

Appendix E
Comments and Responses

Appendix E

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Attachment

E-1 IOP for New Melones Reservoir

INTRODUCTION

This section provides the public comments on the Draft EIS/EIR and the lead agencies' responses to those comments. Text changes resulting from the comments are often summarized under the responses and have been incorporated into the text of the Final EIS/EIR.

RESPONSES TO COMMENTS

The Draft EIS/EIR was sent to the State Clearinghouse as required by CEQA on June 4, 2004. The Clearinghouse distributed the document to selected State agencies: Resources Agency; Regional Water Quality Control Board, Region 5 (Fresno); Regional Water Quality Control Board, Region 5 (Sacramento); Department of Parks and Recreation; Native American Heritage Commission; Reclamation Board; Department of Health Services; Department of Food and Agriculture; Department of Fish and Game, Headquarters; DWR; Caltrans, Division of Transportation Planning; State Water Resources Control Board, Division of Water Rights; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Clean Water Program; and State Lands Commission. None of these agencies commented through the Clearinghouse by July 23, 2004, the close of the mandatory 45-day review period. However, comments were provided separately by the DWR and the Department of Food and Agriculture. The Clearinghouse letter confirming compliance with their review requirements for draft environmental documents follows this introductory section. Consistent with CEQA Guidelines, the Exchange Contractors placed notices in two newspapers of general circulation within the project area: *The Fresno Bee* on June 10, 2004, and *The Modesto Bee* on June 10, 2004.

Consistent with Reclamation's procedures for implementing NEPA, the Draft EIS/EIR was filed with the USEPA on June 9, 2004, and a notice was placed in the *Federal Register* on June 16, 2004, announcing the availability of the document for public review and commencing the official public review period, which closed August 2, 2004. Reclamation also issued a press release on June 17 and placed an announcement on the Reclamation Web site.

Written comments on the Draft EIS/EIR were received from the following 16 agencies and organizations:

Federal

- USEPA, Region IX (Lisa B. Hanf)

State

- Department of Food and Agriculture (Steve Shaffer)
- DWR (Paula J. Landis)

Local

- City of Stockton (Mark J. Madison)
- Friant Water Users Authority (Ronald D. Jacobsma)

- Madera Irrigation District (Steve Ottemoeller)
- Pajaro Valley Water Management Agency (Charles McNiesh)
- Sacramento Municipal Utility District (Paul Olmstead)
- San Joaquin Valley Air Pollution Control District (Chrystal Meier)
- South Delta Water Agency (John Herrick)
- Stockton East Water District (Karna Harrigfeld)
- Westlands Water District (John D. Rubin)

Private Groups and Organizations

- California Farm Bureau Federation (Becky Sheehan)
- Mendota Pool Group (William V. Pipes)
- Natural Resources Defense Council/the Bay Institute (Gary Bobker)
- Tulare Basin Wetlands Association (Jack G. Thomson and Robert F. Bowman)

The following sections include a copy of each comment letter in the order presented above, followed by the lead agencies' response to that comment.

A public hearing was held on July 7, 2004, in Los Banos, and oral testimony was provided by Paul Olmstead for the Sacramento Municipal Utility District, Mark Rhodes for Westlands Water District, and Jose I. Faria for the DWR. The public hearing transcripts are provided at the end of this appendix. All of the persons/agencies commenting at the public hearing provided written comments. The responses to their agency's written comments cover their oral comments unless otherwise responded to immediately at the hearing and contained in the transcript. Following the transcript is Attachment E-1, New Melones Interim Plan of Operation.

STATE CLEARINGHOUSE LETTER



Arnold
Schwarzenegger
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Jan Boel
Acting Director

July 26, 2004

RECEIVED

AUG 19 2004

S.J.R.E.C.W.A.

Joann Toscano
San Joaquin River Exchange Contractors Water Authority
541 H Street
Los Banos, CA 93635

Subject: Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005-2014
SCH#: 2003101106

Dear Joann Toscano:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on July 23, 2004, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts
Director, State Clearinghouse

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Document Details Report State Clearinghouse Data Base

SCH# 2003101106
Project Title Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005-2014
Lead Agency San Joaquin River Exchange Contractors Water Authority

Type EIR Draft EIR
Description The Bureau of Reclamation and the San Joaquin River Exchange Contractors Water Authority propose to conduct a 10-year water transfer program that would consist of up to 130,000 acre-feet annually of substitute water (maximum of 80,000 acre-feet of developed water and a maximum of 50,000 acre-feet from land fallowing/crop idling) from the Exchange Contractors to other CVP contractors, to Reclamation for delivery to the San Joaquin Valley wetland habitat areas (wildlife refuges), and/or to Reclamation and/or the Department of Water Resources (DWR) for use by the CALFED EWA as replacement water for CVP contractors.

Lead Agency Contact

Name Joann Toscano
Agency San Joaquin River Exchange Contractors Water Authority
Phone 209 827-8616 **Fax**
email
Address 541 H Street
City Los Banos **State** CA **Zip** 93635

Project Location

County Fresno, Madera, Merced, Stanislaus, San Joaquin, San Benito, ...
City
Region
Cross Streets
Parcel No.
Township **Range** **Section** **Base**

Proximity to:

Highways 99,5,145,33,152,101,and 180
Airports
Railways Yes
Waterways San Joaquin, Stanislaus, Tuolumne, and Merced Rivers
Schools
Land Use Primarily Open Space, including Agriculture

Project Issues Agricultural Land; Air Quality; Cumulative Effects; Other Issues; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Wildlife

Reviewing Agencies Resources Agency: Regional Water Quality Control Bd., Region 5 (Sacramento); Regional Water Quality Control Bd., Region 5 (Fresno); Department of Parks and Recreation; Native American Heritage Commission; Reclamation Board; Department of Health Services; Department of Food and Agriculture; Department of Fish and Game, Headquarters; Department of Water Resources; Caltrans, Division of Transportation Planning; State Water Resources Control Board, Division of Water Rights; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Clean Water Program; State Lands Commission

Date Received 06/09/2004 **Start of Review** 06/09/2004 **End of Review** 07/23/2004

Note: Blanks in data fields result from insufficient information provided by lead agency.

U.S. ENVIRONMENTAL PROTECTION AGENCY LETTER – LISA B. HANF

UNITED STATES DEPARTMENT OF THE INTERIOR
F A X C O V E R S H E E T



Number of pages: *10* including this cover sheet

DATE: 8/16

TO:

ATTENTION: SUSAN HOOTKINS

TELEPHONE:

FAX: 510 874 3268

FROM:

Sheryl Carter
South Central California Area Office
Bureau of Reclamation
1243 N Street
Fresno, California 93721

TELEPHONE: (559) 487-5299

FAX: (559) 487-5397

MESSAGE: EPA COMMENTS EIR/EIS SJEC

If any pages are missing or illegible, please call (559) 487-5113.

209 487 5927 P.01

BUREAU OF RECLAMATION

AUG-16-2004 09:45

Appendix E Comments and Responses



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

August 13, 2004

Mr. Bob Eckart
Bureau of Reclamation
MP-150
2800 Cottage Way
Sacramento, CA. 95825

Subject: Draft Environmental Impact Statement for the Water Transfer
Program for the San Joaquin River Exchange Contractors Water
Authority 2005 - 2014 (CEQ# 040278)

Dear Mr. Eckart:

The Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

We commend the Bureau of Reclamation (BOR) and Exchange Contractors for proposing to provide water for transfer to improve water supply reliability for areas served by the Central Valley Project (CVP). If carefully implemented, this purpose can be carried out while also attending to other issues in the region, notably management of agricultural drainage and water quality to protect beneficial uses. In the San Joaquin Basin, because of the interrelated problems of short water supplies, instream flow deficits, and water quality impairments; actions such as the transfer proposal which could alter the distribution, timing, and quality of water in the Basin, need careful design and coordination with other water quality, quantity, and drainage programs. Providing these concerns are adequately taken into account, we support water management practices that increase the reliability of scarce existing water supplies and provide for flexibility in the allocation, management, and use of the water supply.

1 We note that the DEIS provides limited information about water quality issues which the Exchange Contractors and potential in-basin transfer recipients are trying to address and which could affect the transfer proposal. The Final EIS (FEIS) should discuss the relationship between the proposed transfer program and measures currently underway in the San Joaquin Valley for water quality improvement, such as the salt/boron Total Maximum Daily Load (TMDL) program, management of agricultural drainage, and implementation of the Regional Water Quality Control Board irrigated lands conditional waiver requirements. The FEIS should also explain if there are potential direct and indirect effects to wetlands from conservation measures (e.g., modification of tailwater recovery ponds and construction of pump stations). Although the

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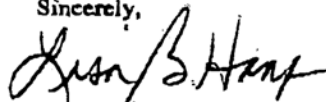
1

DEIS implies that the CVP purposes for which transfer water is being considered exclude enhancing San Joaquin River instream flows, the FEIS should identify current studies and plans in which BOR is involved or is aware of relating to restoration of the San Joaquin River. Finally, the FEIS should provide additional information on cumulative impacts of past and present water transfer programs and land retirement programs.

Because of the need for full disclosure of San Joaquin Valley water quality, agricultural drainage, irrigated lands conditional waivers, and restoration issues; concerns with impacts to efforts to resolve these issues, and potential impacts to wetlands from conservation measures, we have rated the Proposed Action as Environmental Concerns - Insufficient Information (EC-2). Please see the enclosed Rating Factors for a description of EPA's rating system.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send two copies to the address above (mail code: CMD-2). If you have any questions, please contact me or Laura Fujii, the lead reviewer for this project. Laura can be reached at 415-972-3852 or fujii.laura@epa.gov.

Sincerely,



Lisa B. Hanf, Manager
Federal Activities Office
Cross Media Division

Enclosures:
Summary of EPA Rating Definitions
EPA's Detailed Comments

cc: Dale Garrison, US Fish and Wildlife Service
John Brooks, US Fish and Wildlife Service
Dennis Wescott, Central Valley Regional Water Quality Control Board
Joann Toscano, San Joaquin River Exchange Contractors Water Authority

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

EPA DETAILED COMMENTS FOR THE DEIS WATER TRANSFER PROGRAM FOR THE SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY 2005-2014, SAN JOAQUIN VALLEY, CA, AUGUST 13, 2004

Water Resources

1. Reaches of the San Joaquin River and tributaries are listed as "impaired" pursuant to Section 303(d) of the Clean Water Act for a number of pollutants. A total maximum monthly load (TMML) reduction program is in place for selenium, and high priority total maximum daily loads (TMDLs) are now being developed by the Regional Water Quality Control Board (Regional Board) for salt/boron, low dissolved oxygen, and pesticides. These efforts are complemented by the Regional Board's Conditional Waiver Program for managing discharges from irrigated lands, which is currently focused on putting monitoring in place. Implementation of monitoring and actions to manage salinity and other pollutants is likely to influence the Exchange Contractors' conservation activities, regardless of the transfer program, although this is not discussed in the draft environmental impact statement (DEIS). Improving water quality and flows along the San Joaquin River system is a complex problem. Shifts in the timing and intensity of water use, improved conjunctive use of surface and ground water, improved coordination and routing of existing supplies, and water conservation can contribute to solutions.

2

Recommendations:

The Final EIS (FEIS) should address the potential relationships between the water transfer program and water quality goals for the San Joaquin River (River), including TMML/TMDLs and the irrigated lands conditional waiver program.

The FEIS should disclose actions which the Exchange Contractors have taken (existing conditions baseline) and might expect to take (under future "no project" conditions) to manage their agricultural drainage water. For example, explain if activities pursuant to the Regional Board water quality programs or drainage management programs would be undertaken in the future, even if the transfer program is not pursued. Discuss possible constraints and issues associated with discharges of water.

Explain whether implementation actions for water quality and drainage management actions (e.g., TMMLs and Conditional Waiver Program) are directly linked to, and dependent on, the transfer program.

3

2. Elements of the transfer program involving groundwater pumping and tailwater and spill recovery may have the potential to alter the quality of water available for irrigated lands, including refuges which receive water by means of the Exchange Contractor conveyance system. For example, the DEIS provides a brief description of groundwater water quality, mentioning areas of high salinity, but does not contain enough detail to understand whether, in blending pumped groundwater with surface supplies, there is potential to introduce additional loads of salts, particularly into water which is transferred to other users in the Basin such as the San Joaquin Valley refuges (refuges).

Achieving a salt balance which safeguards continued agricultural productivity in the San Joaquin basin is a challenging problem which is being addressed by a number of parties at the local, state, and federal levels. The Regional Water Quality Control Board's work on a TMDL for salinity/boron has identified excess salt/boron loading in the Basin, although an implementation program to address this problem has not yet been fully developed. While the transfer proposal could help the Exchange Contractors manage salinity in their area, it could be at the expense of transferees such as the refuges. The issue of high salinity levels in refuge supplies and difficulties this poses for refuge salinity management was raised by the Field Supervisor for the Fish and Wildlife Service, Wayne White, in a letter to Robert Schneider, Central Valley Regional Water Quality Control Board this year (January 20, 2004).

3

We note also that the Mendota Pool is listed by the State Water Resources Control Board as "impaired" for selenium associated with agricultural irrigation, agricultural return flows, and groundwater withdrawals [CWA 303(d) list, July 2003], although this is not mentioned in the DEIS. Providing wetlands with low selenium (maximum 2 ppb) waters is a priority of the US Fish and Wildlife Service.

Recommendation:

The evaluation of potential water quality impacts of increased inputs of groundwater and recovered tail water should be expanded in the FEIS. Explain whether the proposed project could increase the proportion of tailwater and groundwater in water reaching refuges (as transfers, or indirectly), streams, the San Joaquin River, or other water users.

3. Water quality monitoring specific to this project, as well as monitoring already conducted by the lead agencies and others, is not discussed in the DEIS. Environmental consequences on surface water resources states that negative effects would occur, but will be mitigable to minimal effects with transfer approval process measures (e.g., Table 4-63, Summary of Effects of Alternative C, pg. 4-81). Existing surface and ground water quality of the region is of concern. Any action which could potentially affect water quality and efforts to improve it, should be carefully monitored. Water quality monitoring is also important to validate assumptions of potential effects of the water transfer program.

