such, Reclamation correctly identified the No Action and Proposed Action alternatives as the continued delivery of CVP water under interim contracts pending execution of the contractors' long-term renewal contract as required by CVPIA 3404(c). As described in Section 2.3 of EA-13-023, two additional alternatives (non-renewal of contracts and reduction in interim renewal contract quantities) were considered but eliminated from further analysis. Given legal and regulatory constraints and the short term nature of the proposed action, Reclamation determined that the two action alternatives analyzed in EA-13-022

provided a reasonable range of alternatives. On February 6, 2014, the Eastern District Court of California found that focusing on “alternatives that...compare contract terms (e.g. pricing provisions) that are likely to make a practical difference...was reasonable” (Document 88 for Case 1:12-cv-01303-LJO-MJS).

**Coalition-4** EA-13-023 was prepared in accordance with NEPA regulations (see Response to Coalition-1). As described in Section 1.1 of EA-13-023, interim renewal contracts have been and continue to be undertaken under the authority of the CVPIA to provide a bridge between the expiration of the original long-term water service contracts and the execution of new long-term water service contracts as required by the CVPIA. As the PEIS did not analyze site specific impacts of contract renewal but rather CVP-wide impacts of execution of long-term renewal contracts, Reclamation prepared environmental documents that tiered from the PEIS to analyze the local effects of execution of long-term renewal contracts as well as interim renewal contracts such as those analyzed in EA-13-023. As the NEPA process for EA-13-023 is ongoing, Reclamation has not executed the proposed interim renewal contracts analyzed in EA-13-023.

In addition, EA-13-023 clearly documents Reclamation’s compliance with the federal ESA and the MBTA (see Section 3.3 and Section 4 of EA-13-023). The Fish and Wildlife Coordination Act (FWCA) requires that Reclamation consult with fish and wildlife agencies (federal and state) on all water development projects that could affect biological resources. The implementation of the CVPIA, of which this action is a part, has been jointly analyzed by Reclamation and the U.S. Fish and Wildlife Service (USFWS) and is being jointly implemented. Since there would be no construction and water would move in existing facilities, FWCA does not apply and compliance is unnecessary. Further, Reclamation is not required to comply with CEQA or the CESA as it is the lead agency for the proposed federal action.

**Coalition-5** On March 8, 2013, the Eastern District of California found that Reclamation “appropriately defined the status quo as the ‘continued delivery of CVP water under the interim renewal of existing contracts’” and that “[t]he indisputable historical pattern of use of the resource (water) further supports the Bureau’s definition of the no-action alternative”. The Court further found “that where the Proposed Action does not alter the status quo, no EIS is required” (Document 52 for Case 1:12-cv-01303-LJO-MJS). See also Response to Coalition-1 and Response to Coalition-3.

Further, on March 8, 2013, the Federal Court in the Eastern District of California found that the contention made in this comment that “The use of the term “may” in Section 3404(c) of the CVPIA demonstrates that Congress intended to make entry into interim contracts a completely discretionary action” (Coalition-5) was not “countenanced with the obvious (and conceded) Congressional intent that the contractual relationship between Reclamation and water users is not to be interrupted.” (Document 52 for Case 1:12-cv-01303-LJO-MJS filed March 8,

2013). The Federal Court further determined that “Congress used the term “may” in reference to interim contracts because re-using the term “shall” would lead to the absurd result that Reclamation would be required to keep issuing interim contracts even when long-term ones were in place. Here, the “may” is permissive only insofar as it permits Reclamation to use interim contracts as an alternative to mandatory long-term contracts” (Document 52 for Case 1:12-cv-01303-LJO-MJS filed March 8, 2013).