4

Recommendations:

The FEIS should describe the monitoring in place or planned to track potential effects of the transfer program and support the finding that negative effects of the action are mitigable. The monitoring program should include monitoring of ground water quality, and monitoring of surface waters, in addition to the Vernalis compliance point.

Provide information on water quality monitoring that will be used to track changes in salinity, boron, and selenium concentrations in "blended" supplies used within the Exchange Contractor area and transferred/conveyed to other users.

- 5 4. The environmental effects of the water transfer program depends, in part, on the relationship between the disposition of transfer water, San Joaquin River flows and water quality, and New Melones Reservoir operations (e.g., pgs 4-22 to 4-26). For instance, in some transfer scenarios, development of transfer water via reuse of tailwater reduces agricultural return flows to the San Joaquin River, reducing overall San Joaquin River flows that could trigger a release from New Melones Reservoir, reducing the storage level of New Melones Reservoir. The level of storage in New Melones Reservoir is a key component of the CVP because water releases from this reservoir are used to meet flow and water quality requirements at the Vernalis compliance point.

Recommendations:

The FEIS should include a diagram and supporting text to describe the operational relationship between the transfer water, San Joaquin River water quality and flows, and the operation of New Melones Reservoir.

The FEIS should also disclose the ability of New Melones Reservoir to meet water quality standards, flow requirements, and water supply needs, including a short description of past experience with New Melones Reservoir operations.

- 6 5. The evaluation of effects selectively focuses on State Water Resources Control Board and CALFED requirements such as the Vernalis flow and salinity objectives, and "Delta supplies" (inflows from the San Joaquin River). Potential water quality and flow impacts to other beneficial uses, such as those above and within Mud and Salt Sloughs, and upstream of Vernalis should also be addressed.

Recommendation:

The FEIS should provide more information on conditions in, and potential impacts to, reaches of the river above and within Mud and Salt sloughs. Additionally, explain whether transfers to parties downstream of the Mendota Pool might be conveyed through the River channel reaches where surface flows are linked to operation of the Mendota Pool.

- 7 6. Although the DEIS describes Executive Order 11990, Protection of Wetlands, it does not describe the requirements of, or compliance with, the Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the Clean Water Act (CWA). Proposed water conservation measures, such as lining of canals, modification of tailwater ponds, and construction of groundwater pumps, could trigger the need for a Section 404 permit pursuant to the above 404(b)(1) Guidelines.

Recommendation:

The FEIS should clarify whether the conservation actions being considered will require a Section 404 permit. If yes, the FEIS should address the 404(b)(1) Guidelines and fully disclose compliance with these requirements.

Allocation of Transfer Water

- 8 1. The proposed action would transfer up to 130,000 acre-feet/year (af/yr) of water from the San Joaquin River Exchange Contractors to Central Valley Project (CVP) water service contractors, municipal and industrial (M&I) contractors, and San Joaquin Valley wildlife refuges. Included are lands on the west side of San Joaquin Valley which may have problems with agricultural drainage and high soil salinity. Some of these lands are also the sources of selenium and boron, which are San Joaquin River water quality contaminants of significant concern. CVP water should not be committed to areas with serious drainage problems or lands that contribute to the selenium and boron water quality problem (notably, portions of the west side San Joaquin Valley).
- Recommendations:*
The FEIS should clearly describe the process and criteria for determining allocations of transfer water. For example, describe who makes the decision (Bureau of Reclamation or Exchange Contractors or both), and how and when the decision is made to allocate transfer water to the refuges, agriculture, and M&I contractors. Describe the criteria for determining the proportion of annual allocation to each type of recipient.
- The use of transfer water should maximize beneficial uses and minimize adverse effects of the transfer. The FEIS should explain whether there are procedures in place to preclude allocation of transfer water to lands that contribute to agricultural drainage problems or selenium and boron water quality problems.
- 9 2. The DEIS states that allocation of transfer water to San Joaquin Valley wildlife refuges for Level 4 refuge water will provide significant beneficial effects (pg. 6-21). Suitable water quality must be a component of refuge supplies (see Water Resources Comment #2). We observe that the DEIS future "no project" conditions assume that substitute refuge supplies would be purchased. However, there is no information regarding potential sources or quality of these alternative supplies.
- Recommendation:*
Given the significant beneficial effects of transfer water for the wildlife refuges, the FEIS should consider permanent dedication of a portion of transfer water of suitable quality to Level 4 water for refuges.
- 10 3. The DEIS states that water transfers out-of-basin are subject to the reduction in consumptive use/irretrievable loss criteria of the CVPIA, the 1993 Transfer Guidelines, and State law (pg. 2-18). However, these requirements are not well defined. As a result, it is difficult to determine the effect these criteria have on the allocation of transferred water.
- Recommendation:*
An explanation of "reduction in consumptive use" and "irretrievable loss" criteria should be provided in the FEIS, to supplement the quote provided from the

- 10 *Interim Guidelines for Implementation of Water Transfers.* It would be helpful to explain the purpose of these criteria; discuss how "reduction in consumptive use" and "irretrievable loss" are defined and measured; and explain how these criteria affect the quantities of water that can be transferred.
- 11 4. EPA scoping comments regarding funding, recommendations of the Environmental Water Account Science Review Panel, and impacts on the Environmental Water Account, are not addressed in the DEIS. We recommend the FEIS address these comments, if feasible.
- Recommendations:*
If feasible, funding needs and funding sources for Exchange Contractors' conservation measures and water users purchase of transfer water should be identified. The FEIS should also document applicable recommendations from the 2002 Environmental Water Account Science Review Panel, and describe how the project affects Environmental Water Account (EWA) assets and operations.
- Cumulative Impacts**
- 12 1. The proposed project is for a 10-year transfer program which transitions the current annual transfer program into a long-term transfer program. The Exchange Contractors have conducted annual transfers since 1999. The DEIS does not appear to incorporate into the environmental effects evaluation the past and present impacts and trends of the current annual transfer program.
- Recommendation:*
The FEIS cumulative impacts analysis should incorporate information on present and past effects and trends of water transfers by the Exchange Contractors.
- 13 2. The Westlands Irrigation District has proposed retirement of up to 200,000 acres and the Bureau of Reclamation has a land retirement program that could retire up to 7,000 acres (pg. 7-18). The proposed 10-year transfer program, which includes temporary fallowing of up to 20,000 acres/year of farm land, could have significant cumulative impacts to agricultural land use and a disproportionate impact on low-income and minority groups (pg. 9-6), if other large-scale land retirement programs were implemented at the same time.
- Recommendation:*
If there is a disproportionate impact to low-income and minority groups and agricultural land use caused by cumulative impacts of temporary fallowing of agricultural land, the FEIS should describe potential mitigation measures for these impacts.
- 14 3. Although the transfer program by itself might not have a significant cumulative effect on flows and sensitive species in Mud and Salt Sloughs, the DEIS states that phase out of the Grassland Bypass Project and other potential flow reductions could be cumulatively significant (pg. 6-25).

14

Recommendation:

The FEIS should describe possible mitigation measures for potential cumulative impacts to sensitive species from flow reductions in Mud and Salt Sloughs.

Biological Resources

15

1. The DEIS describes the regulatory requirement to consult with the US Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) pursuant to the Fish and Wildlife Coordination Act. A number of special-status and listed species may occur in the project area.

Recommendation:

The FEIS should disclose the status of consultation with FWS and NOAA Fisheries and issues of concern to these agencies, if any. For instance, describe if there are concerns with potential impacts to riparian habitat and the giant garter snake.

RESPONSE

U.S. Environmental Protection Agency – Lisa B. Hanf
August 13, 2004

USEPA-1

The proposed transfer program is independent of, but sometimes complementary to the other actions occurring in the San Joaquin River basin. For instance, the tailwater recapture component of the transfer program in effect will remove loading from the river. The Exchange Contractors are actively involved with or affected by the other programs occurring in the basin, including programs intended to restore and improve the quality of the San Joaquin River. See Section 4.2.3, Cumulative Effects, for additional discussion.

Section 1.3, Related Projects, has been supplemented with an explanation of the proposed transfer program and the other water quality improvement programs you and others have mentioned: TMDLs for salt and boron, agricultural drainage management, the Regional Board's irrigated lands conditional waiver requirements, the San Joaquin River DO management plan/studies, and San Joaquin River restoration/flow enhancement studies.

Concerning the direct or indirect effects to the wetlands areas due to the Exchange Contractors' conservation measures, these effects have already occurred through the events that have evolved since the early 1990s, and consequently have been recognized in the existing condition/no project settings. Moreover, transfers to refuges will improve, not adversely affect, water supply conditions at certain San Joaquin Valley refuges.

USEPA-2

The analysis evaluates the potential effects of the transfer program against an existing condition/no project backdrop that is reflective of current regulatory and environmental conditions. The ultimate outcome of programs and objectives of not yet completed processes would require speculation regarding their impact to the transfer program. If additional programs, objectives or requirements become implemented during the tenure of the transfer, the transfer will necessarily consider those effects due to the annual transfer approval process. See Section 4.2.3, Cumulative Effects, and Section 1.3, Related Projects, for additional discussion.

USEPA-3

The blend of water currently reaching the wetlands areas from those sources/conveyances affected by the Exchange Contractors' transfer program is essentially in a static state as depicted by the existing condition/no project setting. The significant portion of the Exchange Contractors' transfer water has already been developed, and will either continue to be provided for transfer or alternatively be used within their own systems. The slight incremental increase in conservation efforts required to provide an additional level of transfers will likely only slightly reduce the water quality available to entities receiving water through conveyance from the Exchange Contractors, which will be at the same time a worsening of water quality to the Exchange Contractors' members themselves. In any event, the quality of water to be delivered to refuges pursuant to transfers under the proposed program will be no worse than water acquired from

other sources and delivered through the same conveyance system. No other conveyance system is available for most of the refuges to use. In addition, the water quality provided under this or any other program will be significantly better than what the refuges received in the pre-CVPIA condition.

USEPA-4

The San Joaquin River is heavily monitored. Existing monitoring includes District level monitoring in their canals and at major discharge points, through the Grassland Bypass Project, by the Regional Board. In addition, the SJRECWA is a member of the Westside San Joaquin River Water Quality Coalition and as such they have an approved water quality monitoring program under the Regional Board's Conditional Agricultural Waiver program.

The protocols used to predict and evaluate the effects of the transfers currently use readily available monitoring information from the DWR and the Bureau of Reclamation, e.g., flow, electrical conductivity and operation indicators. Additional information regarding other quality parameters such as selenium and boron are not incorporated into the protocols, but are inclusive in the other programs and activities within the basin within which the Exchange Contractors also interact.

USEPA-5

The interaction and the effects of the transfers, both from the development of water and the disposition of water, has been explained thoroughly in Section 4.2, in particular for the effects to New Melones releases and storage. The analysis of the potential effects of the transfers was constructed to determine the incremental effects regardless of New Melones' ability, or at times inability, to comply with objectives. A description of the existing condition is included in Section 4.1. A diagram of water distribution and flow is provided (see Figure 4-2). Concerning New Melones Reservoir operations, the Interim Plan of Operations (IOP) is attached to this response (following the public hearing transcript as Attachment E-1).

USEPA-6

No noticeable changes are expected to be experienced below Mendota Pool. Releases currently occur to meet the Exchange Contractors' diversions near Sack Dam. These diversions will continue to occur, except they may be slightly reduced due to the transfers. A discussion of the effects on Mud and Salt Sloughs is provided in Section 6.2.2.4 because of the potential for effects on special status species due to change in flow in these sloughs. The proposed program does not venture into alternative proposals to supplement river flows by using the river as conveyance, because Reclamation conveys water through existing facilities. Such proposals may be considered as related projects beyond the purposes of the proposed transfer. Furthermore, generally, the refuge distribution systems are not configured in a way that it is physically possible to deliver water from the San Joaquin River. Only East Bear Creek Unit has that capability.

USEPA-7

None of the conservation measures contemplated under the 10-year program will require a Section 404 permit.

USEPA-8

All transfers are subject to the water transfer policy of the Exchange Contractors and requirements contained therein to reduce impacts from the water transferred upslope. Priorities of who receives the transferred water are first based upon a willing buyer and willing seller basis. In addition, all transfers are at the discretion of Exchange Contractors Transfer Committee and full Board of Directors, and member agency Boards of Directors. On the Reclamation side, all transfers will be in compliance with CVPIA Section 3405 and Reclamation's Interim Water Transfer Guidelines. Proposed transfers will be submitted to Reclamation in advance for review and approval and determination of any conditions. However, Reclamation's review and approval does not extend to the question of to whom or on what terms and conditions the Exchange Contractors' Board decides to sell water.

USEPA-9

The commenter's recommendation is noted. The Proposed Project/Action would allow the Exchange Contractors to sell water to the Water Acquisition Program to meet Level 4 needs. It would not require permanent dedication of water for Level 4, and this has not been identified as an appropriate mitigation measure. There is no legal basis in CVPIA to require permanent dedication of water to Level 4 refuge supply. Transfers to refuges from sources other than the Exchange Contractors are beyond the scope of this program and will be covered by separate environmental documentation to the extent required.

USEPA-10

The CVPIA and the 1993 Transfer Guidelines speak for themselves and do not need further explanation. These do not affect the allocation of transferred water. They do define what water can be transferred under what circumstances. All transfers will be subject to Reclamation review and approval and will be in compliance with CVPIA Section 3405 and the Transfer Guidelines. For purposes of this program, the salient point is that Reclamation considers transfers within the Delta export service area (those CVP contractors served by the Tracy Pumping Plant) to meet the reduction in consumptive use criteria of CVPIA Section 3405. Transfers outside of this area must be based on a reduction in consumptive use or irretrievable loss or be groundwater substitution transfers.

USEPA-11

Comment noted and considered. The EIS/EIR focuses on the key physical impacts and socioeconomic impacts related to a physical change in the environment. Issues of project funding and EWA review activities are beyond the scope of this project. Concerning the EWA, the intent is to enable the EWA to be one of the purchasers of transfer water. To this end the subject document focuses on the impacts associated with water developed and transferred by the Exchange Contractors to the EWA.

USEPA-12

The effects of the historical transfers are briefly discussed in Section 4.1.2, within the discussion of the existing environment. Essentially the past transfers and other activities have evolved the operations of the Exchange Contractors to a setting that is indicative of the existing condition/No Project setting.

USEPA-13

The incremental effect of the proposed water transfer program is insignificant. Consequently, it would not have a disproportionate impact to low-income and minority populations as explained in Section 9.2.3.

USEPA-14

Comment noted. The project proponents are not responsible for mitigation of cumulative effects that are attributable to other activities and projects. The project's contribution to this impact is less than significant and, therefore, no mitigation is required.

USEPA-15

Reclamation will complete the required consultation by the time the ROD is executed. The Service's letter of concurrence is to be attached to the ROD.

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE LETTER –
STEVE SHAFFER, DIRECTOR**

State of California

RECEIVED

Memorandum

AUG 05 2004

To: Ms. Joann Toscano
Exchange Contractors
P.O. Box 2115
Los Banos, CA 93635-1122

Date: July 27, 2004

S.J.R.E.C.W.A.

Place: Sacramento

Phone: (916) 657-4956

Mr. Bob Eckhart
US Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

From: **Department of Food and Agriculture**

Steve Shaffer, Director
Office of Agricultural and Environmental
Stewardship

Subject: Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005-2014 – **SCH #2003101106**

The California Department of Food and Agriculture (Department) has reviewed the DEIS/EIR for the proposed land fallowing project. The Department's mission is to promote and protect California agriculture, including the natural resources upon which it depends. From this perspective, we offer the following comments on the project's impacts on agricultural land resources...

As stated in the DEIS/EIR, the project would consist of the transfer of up 130,000 acre-feet of water during non-critical years, including up to 80,000 ac-ft. of developed water made available through conservation measures and groundwater, and up to 50,000 ac-ft. from temporary land fallowing annually from the Exchange Contractors to other Central Valley Project contractors, to Reclamation for wildlife refuge water supply, and/or for the CALFED Environmental Water Account. During critical years, up to 50,000 ac-ft. would be made available only through land fallowing.

Alternatives

1

On page 2-20 of the DEIS/EIR, water development alternatives are briefly discussed. Please provide additional explanation as to why additional groundwater pumping was deemed unnecessary. From a resources management perspective, additional groundwater pumping may be preferable to crop idling/land fallowing. What is the Exchange Contractor's policy with respect to conservation measures that makes additional conservation impractical?

Direct and Cumulative Agricultural Land Impacts

2

The DIES/EIR on page 7-17 states that the land would remain in agricultural use over the long term and conditions of the California Water code (Sec. 1745.05(b)) would be

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Comments and Responses

Ms. Joann Toscano
Mr. Bob Eckhart
July 27, 2004

- 2 met. This is used to establish a threshold of significance that less than 10 percent of land would be fallowed temporarily. The Department disagrees with this method of establishing a threshold. The cited state legislation has no direct nexus to CEQA and establishing thresholds of significance for its purposes.
- 3 The Department disagrees with the conclusion of the DEIS/EIR that the project will not have a significant adverse impact on agricultural resources. The Department also disagrees with the conclusion on page 14-8 that the temporary idling of approximately 20,000 acres of land would not significantly affect prime and unique farmland. The project will result in an average annual idling of 20,000 acres of farmland over a nine-year period. Removal of a secure water supply from high quality agricultural soils results in the conversion of prime agricultural land to non-prime lands. Furthermore, there is no assurance that after the period of the transfer is concluded, that the "temporary" land fallowing will not continue under a new contract. The Department requests that the Natural Resources Conservation Service be consulted to determine appropriate compliance with the Farmland Protection Policy Act for this project.
- 4 The Department does concur with the acknowledgement on page 7-18 that in conjunction with the Bureau of Reclamation plan to permanently retire 7,000 acres by 2007 and the Westlands Water District's proposal to retire nearly 200,000 acres of farmland, the cumulative impact of these three programs would significantly increase the long-term, in some cases permanent, loss of farmland available for agricultural production, and thus constitute a cumulatively considerable and potentially significant effect. We recommend that the subsequent environmental document acknowledge this impact as a significant adverse environmental impact and include mitigation measures to avoid, reduce or lessen the impact. It should be noted that these are not the only project in the region that may add to cumulative impacts to the loss of highly productive agricultural land. Urban and single-purpose habitat development projects also impact agricultural land and water resources.
- 5 To document the significance of the impact, we suggest that the subsequent environmental document include an analysis of the proposed fallowing compared with the current level of fallowing practiced for water conservation, erosion control, disease control, soil fertility, soil conservation, or other agronomic-motivated reasons by growers in the Valley. This comparative analysis will help to quantify the net impact of the proposed fallowing program on the region's and State's agricultural land resource base.
- 6 California is experiencing rapid population growth pressures on agricultural land and water resources. The California Department of Conservation documents the annual loss of irrigated farmland to urbanization as being in the tens of thousands of acres. At the same time, agricultural land is being retired for wildlife habitat at a significant rate. Further, agricultural land is being taken out of production indirectly via the transfer of water for non-agricultural uses as proposed by this project. At a project scale, these

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- 6 conversions may appear insignificant. The DEIS/EIR takes this position by concluding that the small percentage of agricultural land impacted by the project relative to the state and county-level supply of agricultural land is insignificant.
- Mitigation
- 7 We recommend that the DEIS/EIR analyze the potential that land from the fallowed fraction will return to agricultural use in 10 years. In other words, what is the likelihood that at the end of 10 years of further population growth in the Santa Clara Valley Water District service area there will no longer be a need for the Exchange Contractors' irrigation water, or that other sources of water in the Exchange Contractors' service area will be developed?
- 8 If this evaluation shows that land is *not* likely to be returned to agricultural uses, then the alternative for a more strategic land retirement and fallowing should be given greater consideration as a viable alternative, perhaps combined with a smaller scale rotational fallowing component that is designed to address soil fertility and conservation goals, as well as "water saving" goals.
- 9 In non-critical years, a hierarchy of water acquisition methods could be established where land fallowing could be identified as a method of last resort to acquire the water needed for transfer in that year.
- 10 Water conservation measures for refuges could be put in place that could reduce in some years the water demand for these facilities.
- 11 We recommend that the individual contracts include language that specifies participating growers will adopt USDA-Natural Resource Conservation Service/Resource Conservation District-approved conservation plans for their farms, at least for the control of soil erosion on fallowed lands. With the recently enacted U.S. Farm Bill, new conservation programs are now available that may provide financial and technical assistance for farm- and valley-level conservation planning and implementation to leverage MWD payments for soil conservation.

Thank you for the opportunity to review and comment on the DEIS/EIR for the proposed land management project. If you have questions on our comments, or require information or assistance in responding to them, please call me at (916) 657-4956.

RESPONSE

California Department of Food and Agriculture – Steve Shaffer, Director
July 27, 2004

DFA-1

The Exchange Contractors and the member entities have aggressive conservation based policies, economic incentive programs aimed at on-farm conservation, and expend substantial annual budgets on conservation oriented capitol improvements. As to the question on whether additional groundwater pumping should be utilized; the groundwater assets within the Exchange Contractors is already intensively monitored and managed in order to maximize the conjunctive use of the resource. Also, groundwater is generally more expensive to develop than other conservation water development practices.

DFA-2

Comment noted and considered. The determination of a threshold of significance for the lands that would be temporarily idled was based on 10 percent of the total Exchange Contractor's acreage, relying on professional judgment that this amount of change was appropriate for a "land-based" evaluation in a large setting such as the 240,000-acre service area. In addition, the conditions of the Water Code and Reclamation's Interim Guidelines would also be met, which adds to the determination of significance rather than being a threshold criterion.

Project impacts are assessed based on a threshold of significance that is established by the Lead Agency. Determining whether a project may have a significant effect on the environment should be based on scientific and factual data; however, an ironclad definition of "significant effect" is not possible because the significance of an activity may vary with the setting (CEQA Guidelines Section 15064(b)). According to the CEQA Deskbook (2001 Supplement), disagreement among experts concerning the significance of a proposed project's environmental effect does not require the Lead Agency to follow the evidence concluding an impact is significant. In contrast to the "fair argument" test used when a Lead Agency is deciding whether to prepare an EIR or Negative Declaration, when experts disagree on impact significance in an EIR, the Lead Agency need only summarize the main points of disagreement and explain its choice of expert opinions. Using a 10 percent change from the existing condition for a land use/land management issue within a large area (240,000 acres) is a reasonable level of significance.

DFA-3

The comment reads that the project "will result in an average annual idling of 20,000 acres of farmland over a nine-year period. Removal of a secure water supply ... to non-prime lands." That is not accurate for at least two reasons. First, the maximum amount of land that could be idled in any single year is 20,000 acres. However, given normal variability in hydrology, cropping rotations, market conditions, and other factors, it is very unlikely that an average of 20,000 acres would be idled each year.

Second, the land that can be idled will be rotated among the approximate 240,000 acres of annual cropland within the San Joaquin River Exchange Contractors Water Authority service area. Any

land idled can only be idled for three consecutive years, and then must be put back into production. Moreover, by the San Joaquin River Exchange Contractors Water Authority provisions on rotational fallowing, land must be maintained when idled in order to preserve maximum productivity when returned to production. These provisions include the use of cover crops, weed control, pest control, and continued operation of tile drains, where installed, for drainage. Thus any prime farmland would be maintained as prime land and not allowed to degrade to non-prime condition.

DFA-4

Comment noted and considered. The larger issue of land retirement or permanent loss of productive farmland is a significant cumulative impact resulting from insignificant actions such as the Exchange Contractor's proposed rotational fallowing combined with other insignificant and significant actions if these actions occurred in the short term. Lands would be retired voluntarily for the CVPIA program, and the Westlands proposal would occur over several years, with some lands coming back into production with the provision of drainage service. One problem with addressing cumulative impacts is that the responsibility for mitigation goes beyond the lead agencies for the proposal at hand, and rests with other actions contributing to cumulative effects. Environmental documents for the other land retirement programs are the place for identification of appropriate mitigation of their action-specific effects. For the exchange/transfer proposal addressed in this EIS/EIR, the responsibility is to identify specific effects of the Proposed Action, identify cumulative effects, and address how discrete effects of the Proposed Action could be mitigated.

Concerning the comment that there needs to be a discussion of urban and single-purpose habitat development projects, the long-term trend of loss of agricultural lands would more appropriately be discussed under the affected environment. Section 7.1.1.1, Agricultural Land Use, has been supplemented to include information contained in response DFA-6 below on urban growth conversion of agricultural land to urban uses. For wetland habitat areas, the 1989 *Report on Refuge Water Supply Investigations* (Reclamation 1989) describes the long-term trend of loss of wetlands in the Central Valley, from about 4 million acres in 1850 to about 300,000 acres in the 1980s, which is pointed out in Section 1.2.1 of the EIS/EIR. This loss is due to conversion of wetlands to agricultural and urban uses, prior to recent legislation designed to prevent the further loss of wetland habitat.

DFA-5

Current fallowing by the Exchange Contractors member districts for normal practices is approximately 1 percent of the total acreage within the service area of 240,000 acres or 4,300 acres on average in the past 5 years with a range of 525 to 8,300 acres. This would continue under No Action/No Project. The rotational fallowing of up to 20,000 acres would be in addition to this fallowing under normal crop/land management practices. Overall, temporary fallowing would be less than 24,000 acres or no more than 10 percent of the service area.

DFA-6

The DEIS/EIR analyzes the effects of water transfers, not only to non-agricultural uses, but to agricultural uses as well. The transfer to other agricultural areas would, on a net basis, not

damage California agriculture at all and, in fact, may add to the overall value of crops produced. This scenario is particularly likely if the land to which the water is transferred is used for permanent rather than annual crops, given that any land idled in the San Joaquin River Exchange Contractors Water Authority service area would have grown annual crops.

Urban growth will continue in California, and conversion of agricultural land to urban purposes will continue as well with or without the proposed transfer. The last California Water Plan published by the California DWR, 160-98, showed that between 1995 and 2020 cropland in California was projected to decline by 325,000 acres. The South Coast region was projected to decline by 123,000 acres, Tulare Lake Basin by 142,000 acres, and San Joaquin region by 70,000 acres.

A recent publication by the California Department of Finance, Demographic Research Unit, shows that from 2000 to 2050 total population in the State is projected to grow by 9.4 million people. Of this total, approximately 0.7 million are projected to be in the four-county area making up the service area of the San Joaquin River Exchange Contractors Water Authority. Fresno is projected to grow the most rapidly, by about 0.3 million, followed by Stanislaus at 0.2 million and Merced at 0.15 million. While projections for individual cities are not available from the same source, it is likely that most of the urban growth in the San Joaquin Valley and elsewhere will be in or proximate to population centers, which for the San Joaquin Valley include Fresno, Merced, and Modesto.

DFA-7

The water transferred by the San Joaquin River Exchange Contractors Water Authority may be to agricultural or non-agricultural uses. Any water transferred to Santa Clara Valley Water District will not be growth-inducing and will be only to meet shortages in the District's other CVP supplies on an annual basis. Moreover and relatedly, the agreement with Santa Clara Valley Water District is annually severable, and that District consequently will be unable to meet projected growth in water demands based on water transferred from the San Joaquin River Exchange Contractors Water Authority.

DFA-8

As discussed above, land idled as part of this proposed program will be maintained to sustain productivity when returned to production after a maximum of three years. The proposed program is not a policy to allow permanent retirement of cropland, but rather the temporary idling of land for up to three years, on a rotational basis, throughout the San Joaquin River Exchange Contractors Water Authority service area subject to district policies that limit the amount of fallowing in each district and that provide an economic incentive to rotate the affected lands. Therefore, the land will be put back into production during the term of the proposed 10-year transfer.