- Coalition-6** Section 3404(c)(1) of the CVPIA requires the preparation of “appropriate environmental review, including the preparation of the environmental impact statement required in section 3409” prior to renewal of the long-term contracts. As described in Section 1.1 of EA-13-023, Reclamation completed the CVPIA PEIS and issued a Record of Decision (ROD) in January 2001. Further, as described in Section 1.1.1 of EA-13-023, Reclamation is pursuing completion of environmental compliance for the remaining long-term contracts that have not yet been renewed under separate environmental documentation. See also Response to Coalition-2 and Coalition-3.
- Coalition-7** Section 3403(c)(2) does not exist in the CVPIA. However, Section 3404(c)(2) does state that “Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.” Reclamation administers all “existing, new, and renewed contracts in conformance with the requirements” of the CVPIA.
- Coalition-8** On February 6, 2014, the Eastern District Court of California found that “agency actions that do not alter the status quo *ipso facto* do not have a significant impact on the environment” and that the “[a]n action that does not change the status quo cannot cause any change in the environment and therefore cannot cause effects that require analysis in the EA” (Document 88 for Case 1:12-cv-01303-LJO-MJS). See also Response to Coalition 1, Coalition-2, Coalition-3, Coalition-5, and Coalition-6.
- Coalition-9** See Response to Coalition-8.
- Coalition-10** As stated in Section 4.2 of EA-13-023, Reclamation has completed consultation pursuant to section 7 of the ESA with the USFWS for the Proposed Action. The biological opinion from USFWS is included as an appendix to the Final EA.
- Coalition-11** See Response to Coalition-8 and Coalition-10.
- Coalition-12** See Response to Coalition-8 and Coalition-10.



- Coalition-13** It is unclear what “various documents” are being referenced or how the “baseline” is different from the Proposed Action. Reclamation has completed consultation with the USFWS pursuant to Section 7 of the ESA for the Proposed Action. In addition, as described in Section 2.2.1 of EA-13-023, Reclamation has included the environmental commitment, among others, that “No native or untilled land (fallow for three consecutive years or more) may be cultivated with CVP water without additional environmental analysis and approval.” Environmental commitments are reviewed by Reclamation as part of its’ environmental commitment monitoring program.
- Coalition-14** See Response to Coalition-1 and Coalition-8. As described in Section 1.4.2 of EA-13-023, no sales, transfers, or exchanges of CVP water are included as part of the alternatives or analyzed within this EA. Approval of these actions is independent of the execution of interim renewal contracts and would require appropriate site-specific environmental compliance.
- Coalition-15** As stated in Section 2.2 of EA-13-023, the six interim renewal contracts contain provisions that allow for adjustments resulting from court decisions, new laws, and from changes in regulatory requirements imposed through re-consultations. Accordingly, to the extent that additional restrictions are imposed on CVP operations, those restrictions would be implemented in the administration of CVP contracts including the six interim renewal contracts considered in EA-13-023.
- Coalition-16** A Water Needs Assessment was completed for each CVP contractor undergoing long-term contract renewal that was not exempt from the requirement. The water needs methodologies were made available to the contractors and interested public for review and comment before the studies were performed. The Water Needs Assessments show that the contractors’ needs were at least equal to the contract totals and frequently exceeded those amounts. See also Response to Coalition-3.
- Coalition-17** See Response to Coalition-1, Coalition-2, Coalition-3, and Coalition-8. Further, on February 6, 2014, the Eastern District Court of California found that “[a]n action that does not change the status quo cannot cause any change in the environment and therefore cannot cause effects that require analysis in the EA” and that the “conclusion applies with equal force to...the content of the EA’s impact analysis, including Plaintiffs’ arguments that...the EA contains no analysis of the impact of agricultural runoff and subsurface drainage from Westlands’ CVP-irrigated lands” (Document 88 for Case 1:12-cv-01303-LJO-MJS).
- Coalition-18** See Response to Coalition-17.
- Coalition-19** Comment noted. This comment does not address the Proposed Action covered in EA-13-023; therefore, no response is provided.
- Coalition-20** See Response to Coalition-15.

**Coalition-21** Comment noted. This comment does not address the Proposed Action covered in EA-13-023; therefore, no response is provided.

**Coalition-22** See Response to Coalition-15, Coalition-16, and Coalition-17.

**Coalition-23** Comment noted. This comment does not address the Proposed Action covered in EA-13-023; therefore, no response is provided.

**Coalition-24** See Response to Coalition-8.