DFA-9

Comment noted and considered. The Exchange Contractors will determine on a year-to-year basis the sources of water to be available for transfer. Their determination is based on the circumstances at the time.

DFA-10

Regarding “reducing water demand” at the refuges, Reclamation has no authority to unilaterally reduce the contractual amounts of water provided to the refuges. The quantities are established by law (CVPIA Section 3406(d)). The refuges are actively developing conservation and best management practices to improve their water use efficiency, but those actions are not within the scope of this project.

DFA-11

Comment noted.

DWR LETTER – PAULA J. LANDIS, CHIEF

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF WATER RESOURCES

SAN JOAQUIN DISTRICT
3374 EAST SHIELDS AVENUE
FRESNO, CA 93726-6913



August 2, 2004

Mr. Bob Eckart
Bureau of Reclamation
2800 Cottage Way, MP-150
Sacramento, California 95825

Subject: Review and comments of State Clearinghouse # 2003101106, Water Transfer Program for the San Joaquin River Exchange Contractor Water Authority 2005-2014

Dear Mr. Eckart:

Thank you for the opportunity to comment on this important program. The Department of Water Resources commends the efforts of San Joaquin River Exchange Contractors on the development of local water sources as a way to help meet the local water supply as well as State and environmental water needs. We have the following comments:

- 1 Water quality impacts in the San Joaquin River (SJR): Alternative A and C (Preferred alternative) will augment the water supply to wetlands refuges by as much as 65 percent of a proposed full level 4 water increment. This will likely result in an increase of salt-boron laden wetlands drainage flows into the SJR, therefore adversely impacting its water quality. Grasslands Bypass Project monitoring data from 2001 to 2003 indicate that wetlands drainage contribution in these three years range about to 40 percent of salt loads into the SJR above Merced River.
- 2 Further degradation of water quality in the SJR may require additional flow releases from New Melones to meet water quality objectives at Vernalis. The EIS/EIR should disclose the management practices and mitigation measures proposed by the wetlands dischargers to offset the adverse water quality impacts in the river the additional discharges will create. The San Joaquin Real Time Water Quality Monitoring Program could be a very useful tool for timing refuge releases.
- 3 2) Groundwater: Under the proposed water transfer program up to 20,000 acre-feet per year of groundwater will be pumped for transfer. The SJR Water Exchange Contractors service area is located within Fresno and Madera Counties both of which have groundwater ordinances. The SJR Exchange Contractors indicate in the draft

Appendix E Comments and Responses

Mr. Bob Eckart
August 2, 2004
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- 3 EIS/EIR that they have signed an MOU with Fresno County that exempts them from regulation of groundwater resources within Fresno County. For verification, a copy of this MOU should be appended to the EIS/EIR. However, the draft EIS/EIS does not address how it plans on complying with the Madera County groundwater ordinance. This issue should be corrected in the final document.
- 4 3) Subsurface Drainage Flows: The draft EIS/EIR indicates that approximately 28,000 acres of the Exchange Contractors service area is a part of Grasslands Drainage Area which is a regional entity formed to reduce discharge of subsurface drainage waters to the SJR. This Exchange Contractors service area could be contributing salt loading from the Grasslands Drainage area discharge flows into the SJR through the Grasslands Bypass Project.
- 5 The proposed water transfer program provides an opportunity to improve water quality in the SJR by reducing discharges if the proposed groundwater pumping and land fallowing are targeted in the drainage impaired area. The combination of fallowing 20,000 acres and groundwater pumping in the drainage impaired areas would reduce a significant amount of salt, boron, and trace element loads from subsurface drainage flows into the SJR. A discussion of this issue is warranted in the report.
- 6 4) Conservation and Efficiency Measures: Several times, the statement is made that up to 80,000 acre feet of water is going to be made available for transfer through "conservation measures including but not limited to tail water recapture, savings to a saline sink, other efficiency measures, and groundwater pumping." "Conservation" and "efficiency measures" do not necessarily produce transferable water. For example, although tail water recapture may improve efficiency, no transferable water is produced. The amount of water used by the crop does not change and normally neither does the amount of irrigation water applied. The change occurs in the amount of water diverted from the source (less) and a lowering of drainage returning to the source as tailwater. Overall water use stays the same. The "other efficiency measures" referred to could fit into a similar category. The document should include a discussion regarding the process Reclamation will use to verify transferable water.
- 7 Page 6-18, first sentence: "...foraging Swainson's hawks in the service area and vicinity." If the 5 percent of the habitat acreage that is idled were to be concentrated in critical foraging habitat when birds are on the nest and adults forage nearby, population impacts could occur.
- 8 Page 6-18, third paragraph, last sentence: "...not a significant impact compared to existing conditions." If reductions were to continue year after year, splittail and

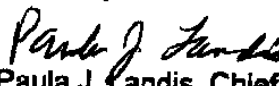
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- 8 hardhead populations might be impacted as they would not be given a chance to recover from below-normal flows.
- 9 Same comment for Page 6-22, last paragraph, first sentence: "normal range of fluctuations that occur during normal water years and dry/below normal years (Table 6-3). If these reductions in flow are sustained, aquatic species and habitats may be impacted.
- 10 Page 6-24, Section 6.2.3: Please describe how wetlands impacts can be neutral.
- 11 Page 6-24, Section 6.2.3.1, last sentence: "...reduce crop types that are utilized by foraging raptors." This sentence needs clarification, also where are the 7,000 acres located?
- 12 Page 6-27, first paragraph, second-to-last sentence: "...not significantly impact aquatic habitats." A consistent, year-to-year reduction due to tailwater recovery may impact aquatic habitats as cumulative low-water may not give populations a chance to recover.
- 13 Section 8.2.2.1, first sentence in second paragraph: Please define what is meant by "output" and "income". These terms are used from this point onward in text and tables, but no clear definition is apparent. Why is output consistently much higher (in all tables) than income?

If you have any questions, please contact Jose Faria of my staff at (559) 230- 3339.

Sincerely,


Paula J. Candis, Chief
San Joaquin District

Enclosure

cc: Ms. Nadell Gayou
Department of Water Resources
Division of Planning and Local Assistance
Post Office Box 942836
Sacramento, California 94236-0001

Mr. Bob Eckart

August 2, 2004

Page 4

**cc: Governor's Office of Planning
and Research
State Clearinghouse
Attn: Analyst
1400 Tenth Street
Sacramento, California 95812**

**Jose Faria
Department of Water Resources
San Joaquin District
3374 East Shields Avenue, Room A-7
Fresno, California 93726**

RESPONSE

DWR – Paula J. Landis, Chief
August 2, 2004

DWR-1

This analysis and this proposed project are only concerned with the delivery of a portion of the Incremental Level 4 supply. The commenter's citation of incremental changes in deliveries is associated with the full Level 4 supply. With the project, the Level 4 supplies to the refuges may increase from about 75 percent to 100 percent. Therefore, the data referenced appears to be based on full refuge water deliveries (Level 2 and Level 4) and therefore does not provide any indicator of the impacts of this Proposed Action.

The San Joaquin Valley refuges are actively participating in the San Joaquin River Water Quality Management Group.

DWR-2

Section 13 of the EIS/EIR indicates that in some cases, Reclamation's response to how the refuges manage their water supply will be provided by the release of water from New Melones, as part of Reclamation's obligation to meet Vernalis flow and water quality objectives. Reclamation does not look upstream to determine the source of water quality impacts on the San Joaquin; New Melones is operated in reaction to the conditions at Vernalis or other compliance points, in accordance with the Water Quality Control Plan, D-1641, the San Joaquin River Agreement and the New Melones IOP.

DWR-3

No groundwater will be developed from within Madera County for transfer.

DWR-4

Comment noted.

DWR-5

Comment noted. The Exchange Contractors target conservation projects, called source control, that reduce discharges from Grassland Drainage Area lands.

DWR-6

The comment confuses transfers under State law with transfers among CVP contractors within the CVP Service Area. As long as the water transferred by the Exchange Contractors stays within the CVP service area, no action by the State Water Resources Control Board is required. Transfers among CVP contractors will be in compliance with CVPIA Section 3405 and Reclamation's Transfer Guidelines. Certain types of transfers (transfers within the CVP Delta

export service area) are deemed to meet the requirements of reduction in consumptive use or irretrievable loss. Reclamation applies this provision to all transfers among CVP contractors, including the Exchange Contractors, within the Delta Export Service Area, meaning generally those CVP contractors served by the Tracy Pumping Plant because such transfers do not change the amount of pumping at Tracy and do not affect the total amount of water delivered in this area. The Exchange Contractors have historically used 100 percent of their substitute water supply. Increased tailwater reuse and other conservation measures result in a decrease in the amount of substitute water delivered to them which then can be made available to others, under the CVPIA transfer rules. Transfers to the Friant service area or to the State Water Project service area would be subject to the reduction in consumptive use requirements or irretrievable loss (or could be by groundwater substitution) of CVPIA and the Transfer Guidelines.

DWR-7

Idling is defined as rotational crop fallowing and the exact location of idled land is not known and would change from year to year. However, even if the entire area of idled high quality raptor foraging habitat (7,000 acres) were located in the foraging radius of a nest site, the temporary loss would be approximately 10 percent of the total foraging habitat available within a typical 10-mile foraging range. This loss would require less than a half-mile increase of the typical foraging radius from a nest site.

This estimate is based on the CDFG protocol for Swainson's hawk mitigation, which assumes that this species typically forages within 10 miles of a nest site (approximately 200,000 acres). A hypothetical Swainson's hawk nest site in the Exchange Contractors service area would have a maximum of 70,000 acres of high quality foraging habitat in this 10-mile radius (35 percent of 200,000 acres as described on page 6-17). Therefore, the idled foraging habitat would be 10 percent of the total foraging habitat available (7,000 acres divided by 70,000 acres). It is assumed that the temporary loss of foraging habitat might be offset by an increase in the average foraging radius of less than 0.5 mile. This change is not likely to adversely affect a nesting pair of Swainson's hawks because this species is known to forage as far as 20 miles in search of habitats with abundant prey (Woodbridge 1998).

DWR-8

The significance determination for aquatic habitats compares the proposed Alternative A to the existing conditions. The available historic data for Mud and Salt sloughs document seasonal flow reductions during dry/below normal years. Therefore, under existing conditions, consecutive dry/below normal years are expected to result in consecutive years of flow reductions in the absence of the Proposed Project. Habitat changes associated with Alternative A during dry/below normal years would not be significantly greater compared to existing conditions and do not represent a significant impact as defined in the significance criteria.

As noted in the third paragraph on page 6-16, hardhead and Sacramento splittail occur in other waterways with substantial seasonal fluctuations. Seasonal flow reductions would have been typical of habitat conditions in sloughs throughout the Central Valley prior to the widespread development of irrigated agriculture and the reductions anticipated under Alternative A would be within the range of existing variations in Mud and Salt sloughs.

DWR-9

Reductions in flow of varying amounts would be sustained for consecutive years, depending on the amount of tailwater recovery and land fallowing, with no tailwater recovery in critical years. The available data indicates that similar reductions would occur even under existing conditions because tailwater recovery is a normal procedure during noncritical years. Therefore, the associated effects to aquatic species and habitats are not substantially different from existing conditions.

DWR-10

All of the alternatives include the maintenance of existing or enhanced water deliveries to refuge wetlands. It is assumed that Reclamation will acquire additional water supplies to maintain existing water deliveries to refuge wetlands even if water is transferred out of basin or utilized primarily for agriculture. No reductions in the area, quality, or wildlife utilization of wetlands are anticipated under any of the action alternatives. Therefore, the Proposed Project does not contribute to a cumulative adverse effect on wetlands. Increased water deliveries to wetlands could result in a beneficial impact to refuge wetlands, but these impacts are not considered to be cumulatively significant.

DWR-11

Crops that provide high-quality foraging habitat for Swainson's hawks and other raptors currently occupy approximately 35 percent of the cultivated land in the Exchange Contractors service area. For purposes of the cumulative impact evaluation, it is assumed that 35 percent of the 20,000 acres (7,000 acres) that could be idled under each of the action alternatives would be high-quality foraging habitat. However, the actual total would probably be less because the grains and alfalfa that provide the best foraging habitat are also the least likely crops to be idled because they are salt tolerant and require less irrigation.

When considered with the cumulative loss of foraging habitat that might occur in the Westlands WD, the total change in foraging habitat is not likely to adversely affect the population of Swainson's hawks or result in long-term or permanent loss of important habitat. Therefore, the potential land idling during critical years is not considered to be a cumulatively significant impact to Swainson's hawks or other raptors.

DWR-12

This comment is addressed in responses DWR-8 and DWR-9.

DWR-13

"Output" is a single number that represents the value of an industry's total production. Data sources include U.S. Bureau of the Census, Bureau of Economic Analysis, and Bureau of Labor Statistics. Output is comprised of purchases from other industries (termed interindustry purchases) and "value added" components. Value added is the contribution of an industry to the overall gross product for the region and is equal to the gross output of the industry less its purchases from other industries. Value added includes employee compensation, proprietor

income (payments to self-employed individuals), payments for rents or royalties, and taxes (including property taxes, fees, licenses, and sales taxes). “Income,” as used in the socioeconomic analysis, includes employee compensation and proprietor income.

CITY OF STOCKTON LETTER – MARK J. MADISON



CITY OF STOCKTON

DEPARTMENT OF MUNICIPAL UTILITIES

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S.J.R.E.C.W.A.

August 2, 2004

VIA FACSIMILE and U.S. MAIL

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**CITY OF STOCKTON COMMENTS TO DRAFT EIS/EIR WATER TRANSFER
PROGRAM FOR THE SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER
AUTHORITY 2005-2014 SCH# 2003101106**

Thank you for the opportunity to comment on the DEIS/EIR. Our main concerns involve the reduced flows in the San Joaquin River and the proposed mitigation by way of releases from the New Melones Reservoir.

No Action Alternative

1. Under the No Action Alternative, the DEIS/EIR assumes that the Exchange Contractors will conserve the same amount as they would under the Action Alternatives, using conserved water on their own lands, and this would reduce groundwater pumping. We cannot determine whether the document assumes full entitled deliveries to Exchange Contractors in addition to use of conserved water under the No Action Alternative (it should). The assumption of full use of conserved water in this case is counter-intuitive. Why would the Exchange Contractors and their growers elect to recycle salts in their systems and allow shallow groundwater to rise, exacerbating a chronic drainage problem?
2. Page 4-15 states that existing/No Action conditions include transfers. This statement is in conflict with earlier descriptions of the No Action Alternative.
3. The DEIS/EIR states that the Exchange Contractors have been the major or only supplier of Level 4 refuge water. In the absence of the water transfer program, Reclamation would have to obtain the Level 4 water from other water supply sources. The DEIS/EIR did not address the impacts of securing water from other sources, nor did it identify what other sources were available and the quantities



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- 3 of water from each of those sources. As an example, the DEIS/EIR states that under the No Action Alternative, there would be no impacts to Delta water supplies. If the Level 4 water does not come from Delta supplies, where would it come from?
- 4 4. The DEIS/EIR did not evaluate the impacts of not delivering Level 4 water to the refuges.
- 5 5. In the absence of the project, existing conditions would not be the current transfer program. That program is expiring this year; in 2005 when the proposed project is to start, the baseline would be no transfer water. In general, the logic of the no project and no action alternatives is not well explained. Please clarify whether any of the activities assumed to occur under no action or no project would require discretionary actions or themselves require compliance with CEQA, NEPA, the ESA, or other laws and if so, explain why these are considered part of the no project or no action alternative.
- 6 6. Under the No Action Alternative, the DEIS/EIR states that the Exchange Contractors would receive their full deliveries. The DEIS/EIR does not fully analyze the impacts of the No Action Alternative. If the baseline includes 63,635 AF of tail water recovery, the Exchange Contractors are receiving their full delivery of 845,000 AF of water, and the refuges are receiving 129,000 AF of Level 4 supplies, where is the additional water going? The DEIS/EIR states that water recovered from tail water systems would be "integrated" into the existing delivery system and less groundwater would need to be pumped. If you decrease pumping and add 129,000 AF of water to the refuge supply the net effect will be that groundwater levels will increase, accretions to the river will increase, and high water table/drainage conditions will deteriorate. These effects were not analyzed in the DEIS/EIR.

Alternatives A, B, and C

- 7 1. The analysis computes the impacts of alternatives against water quality and quantity objectives at Vernalis, rather than against the No Action alternative. An example is Table 4-13. Action alternatives must be evaluated against the No Action alternative for valid impact analysis.
- 8 2. Table 4-15 shows that Delta Export CVP supplies would be reduced by the amount of conservation savings. Therefore, Delta Export CVP water transfer recipients would have to cover this loss with the transfer before seeing any

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- 8 benefit. If the transferred water were to go to refuges or recipients outside of the San Joaquin River drainage, the Export CVP contractors would be negatively impacted.
- 9 3. Under some scenarios, the DEIS/EIR indicates that there would be impacts to water quality at Vernalis under each of the alternatives. The proposed mitigation is additional releases from New Melones. The New Melones project is already over-subscribed and cannot afford to make additional releases. Furthermore, mitigation for impacts caused by water transfers is not an authorized purpose of the New Melones project. With all of the obligations that New Melones currently has, including fish flows, water quality, CVP water supply contracts, what will be the priority of mitigation releases? Will Reclamation make releases to mitigate impacts caused by the water transfer ahead of its obligations to the CVP contractors?
- 10 4. Water transfer recipients are limited to Delta Export customers and refuges, both inside and outside of the San Joaquin River drainage basin. Because San Joaquin County CVP contractors have weathered significant delivery shortages, San Joaquin County CVP contractors should be listed as potential recipients of the transferred water.
- 11 5. The document states in numerous locations that New Melones Reservoir (NMR) is operated to meet water quality and quantity objectives at Vernalis under the 1997 Interim Plan of Operations. The document assumes that the Interim Plan of Operations will remain in force, and represents a valid basis for impacts. San Joaquin County CVP contractors have objected to the Interim Plan of Operations because it has impacted them disproportionately to other CVP contractors. The long term plan of operations for the Stanislaus River should resolve the inequity in contract deliveries, and should include water quality objectives for points along the San Joaquin River between Mendota Pool and Vernalis. Impact analysis in the EIS/R should be modified to reflect contract delivery parity.
- 12 6. Under some scenarios, the DEIS/EIR indicates that there would be reductions in Vernalis flows under each of the alternatives, but claims that such flow reductions would be less than significant. Any reduction in flows will have significant impacts. Already in 2004, there were insufficient flows in the San Joaquin River and the South Delta. This condition led the Bureau of Reclamation to release additional water from New Melones in an effort to improve the situation. In light of this fact, it would be unreasonable for the Exchange Contractors to solely rely

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- 12 upon Bureau releases from New Melones to mitigate for reductions in flows resulting from the proposed water transfer.
- 13 7. Page 4-16, and 4-17 state that in certain months, there is no impact to NMR because it would be tasked with mitigating anyway. This implies that no matter what new actions take place in the San Joaquin River basin, NMR is tasked with mitigating. The action alternatives must be evaluated against the No Action Alternative, and all impacts revealed.
- 14 8. The DEIS/EIR improperly assumes that water quality impacts of the proposed projects or alternatives would be limited to changes in EC at Vernalis. The proposed project and alternatives would result in decreases if flow at Vernalis. In turn, this will result in decreased flows in the lower San Joaquin River and Stockton Deep Water Ship Channel (DWSC), and impacts to the quality of those waters. Further analysis is required to evaluate changes in flow below Old River and the resultant project-specific and cumulative impacts to water quality. Among the water quality parameters of greatest concern is dissolved oxygen (DO). The DWSC frequently experiences low DO conditions, including DO levels below water quality objectives adopted for the protection of aquatic life. The DWSC thus is listed as an impaired water body on the State's list of impaired waters under section 303(d) of the Clean Water Act. Reduced flow through the DWSC has been identified as a major factor causing the impairment. See, for example, Draft Final Staff Report, Amendments to the The Water Quality Control Plan, Sacramento and San Joaquin River Basins, Control Program for Factors Contributing to the Dissolved Oxygen Impairment in the Stockton Deepwater Ship Channel (CVRWQCB, 24 May 2004). Any additional decrease in flow or increase in oxygen-demanding substances may exacerbate the impairment and impede the substantial ongoing effort to address the DO issue. The impacts and cumulative impacts should be evaluated, and mitigation provided for any potentially significant impacts. Changes in the quantity or timing or quality of flow may also affect other water quality parameters below Vernalis, including but not limited to toxic pollutants, salinity or water temperature.

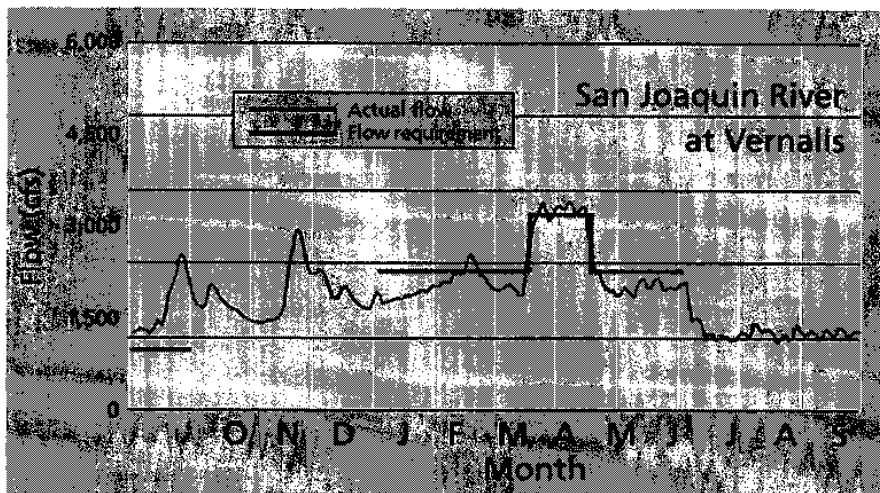
Mitigation Monitoring and Reporting Program

- 15 1. Section 13.3 states that the Interim Plan of Operation is another measure available to Reclamation for mitigation of impacts. The Interim Plan of Operation does not include water for mitigation resulting from water transfers. The Interim

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Plan of Operation already fails to meet existing requirements—how do the Exchange Contractors and Reclamation propose to squeeze additional water from the project to mitigate for the water transfer program? As the chart below shows, New Melones failed to meet the Vernalis flow objectives throughout most of 2003.



Actual flow on the lower San Joaquin River compared to minimum flow required by the state for water quality and fish protection in Water Year 2003. Data sources: California Department of Water Resources (DAYFLOW), State Water Resources Control Board.

Source: The Bay Institute, Ecological Scorecard, The Year In Water 2003 (2004).

2. Section 13.3.1 states that the United States and the refuge entities will be responsible for mitigation of impacts caused by refuge deliveries. As the lead agency, the Exchange Contractors is responsible for identifying and carrying out the proposed mitigation. The Exchange Contractors have no authority or control over the United States government. How can the Exchange Contractors guarantee that the proposed mitigation actually takes place? 14 CCR § 15126.4(a)(2) states that "mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." The Exchange Contractors have no enforceable mechanism to require the United States to comply with the proposed mitigation measures.

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- 17 3. Section 13.3.2 states that the current 5-year program has not identified significant impacts. The environmental documents that were prepared for the 5-year program may not have identified impacts, but impacts have occurred in recent years to the San Joaquin River system. The most notable example has been the increase in salinity as a result of refuge water releases to the river. As a result of Level 4 deliveries to the refuges, salinity has increased at times of the year when previously salinity was not an issue. This DEIS/EIR ignores current conditions.
- 18 4. Section 13.3.3(5) states that the Exchange Contractors "...will not be responsible for mitigation of impacts to the CVP/SWP, including impacts if any to carryover storage, in the year of the transfer." Does this include impacts to New Melones carryover storage? The Exchange Contractors cannot simply refuse to mitigate for impacts caused by their proposed project. The section then goes on to state that impacts to New Melones reservoir "will be resolved during the transfer approval process in the *following* year." (Italics added.) The Exchange Contractors cannot wait to mitigate for impacts after they have occurred. CEQA requires that mitigation measures not be deferred until some future date. (14 CCR § 15126.4(a)(1)(B).)
- 19 5. Section 13.3.3(6) states that except for extraordinary circumstances, there will be no significant adverse impacts to New Melones carryover storage. This is contrary to the analysis in Chapter 4:
- The change in storage is potentially significant in its effect upon water supply allocations under New Melones Interim Plan of Operations. (DEIS/EIR, pp. 4-68, 4-70, 4-73, 4-74, 4-77, 4-79.)
 - Potentially significant adverse impact. (Table 4-61, p. 4-72; Table 4-62, p. 4-76; Table 4-63, p. 4-81.)
- 20 6. Section 13-4 describes the post-transfer process. The analysis reviews the transfer and the actual hydrologic conditions to determine impacts to hydrology and to New Melones Reservoir. Impact issues that need to be addressed and how they would be addressed are identified and resolved. This is a classic case of deferring the formulation of mitigation measures until some future date. CEQA requires that mitigation measures be identified now, not in the future, and that they be feasible, capable of being implemented, and be enforceable. They cannot be deferred until after the impact has already occurred.

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Again, we appreciated the opportunity to meet with you and to provide comments on the DEIS/EIR document.

If you have any questions, feel free to contact me at (209) 937-8700.



MARK J. MADISON
DIRECTOR OF MUNICIPAL UTILITIES

MJM:RLG:as

RESPONSE

City of Stockton – Mark J. Madison
August 2, 2004

STOCKTON-1

Under the No Action Alternative the Exchange Contractors would divert their full contract quantities. The Exchange Contractors beneficially use a suite of water resources, and utilizing the conserved water under the No Action Alternative will reduce their reliance upon the non-contract resources. This is accomplished through programs that include tailwater recapture, conservation, and groundwater management to minimize impacts, to the extent possible, on the shallow groundwater.

STOCKTON-2

The description on page 4-15 concerns the current hydrologic condition of the San Joaquin River. The existing/No Action condition of the San Joaquin River is already affected by the development of water by the Exchange Contractors, water that will continue to be developed for either use by the Exchange Contractors for their own use or for transfer to other entities. Due to water being developed, the river will see no different condition for that amount of water that has been recently been transferred, with or without a future transfer. In the context of the No Action Alternative, transfers from the Exchange Contractors do not occur, but the river will see no difference since the Exchange Contractors will use the developed water for their own use within their service area.

Furthermore, as stated in Section 2.2, the “No Action and existing conditions are similar in terms of the potential effect upon the San Joaquin River flows of the transferred water because if water was not transferred from the Exchange Contractors, water would be transferred from other sources.” Existing conditions reflect the current environment of the system including the recent actions of the Exchange Contractors that develop and provide transfer water to Interior through 2004 (the Environmental Assessment for current transfers is due to expire after 2004).

The existing conditions do include water transfers and is stated correctly on page 4-15. In Section 2.2, the “No Action and existing conditions are similar in terms of the potential effect upon the San Joaquin River flows of the transferred water because if water was not transferred from the Exchange Contractors, water would be transferred from other sources.” Existing conditions reflect the current environment of the system including the recent actions of the Exchange Contractors that develop and provide transfer water to Interior through 2004 (the Environmental Assessment for current transfers is due to expire after 2004).

STOCKTON-3

The commenter is referred to responses SEWD-2 and SEWD-3 for an explanation of the fact that the provision of water and the alternative sources of water for Level 2 and Level 4 Refuge supplies is a legislative mandate. The Refuge supply and application alternatives have been made subject to environmental analysis under those projects, **and that analysis is preexisting**. If the

commenter is suggesting that the NEPA analysis must include as a Project or No Action Alternative, the alternative of no water for Level 4 from the Exchange Contractors and examine the other sources available and their impacts, the previous NEPA study (Reclamation 2001) undertook the process of examining alternatives regarding the Refuge Supply. This current EIS/EIR involves examining the Exchange Contractor sources as supply sources and the alternatives and impacts associated with that Project.

In 1992, the CVPIA was adopted by Congress. Section 3406(D) provided in part that

“ . . . the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California. Los Banos, Volta, North Grasslands, and Mendota State wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California Provided, that the Secretary shall be obligated to provide such water whether or not such long term contractual agreements are in effect

“(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with Level 4 of the ‘Dependable Water Supply Needs’ Table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation.”

Section 3403(J) defines “Refuge Water Supply Report” as the 1989 report of the Department of Interior. Whether or not there is a transfer from the Exchange Contractors to permit a proper CEQA/NEPA process, the current condition of water being supplied from the Delta Mendota Canal to the Refuges is required both because this is the law and because of the current physical environment.

A subset of these comments refers to the appropriateness of utilizing the provision of 71,600 ac ft annually to the Refuges from the Exchange Contractors as the baseline or the No Action/ No Project Alternative. It is suggested that the proper analysis would be to assume that no water transfer from the Exchange Contractors for Refuge use would occur. It is unclear whether these commenters suggest that it be assumed that no Exchange Contractor water is delivered to the refuges or that water be delivered to the refuges from some other source, or that water be transferred for other uses and purposes.

The Courts have provided guidance in those situations under CEQA where previous actions or policies have led to changes in the environment, and have answered the question of whether it should be assumed, for purposes of the baseline or no action alternative, that the previous changes should or could be reversed. In Remy, Thomas, *Guide to California Environmental Quality Act*, 10th Edition, p. 162-7, it is emphasized that the existing physical conditions of the environment are the baseline to measure and analyze environmental impacts, and that some

theoretical condition should re-authorization of a project not be granted is not the proper baseline when an EIR is being prepared. *Environmental Planning and Information Council v. County of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 352; *Christward Ministry v. Superior Court* (4th Dist. 1986) 184 Cal.App.3d 180, 186-187; 14 CCR 15125, 15126.6; *Black Property Owners Assoc. v. City of Berkeley* (1st Dist. 1994) 22 Cal.App.4th 974, 985-986.

Under NEPA, even if a current practice or program could be discontinued, the proper baseline and the basis for considering a no action alternative is the existing physical conditions. *American Rivers v. Federal Energy Regulatory Commission* (9th Circuit 1999) 187 F.3d 1007 (FERC not required to consider a Dam as removed and not in operation).

The scope of this program does not extend to obtaining Level 4 water from sources other than the Exchange Contractors. The Federal action in this program is the acquisition of a portion of the Level 4 supply, not the entire Level 4 supply. If Level 4 is obtained from sources other than the Exchange Contractors, those acquisitions will be or have been analyzed in specific environmental documents. Other possible sources for Level 4 acquisitions are Kern County, San Joaquin water rights holders, Delta Mendota Canal contractors or various sources in the Sacramento Valley.

STOCKTON-4

See response STOCKTON-3.

STOCKTON-5

See response STOCKTON-3. Furthermore, existing conditions would be the transfer program and resultant environmental conditions in place as of October 21, 2003 when the Notice of Preparation was issued. According to the CEQA Guidelines (Sec. 15125(a)):

“An EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.”

This date, therefore, and not 2005, is considered the date for the description of existing conditions and baseline physical conditions and is in compliance with CEQA. Similarly, the Notice of Intent was filed in the Federal Register on October 21, 2003 in compliance with NEPA requirements.

Existing conditions includes a level of developed water consistent with recent action by the Exchange Contractors. In the context of river conditions being affected by the development of water, with or without transfers the same river conditions will occur (see response STOCKTON-2). Also, without transfers by the Exchange Contractors, the river will practicably be the same in the context of return flows since Reclamation will, in the absence of the Exchange Contractors, acquire water for the refuges from sources other than the Exchange Contractors to fulfill its mandate of Level 4 deliveries.

STOCKTON-6

The Exchange Contractors utilize water other than their replacement water to satisfy area water demands. Water developed by tailwater recovery but not transferred by the Exchange Contractors will be integrated into their supplies, likely causing a reduction to groundwater pumpage from aquifers that do not interact with the San Joaquin River. Water utilized by the refuges, to a large extent, will be the same with or without the proposed transfers from the Exchange Contractors (due to transfers from other sources). To the extent that the proposed transfers allow greater deliveries to the refuges, additional surface water returns will increase and the flow and quality effects have been documented in the analysis.

STOCKTON-7

The alternatives have been evaluated against Existing/No Action flow and water quality conditions. For example, Table 4-11 illustrates the Existing/No Action flow conditions at Vernalis and then demonstrates the change to those conditions for each alternative. Table 4-12 illustrates similar information concerning water quality. Then Table 4-13 illustrates the secondary effect of the direct changes in flow and water quality by showing the resultant change in New Melones releases necessary to maintain flow or water quality standards at Vernalis, if flow or water quality standard is controlling New Melones releases (or the same flow or water quality at Vernalis if the standards were not met in any actual circumstance).

STOCKTON-8

Table 4-15 illustrates that the development of water can have an effect upon Delta CVP/SWP supply which, assuming that exports from the Delta are maximized in the year of the transfer, will manifest into the following year as a potential decrease in upstream CVP/SWP reservoir storage. Any disposition of transfer water “South of the Delta” will cause the same effect as developed water. Different net effects will be caused by different entities receiving the transfer water, and those effects are described in the analysis.

STOCKTON-9

New Melones is required to provide, among other objectives, water quality and flow at Vernalis, reactive to changes that occur within the San Joaquin River. The 1997 Interim Plan of Operations (Attachment E-1) currently guides the operation of New Melones Reservoir, and will continue for the foreseeable future or until changed. The analysis shows that in most circumstances the transfers will result in a gain in water supply to New Melones. In some circumstances that may require additional releases from New Melones the effect of the transfer has been identified. The transfer program will be documented in parallel to the actual operation of New Melones, and in those circumstances when New Melones does not satisfy flow and water quality requirements at Vernalis and the transfer has an effect upon New Melones, the transfer program will be evaluated against the level of operation actually provided by Reclamation. See responses STOCKTON-11 and STOCKTON-13 below.

STOCKTON-10

Comment noted and considered. However, the addition of San Joaquin County CVP contractors is outside of the scope of the Proposed Project/Action.

STOCKTON-11

The 1997 Interim Plan of Operations (Attachment E-1) currently guides the operation of New Melones Reservoir, and will continue for the foreseeable future or until changed. An analysis that relied upon an alternative form of operations plan would be speculative. Speculative analyses are to be avoided in NEPA/CEQA documents.

STOCKTON-12

The changes in flow, net of both development effects and disposition effects, can be either a gain in flow or a reduction in flow (e.g., see Table 4-16) depending upon the circumstances of the year type, source of developed water and disposition of the water. The identification and address of potential impacts due any specific set of circumstances will be a subject of the annual transfer approval process.

STOCKTON-13

Reclamation, currently with its operation of New Melones, is responsible for the compliance to water quality standards at Vernalis. Reclamation will respond to changes in water quality and flow conditions at Vernalis irrespective of the source or cause of changing hydrologic conditions. The annual water transfer review and approval process involves the evaluation of impacts at New Melones, as it relates to these transfers, and to which mitigation is required, if any.

STOCKTON-14

This EIS/EIR analysis explicitly evaluates flow and water quality effects within the San Joaquin River to the downstream point known as Vernalis. These effects include an evaluation of the potential water supply effects to New Melones Reservoir, including changes to river flow in the Stanislaus River. The analysis also includes potential effects to Delta inflow and the effect that flow changes may have an impact to CVP/SWP water supply as upstream reservoir storage may be affected.

The explicit effect of changes to flow and quality at Vernalis upon dissolved oxygen (DO) at downstream San Joaquin River locations was not done in this analysis and is outside of the scope of this technical evaluation. The anticipated flow changes at Vernalis due to the transfer project are recognized as being only one of many factors that can affect dissolved oxygen downstream of Vernalis. The dissolved oxygen impairment at the Stockton Ship Channel is currently the explicit subject of other forums, including the Regional Board's current TMDL process. Modeling is underway to evaluate the myriad of contributing factors and sources to that impairment. Measures are currently being developed by entities participating as the San Joaquin River Water Quality Group to improve the dissolved oxygen (and salt and boron as well) in that downstream area, and results are not ready for use by others/publication at this time. Their management and implementation recommendations/plan are to go to the Regional Board in

December 2004. The Exchange Contractors are one of the many entities currently participating in that group. Text was added to Section 1.3, Related Projects, to address this downstream DO issue.

STOCKTON-15

As a matter of Reclamation responsibility, New Melones will react to changes in water quality and flow in the San Joaquin River (see response STOCKTON-12). The text cited in Section 13.3 misstates that New Melones will be used as a mitigation tool for the proposed transfer. Rather, the effect that occurs at New Melones will be the subject of mitigation. The text of the EIS/EIR has been modified to reflect this clarification (see Section 13.3).

The analysis describes the flow changes that may occur at Vernalis due to the development of water by the Exchange Contractors (e.g., see Table 4-11). These potential changes are the result of both the development of water by the Exchange Contractors and the reaction, if any, by New Melones to the changes in flow and quality in the San Joaquin River upstream of the Stanislaus River. The analysis determines the reaction at New Melones when it is identified in the analysis that a flow or quality standard is controlling at Vernalis, regardless of whether or not in actuality Reclamation can meet, or does meet the controlling standards. These changes in flow have been identified relative to a New Melones operation. The changes in flow, net of both development effects and disposition effects, can be either a gain in flow or a reduction in flow (e.g., see Table 4-16) depending upon the circumstances of the year type, source of developed water and disposition of the water. See also responses STOCKTON-9 and STOCKTON-12 above.

STOCKTON-16

The comment fails to recognize that the CEQA action (the actions of the Exchange Contractors) is not the same as the Federal NEPA action (the acquisition of a portion of the Level 4 refuge water supply). The Exchange Contractors are responsible to mitigate for the impacts of their actions (making water available for transfer). The United States is responsible for the mitigation of its action (the delivery of water to the refuges.) The actions and the mitigation responsibilities are, while not entirely independent, are clearly distinct from one another.

STOCKTON-17

The reference to “no significant impacts” in Section 13 is based on annual assessments of the current transfer program, not just on the environmental documents finalized in March 2000 for the current program. More importantly, the comment is a statement of opinion and unsupported conclusion. Many factors other than the 5-year program and Level 4 deliveries have influenced the flow and quality of the San Joaquin River, including changes to drainage discharges from other entities and the operations of facilities on the east side of the San Joaquin River. Regardless of these circumstances, the analysis in the EIS/EIR does recognize current conditions. The baseline flow and water quality conditions depicted for the San Joaquin River, upon which the effects of the transfers are determined, specifically represent recent/current conditions reflecting a variety of discharges/releases, including the contributing effects of the 5-year program and recent Level 4 deliveries. Furthermore, the conclusions of the environmental documents on the 5-year program have been borne out by the results of the post-transfer, annual approval process.

STOCKTON-18

Section 13.3.3(5) does state that mitigation will not occur during the year of the transfer. From a practical operation perspective, water supply to CVP/SWP water users will be determined at the same time as the transfers are formulated. The current year's potential transfer effect upon that determination, on a prospective basis, would likely not be noticeable, would be speculative, and likely not have any effect upon the current year's water supply. Therefore, from a practical standpoint, the impact cannot be determined at the time of transfer. The annual approval process will utilize a post-year analysis to identify the estimated actual effect of the previous year's transfers upon the storage conditions carried into the next year, and at that time mitigation measures, if necessary, will be implemented.

The comment suggests that mitigation must be accomplished simultaneous in time with the effect of the transfer upon New Melones storage. New Melones releases for water quality conditions at Vernalis occur because of a number of factors, many of which are not predictable such as operation changes or drainage changes on the east side of the San Joaquin River, temperature, water extractions above Vernalis, crop patterns and the like. Only after the fact can it be determined if a release was in whole or in part because of the transfer activities of the Exchange Contractors. In fact, the after-the-fact transfer review process is necessary to determine also if there were improvements (decreases) or increases in reservoir storage in New Melones because of the transfers of the Exchange Contractors. The effect of the transfer must be reviewed on a hydrologic cycle basis so that the gains are offset by the reductions; and only if reservoir operations would be substantially impacted due to loss of storage because of the Exchange Contractor exchange, is a change in the sources or conditions of a transfer necessary to assure a gain or equalization of reservoir storage due to transfers. The Exchange Contractor transfer's possible effect can only be determined on a net basis over a substantial period of time.

STOCKTON-19

The comment illustrates the threshold that was used for the significance criteria. For purposes of identifying significant impact to New Melones water supplies, any potential reduction in storage (indicative of an additional release) caused a negative determination. Review of the potential effects to New Melones storage (e.g., Figure 4-6) illustrates that in many circumstances the effects of the transfers would be a gain to storage. However, since under certain circumstances a reduction in storage could occur, a significant impact determination was stated in the broad summary tables provided to give the reader a quick summary. From a practical perspective, a reduction in storage will be avoided through the annual approval process. Also, the estimated reduction in storage in the worst of circumstances amounts to approximately 5,000 acre-feet, which when applied through the procedures of the Interim Operations Plan results in very minor changes in water supply allocations.

STOCKTON-20

The commenter is confusing a careful scientific quantification process to measure impacts with simply leaving to a later time the determination of how to mitigate. Here, the mitigation measures are known. If there is a gain in New Melones storage in one year of a hydrologic cycle and in another a loss in storage in the same hydrologic cycle, they will be quantified and offset.

If a flood operation spill occurs, while there is a negative balance in effects in storage, the slate will be wiped clean and will start again.

See STOCKTON-18. The allocation of New Melones water in a year will be done at approximately the time as the annual transfer is formulated and prospectively analyzed. The actual affect of the transfer will not be realized until after the current year's operation has been experienced, and will not affect the current year's allocations.

FRIANT WATER USERS AUTHORITY LETTER – RONALD D. JACOBSMA



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Chairman of the Board

Harvey A. Bailey
Vice Chairman

Marvin L. Hughes
Secretary/Treasurer

Dan Fufts
General Manager

Gary W. Sawyers
General Counsel

July 30, 2004

Attn: MP-150, Bob Eckart
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Subject: Water Transfer Program for the San Joaquin River Exchange
Contractors Water Authority (SJRECWA) 2005-2014 – Comments on
the Draft Environmental Impact Statement/Environmental Impact
Report (Draft EIS/EIR)

Member Agencies:

*Arvin-Edison W.S.D.
Arwell Island W.D.
Chowchilla W.D.
Delano-Earlimart I.D.
Exeter I.D.
Fresno I.D.
Hills Valley I.D.
Ivanhoe I.D.
Kern-Tulare W.D.
Lindmore I.D.
Lindsay-Strathmore I.D.
Lower Tule River I.D.
Madera I.D.
Orange Cove I.D.
Pixley I.D.
Porterville I.D.
Rag Gulch W.D.
Saucelito I.D.
Shafter-Wasco I.D.
Sta. San Joaquin M.C.D.
Stone Corral I.D.
Tea Pot Dome W.D.
Terra Bella I.D.
Tulare I.D.*

Mr. Eckart:

The Friant Water Users Authority (FWUA) appreciates the opportunity to review the subject document on behalf of its member districts. The FWUA operates and maintains the Friant-Kern Canal, a conveyance feature of the Central Valley Project (CVP). The FWUA consists of twenty-two member water, irrigation and public utility districts serving the agricultural needs of some one million acres and 15,000 mostly small family farms on the east side of the southern San Joaquin Valley (Madera, Fresno, Tulare and Kern County). Friant Division water supplies are also relied upon by several cities and towns, including the City of Fresno, as a major portion of their municipal and industrial water supplies. The following comments are submitted by the FWUA for your consideration.

1. Under Alternative C, the Proposed Action, water transfers will be limited to 50,000 acre-feet of water made available through crop idling/temporary land fallowing during critical water years. For clarity, the definition of a critical water year should be provided in the text.

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| Classification | ENUG 00 |
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Bob Eckart
U.S. Bureau of Reclamation
July 30, 2004
Page 2

1. It is the understanding of the FWUA that the proposed water transfer program will not involve the transfer of San Joaquin River water called upon by the SJRECWA in a critical water year in accordance with the Exchange Contract.
2. Also, it is unclear how the assumed transferable quantity of 2.5 acre-feet per acre was determined, as the Exchange Contractor's contract water supply (840,000 acre-feet) divided by the number of acres in their service area (240,000 acres) equals 3.5 acre-feet per acre. The additional acre-foot of water per acre should be accounted for in some manner, or the method used to calculate the 2.5 acre-feet per acre should be explained, especially since Section 4.2.2 (page 4-10) states that "for each acre-foot of water recovered by the Exchange Contractors from ...crop idling/temporary land fallowing...an acre-foot of water would be considered acquired and available in the CVP for delivery to other users."
2. Page 2-12 states that groundwater will not be accepted if the wells are "perforated at shallow depths and located within the groundwater influence area of rivers or major distribution conveyance canals (unlined)." This is interpreted by the FWUA to include shallow wells around the Mendota Pool which could potentially increase the rate of groundwater percolation beneath the pool, consequently requiring additional flow into the pool to maintain water elevations adequate for deliveries.
3. To the extent deep wells are used around the Mendota Pool to develop water for transfer purposes, a groundwater monitoring program should be initiated to evaluate any impacts on the local groundwater aquifer as recommended on page 2-12. In addition to the criteria listed on page 2-12 that trigger reductions or curtailment of groundwater pumping, the identification of increased percolation rates at Mendota Pool should be added.
3. It is unclear how the SJRECWA will develop its portfolio of transfers. The document appears to imply that the refuges are the highest priority. Is there a priority list, or does the water go to the highest bidder?
4. The analysis of impacts to surface water resources (Section 4) includes VAMP operations, which help to reduce the impacts to water quality at Vernalis during April and May. Without VAMP, negative impacts to storage in New Melones Reservoir would increase as more water quality releases would be required from the reservoir, although only partially due to the SJRECWA water transfer program. With the expiration of the VAMP program, at the midpoint of the SJRECWA water transfer program, the analysis should include, at a minimum, a detailed qualitative discussion of the anticipated impacts to water quality at Vernalis and storage in New Melones Reservoir under the assumption that all VAMP releases are discontinued.
- 5.

Bob Eckart
U.S. Bureau of Reclamation
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Page 3

5. The document does not appear to place limits on the concentration of water developed in one area, such as the number of acres allowed to be temporarily fallowed within one district or within a specific number of square miles, or the number of acre-feet of groundwater allowed to be pumped within a specific area. The impacts were derived using operations of the entire SJRECWA service area as the basis for the determination of impacts. This is only accurate if the water to be transferred is developed evenly throughout the entire service area and does not include "hot spots" with high concentrations of water development. As an example, Section 5.2.4.2 (page 5-24) states that a loss of 24,000 acre-feet of recharge only represents about 2 percent of the total inputs to the service area (approximately 20% of the average annual groundwater pumped), and thus, should not significantly alter groundwater elevations or flow patterns. If the entire 24,000 acre-feet reduction in recharge occurs in one small region, local groundwater elevations and flow patterns within that region would be significantly altered.
6. It is unclear if the CVP as a whole will be directly responsible, or indirectly responsible through the U.S. Bureau of Reclamation, for any of the mitigation measures outlined in the mitigation plan in Section 13.3.3 for impacts to Delta water supply and New Melones Reservoir as a result of the SJRECWA water transfer program. Although the FWUA supports and encourages the SJRECWA's development of water management programs, the FWUA is not interested in financing them. Any mitigation measures which are intended to place any degree of responsibility, either directly or indirectly, on other CVP contractors should be clearly identified within the mitigation plan to facilitate the appropriate level of review and comment.
7. The document indicates that water will only be transferred to the Environmental Water Account (EWA) as replacement water for CVP water users in the Delta export service area. It is unclear how the Exchange Contractors will be able to guarantee that only CVP water users in the Delta export service area will receive the transferred water when, according to their mitigation plan in Section 13.3.3, they will be preparing their water transfer list in February or March. At this point, the water supply situation in the Delta export service area is highly uncertain at best. Will the Exchange Contractors rescind their transfer to the EWA if there are no CVP water users in the Delta export service area willing to pay the EWA's typically higher prices?
8. With regard to the analysis of impacts associated with EWA water transfers, Appendix B states that they were not specifically modeled in the hydrologic analysis but could be assumed to be included in the in-basin and out-of-basin disposition categories in terms of hydrologic connectivity. While this seems reasonable, it should be disclosed in the main body of the document. The lack of analysis of the socioeconomic impacts of the EWA transfers, however, does not appear as reasonable. The assumed water prices to agricultural transferees in noncritical and critical years in Table 8-17 appear low on an EWA scale. In the most extreme scenario, transferring 130,000 acre-feet of EWA water
- 9.

Bob Eckart
U.S. Bureau of Reclamation
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- 9 could have significant positive and negative impacts to the transferor and transferee, respectively. Of course, the negative impacts to the transferee would only be as severe as the profit margin would allow, and while there is definitely a positive impact associated with the availability of the transferred water, the negative impacts would still be more severe than if the water was transferred directly from the Exchange Contractors.
- 10 8. The USBR is currently developing water accounting guidelines for water transfers including parties responsible for certain incremental costs. In the event that these water accounting policies are finalized in such a manner that results in the proposed transfers generating additional costs to the Friant Division CVP contractors, such an impact will need to be addressed.

The FWUA appreciates your consideration of our comments on the draft EIS/EIR. We look forward to the constructive and practical resolution of our concerns and to the successful implementation of the SJRECWA water transfer program.

Sincerely,



Ronald D. Jacobsma
General Manager

cc: FWUA Member Districts
John Roldan, Chief Engineer
Steve Chedester, SJRECWA
William H. Luce, Jr., U.S. Bureau of Reclamation, SCCAO

RESPONSE

Friant Water Users Authority – Ronald D. Jacobsma
July 30, 2004

FWUA-1

A “Critical Water Year” is defined in Article 7 of the Second Amended Contract for Exchange of Water dated December 6, 1967. Under the 10- year transfer program, up to 50,000 acre feet may be transferred during years designated as “critical.” However, the water will only be generated from fallowed lands.

FWUA-2

The 2.5 acre-feet per acre is an average of all of the individual members’ deliverable allocations. The general formula is the lesser of the deliverable monthly allocation or monthly consumptive use for the crop mix from the lands that are fallowed. Where consumptive use is defined as {evapotranspiration + leaching fraction- effective precipitation}. The 2.5 acre-feet per acre is an average of all of the individual members’ deliverable allocations and will vary by district. All land fallowing transfers must first be approved by the board of directors of the district from where the lands are fallowed. Then the transfer must be submitted to the Exchange Contractors Water Transfer committee for consideration. If the transfer is consistent with the Exchange Contractors Water Transfer Policy and is demonstrated to be scientifically sound, it is recommended to the Exchange Contractors Board for their consideration.

FWUA-3

(1) The wells near the Mendota Pool located within Columbia Canal Company and Madera County will not develop water for transfer; (2) the three Central California Irrigation District wells that could be used for development of groundwater for transfer are located to the northwest of the pool. These wells are always used annually to supplement the districts’ water irrigation flow peaks and quantities. The additional potential quantity that might be developed and the associated groundwater drawdown will not be significant. In addition, the particular wells will not induce additional flows from the pool, since the top of casing perforation is below 100 feet together with the fact that the shallow groundwater in the vicinity is very shallow (less than 5 feet in some areas.)

FWUA-4

There is no formal priority of potential transferees. The question of to whom and on what terms and conditions the Exchange Contractors sell transfer water is a matter of policy for their governing Boards.

FWUA-5

The recent releases provided by the San Joaquin River Agreement (SJRA), inclusive of the VAMP releases, are included in the Existing/No Project conditions. Although the SJRA has a

termination date within the life of the proposed transfer it has been assumed that the agreement, or a similar agreement, will continue beyond the life of the existing agreement, and its effect will result in flow and quality conditions as assumed for the existing condition. Specifically during the VAMP period, in the hypothetical, if VAMP flows by non-Reclamation entities did not occur, pulse flows from the non-Stanislaus tributaries and the Stanislaus would likely be sufficient to achieve water quality objectives at Vernalis, and the effect of the transfers would have no effect upon New Melones operations. In the absence of VAMP, the flow objectives at Vernalis (as currently structured) during the VAMP period would be unmet at times due to operational constraints within New Melones operations. Defining the flow requirements at Vernalis that would occur subsequent to or absent the SJRA is speculative.

FWUA-6

The rotational fallowing program will be made available to landowners equally over the entire 240,000 acre Exchange Contractors service area; fallowing will not be concentrated in such a way as to negatively influence groundwater elevations and flow patterns. In addition, groundwater development will be monitored and managed in order to avoid negative impacts.

FWUA-7

There will not be any impact to Friant water users as a result of any mitigation action taken by Reclamation. The most likely action required of Reclamation will be additional release of water from New Melones to offset water quality or flow reductions in the lower San Joaquin River triggered by Level 4 deliveries to the refuges. Such an action will have no effect, operationally or financially, on Friant contractors. See Section 13.3.3 for listing of all mitigation measures and monitoring procedures.

FWUA-8

Any contract providing for a water transfer to the EWA will include a provision that specifies the Exchange Contractor water can only be used for replacement of CVP water not pumped at Tracy Pumping Plant as the result of an EWA fish action. Once EWA water is delivered to O'Neill Forebay, it becomes CVP water and is then delivered to CVP contractors at their contract rates. CVP contractors who receive EWA replacement water pay for that water at their contract rates, not at the rate paid by Reclamation to acquire the water.

FWUA-9

We look at socioeconomic effects resulting from physical changes due to the development/use of the transfer water in Section 8, and the key issues there are fallowing and agricultural production. We have incorporated the EWA Final EIS/EIR by reference and defer to analyses therein for impacts associated with EWA water transfers in general. See response FO01-6 in the Final EIS/EIR (page 4-218) where the preparers write: "As explained in Section 11.2.5.5, the EWA would not have a substantial effect on water transfer prices or availability. Other types of water transfers would usually be much larger and other factors such as farm prices, commodity programs, and normal hydrologic variability would have much more influence on prices and availability than the EWA."

FWUA-10

Comment noted and considered. Each proposed transfer will be evaluated for NEPA/CEQA compliance, and if supplemental documentation is needed to assess impacts not evaluated herein, it will be prepared.

MADERA IRRIGATION DISTRICT LETTER – STEPHEN H. OTTEMOELLER

MADERA IRRIGATION DISTRICT
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August 2, 2004

VIA ELECTRONIC MAIL, FACSIMILE AND U.S. MAIL

Ms. Joann Toscano
SJR Exchange Contractors Water Authority
P.O. Box 2115
Los Banos, CA 93635-1122

Re: Draft EIS/EIR for San Joaquin River Exchange Contractors Water Authority
Water Transfer Program 2005-2014

Dear Ms. Toscano,

Madera Irrigation District (MID) is pleased to have the opportunity to comment on the draft EIS/EIR for the Exchange Contractors Water Authority Water Transfer Program. Prior Exchange Contractor water transfer programs have provided an important source of supplemental water for District farmers who at times are faced with deficient water supplies and we look forward to the opportunity to continue to participate.

General Comments

1 Upon review of the document, MID has two general concerns that are reflected in some of the specific comments that follow. The first concern relates to the level of subsequent environmental documentation that will be required for specific transfers. This document is very comprehensive with regard to potential impacts as a result of total transfers at the levels analyzed. However, it is not clear to what extent, if any, supplemental environmental review will be required for single or multiple year transfers to specific districts. It would be helpful if the document would explain the extent to which supplemental environmental review will be required for specific transfers.

2 The District's second general concern relates to the conditions under which water will be sold to the Environmental Water Account. The EIS/EIR provides a qualification that water may be sold to the EWA if it would "benefit CVP operations by improving water supply reliability for CVP water users south of the Delta". Although MID is clearly south of the Delta, that terminology has often been interpreted to only include those districts that benefit from Delta exports. We expect and would appreciate confirmation that MID is included in "CVP water users south of the Delta". In addition, MID, some of the Exchange Contractors and others in the Delta Export area have previously expressed concerns regarding the failure of the agencies responsible for management of the EWA to demonstrate how, if at all, the EWA has resulted in benefits to the fish populations it purports to benefit.

SJR Exchange Contractors Water Authority
August 2, 2004
Page 2

- 3 MID is also concerned that previous attempts by EWA agencies to evaluate environmental impacts have failed to adequately address the potential adverse impacts to the cost and availability of water on the open market for water transfers to districts in the San Joaquin Valley, particularly those that don't directly or indirectly benefit from the export supplies that are said to benefit from the EWA. MID encourages the Exchange Contractors to consider these additional factors when making decisions regarding under what circumstances they would sell water to the EWA. In the specific comments below, we have identified two additional conditions for sale of water to the EWA that we believe would help to mitigate the potentially adverse impacts that could result from the sale of significant volumes of water to the EWA that might otherwise be available for sale to neighboring agricultural districts that are in dire need of supplemental water supplies.

Specific Comments

- 4 **Pg. ES-6** – transfers to lands in MID should be considered “in-basin” transfers because the transfers are to lands that are within the immediate drainage area of the San Joaquin River and the Madera groundwater sub-basin as defined by DWR includes both MID and one of the Exchange Contractor members – Columbia Canal Company.
- 5 **Table ES-2** – We request that the Exchange Contractors consider as a policy matter whether sales to EWA should not only be limited to such sales that would “benefit CVP operations by improving water supply reliability for CVP water users south of the Delta”, but also be further limited to sales that would not adversely impact the cost or availability of water supplies for other CVP water users.
- 6 **Pg. 1-2, Section 1.1.2** – Since Madera Irrigation District has historically purchased water from the exchange Contractors, MID should be listed as a potential purchaser of water in the Friant Unit in the same manner that other districts are listed in other areas.
- 7 **Pg. 1-3, Section 1.1.3** – Notwithstanding three years of EWA purchases, the Science Review Panel has been unable to conclude that actions using EWA water have had a beneficial impact on endangered fish populations. In order to mitigate potential adverse impacts, sales to EWA should occur only to the extent that 1) the EWA Science Review Panel has concluded, supported by qualified scientific evidence, that there are real benefits to fish populations and 2) such sales will not adversely impact the cost or availability of water supplies for other CVP water users.
- 8 **Table 1-3** – It is incorrect to assume that Friant Unit contractors receive 100% Class 2 supplies in all wet years. However, in years classified as wet on the San Joaquin River watershed, it is likely that there are minimal, if any, seasonal irrigation deficits that would result in purchases from the Exchange Contractors. Allocations at the level of 25% Class 1 are likely limited to Critically Dry years. However, in years when 100% Class 1 and 0% Class 2 supplies are declared, many districts like MID are still subject deficit irrigation circumstances and there are demands for supplemental water supplies. In MID, 100% Class 1 allocation equates to 31% of the District's total contract supply. In 2002, 2003 and 2004, MID had received Class 2 supply allocations of 8%, 29% and 8%, respectively, and still was faced with the need to purchase water for farmers who had insufficient supplies. In order to avoid the need for supplemental environmental documentation for future transfers to MID, it may be appropriate or necessary to briefly describe the need for water purchases in the known potential buyer districts, as is done with Santa Clara Valley Water District in Section 1.2.3

Appendix E Comments and Responses

SJR Exchange Contractors Water Authority
August 2, 2004
Page 3

- 9 **Page 1-7, Section 1.2.2** – Irrigation on the east side of the San Joaquin Valley has been occurring for at least the same period of time as irrigation on the west side, if not longer.
- 10 **Page 1-7&8, Section 1.2.4** – Same comment as above for Section 1.1.3 regarding conditions precedent to selling water to EWA.
- 11 **Page 2-15, Section 2.3.2, Water to Ag and M&I Uses** – as noted in an earlier comment, transfers to MID should be considered "in-basin" transfers because the District is in the immediate watershed of the San Joaquin River and the District shares a DWR-defined groundwater sub-basin (the Madera Sub-Basin) with one of the Exchange Contractor members.
- 12 **Page 2-19, Section 2.4** – see preceding comment regarding transfers to MID as "in-basin" transfers. Add Chowchilla WD to numbered paragraph 2 and the second paragraph following that numbered paragraph.
- 13 **Page 5-23, Section 5.2.2.4** – the analysis fails to consider the potentially beneficial impacts of water transfers into Madera County, which includes one of the Exchange Contractor entities and is adjacent and immediately east of some of the other Exchange Contractor lands. Transfers into MID and Madera County will have a positive impact on the groundwater conditions immediately east of the Exchange Contractors which are identified in the EIS/R as being overdrafted and downslope of the Exchange Contractors. Transfers into MID will reduce groundwater pumping in the sub-basin coincident with and immediately adjacent to the Exchange Contractors.

Thank you for the opportunity to comment on the subject EIS/EIR. If there are any questions regarding these comments or if any additional information is required, please contact me at 559-673-3514 or at ottemoeller@attitude.com.

Sincerely yours,



Stephen H. Ottemoeller
General Manager

RESPONSE

Madera Irrigation District – Stephen H. Ottemoeller
August 2, 2004

MID-1

Each transfer proposal will be submitted to Reclamation for review and approval. If it is determined that the proposed transfer may have potential effects not considered in this EIS/EIR, additional environmental documentation will be required.

MID-2

EWA operations currently only affect Delta exports. Consequently, in this context, “CVP water users south of the Delta” refers to CVP contractors in the Delta export service area as shown in the EWA Final EIS/EIR, Figure ES-1, and would not include Madera Irrigation District. However, Madera Irrigation District is considered a potential transferee of transfer water from this project. Regarding the question of the benefit of EWA to fish populations, such issue is beyond the scope of this transfer program analysis. See the Final EWA EIS/EIR (referenced in Section 17, page 17-3) adopted by Reclamation in January 2004. See also response MID-6 below.

MID-3

It is entirely a policy decision of a water agency’s governing Board as to whom they sell their transferable water and on what conditions. Reclamation may also impose conditions as part of the transfer approval process. It is not the purpose of this document to define those policy decisions. The Exchange Contractors are explicit in the Statement of Purpose and Need that water transfers to the EWA can occur only if the transfer would “benefit CVP operations by improving water supply reliability for CVP water users south of the Delta” (page 1-4).

MID-4

Reclamation’s interpretation of Section 3405 is that transfers between CVP contractors who are served by the Delta export facilities are deemed to meet the transfer requirements of reduction in consumptive use or irretrievable loss. See response DWR-6. Transfers outside the Delta service area (including Madera Irrigation District) must be based on a demonstrated reduction in consumptive use or irretrievable loss or be based on groundwater substitution.

MID-5

Comment noted. See response MID-3 above.

MID-6

Section 1.1.2 will be revised to reflect that Madera Irrigation District could be a potential purchaser of water in the Friant Unit. The first paragraph under Section 1.1.2 now reads:

CVP contractors who could participate in a water transfer and/or exchange from the Exchange Contractors include westside CVP agriculture (Westlands Water District [WD], Panoche WD, Pacheco WD, San Luis WD, Del Puerto WD, and Patterson WD), CVP Friant Unit agriculture (including Madera Irrigation and Chowchilla Water Districts), and other CVP contractors in the San Felipe Division, specifically San Benito County Water District (SBCWD) and Santa Clara Valley Water District (SCVWD). These districts may not receive 100 percent of their current contract amounts from the CVP and would purchase water from other sources such as the Exchange Contractors to alleviate part of their supply shortage.

Furthermore, exchanges involving eastside contractors would need to be facilitated by either a Cross Valley Canal contractor or a State Water Project contractor.

MID-7

This comment goes beyond the scope of this program. See the EWA Final EIS/EIR recently released by Reclamation and the other EWA agencies (January 2004) and the ROD adopted in March 2004.

MID-8

Table 1-3 is provided as an illustration of the need for water that could be provided by the transfer. Regardless of additional footnoting of specific circumstances during which the table may be an oversimplification or an understatement of water need, the conclusion will still result in the identification of a total potential need in excess of available transfer water. In any particular year, regardless of declared water allocation by Reclamation, if there is a request for a transfer there must be a need for the water. However, in the context of transfers allowed under this proposal, no transfer will be allowed to amount to a delivery that is excess of an entity's contract amount with Reclamation when combined with contract water delivered by Reclamation. Table 1-3 was based on Appendix A, a specific water balance analysis using data from the CVP long-term contract renewal environmental documents, and has been revised to better reflect water needs and its use as noted herein.

Table 1-3 summarizes the irrigation shortages from the water balance analysis under wet and dry hydrologic scenarios and with 25 to 100 percent of contracted water (see Appendix A). It is important to note that even in wet years, many districts including Madera Irrigation District are still subject to deficit irrigation circumstances and need supplemental water supplies such as those being proposed by the Exchange Contractors.

Table 1-3
Existing Seasonal Irrigation Water Deficit for Districts in Project Area

| Water District | Wet Year with 100 Percent Contract Water Supply | | Dry Year with 25 Percent Contract Water Supply | |
|----------------------------|---|---|--|---|
| | Contract Water (acre-feet) ¹ | Seasonal Irrigation Water Deficit (acre-feet) | Contract Water (acre-feet) | Seasonal Irrigation Water Deficit (acre-feet) |
| Westlands | 1,150,000 | 85,869 | 287,500 | 1,265,433 |
| Panoche | 93,904 | 0 | 23,476 | 74,859 |
| Pacheco | 10,000 | 0 | 2,500 | 9,219 |
| San Luis | 124,502 | 0 | 31,126 | 107,031 |
| Del Puerto | 140,210 | 0 | 35,053 | 88,017 |
| Patterson | 22,500 | 11,275 | 5,625 | 41,640 |
| Plainview | 20,600 | 0 | 5,150 | 4,662 |
| San Benito County | 35,550 | 11,505 | 8,888 | 48,379 |
| Santa Clara Valley | 33,100 | 410 | 8,275 | 39,633 |
| Friant Unit ^{2,3} | 2,137,225 | 0 | 183,938 | 2,605,385 |
| All Districts | 3,767,591 | 109,059 | 591,529 | 4,300,320 |

Source: Water Balance Analysis (Appendix A).

Notes:

¹ Contracted water amounts were obtained from interim and long-term renewal contracts (Reclamation 2001a–2001i, 2003a). Westlands’ surface water supply/maximum USBR total delivery is 1,130,463 acre-feet for 1989, and 1,150,000 acre-feet for 2025, as reported in their October 11, 2000, Water Needs Assessment.

² The Friant Division was assumed to receive 100 percent of both Class 1 and Class 2 deliveries in a wet year, although this is unlikely to occur.

³ The Friant Division was assumed to receive no Class 2 deliveries and 25 percent of Class 1 deliveries in a dry year.

MID-9

Section 1.2.2 has been revised to reflect that irrigation on the east side of the San Joaquin Valley has been occurring for at least the same period as irrigation on the west side. The last paragraph under Section 1.2.2 now reads:

The availability of water for plant use during the growing season (primarily April through October) is the most limiting factor in crop production. Short water supplies reduce crop yields and quality and increase the risks of farming. Adequate irrigation increases the level and uniformity of crop yields and improves crop quality, thereby reducing these economic risks. In the western and eastern San Joaquin Valley, farmers have been irrigating cropland for more than 120 years. With the increased availability of groundwater and surface water, the acreage of irrigated cropland in the San Joaquin Valley has increased more than 80 percent since the 1950s (Exchange Contractors 1997a). For the Proposed Action, no new lands would be brought into production; water would be used on lands irrigated within the last 3 years.

MID-10

See response MID-3 above.

MID-11

See response MID-4 above. The hydrologic analysis in Section 4.2 and Appendix B uses this physical definition of “in-basin” to document environmental effects on the physical environment.

MID-12

The text edits have been made as suggested to incorporate Chowchilla WD after Madera ID in the listing of Friant Unit potential transferees. See response MID-6 above.

MID-13

We concur that there could be potentially beneficial impacts on groundwater conditions immediately east of the Exchange Contractors. The focus of the analysis is on identifying adverse effects. Beneficial impacts are those where the environmental effect of the proposed project will improve the environment regardless of the threshold of significance. However, less-than-significant beneficial effects were noted for Alternative B, All Water to Refuges, because this effect could be quantified. The text in Section 5.2.2.4 has been modified to include MID’s comment that there is a positive impact/beneficial effect on groundwater conditions east of the Exchange Contractors service area in Madera County.

PAJARO VALLEY WATER MANAGEMENT AGENCY LETTER – CHARLES MCNIESH



PAJARO VALLEY WATER MANAGEMENT AGENCY

36 BRENNAN STREET • WATSONVILLE, CA 95076
TEL: (831) 722-9292 • FAX: (831) 722-3139
email: info@pvwma.dst.ca.us • http://www.pvwma.dst.ca.us

VIA U.S. MAIL AND FACSIMILE (916-978-5055)

August 2, 2004

Bob Eckert
U.S. Bureau of Reclamation
Attn: MP-150
2800 Cottage Way
Sacramento, California 95825

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H.P.

**Subject: Water Transfer Program for the San Joaquin River Exchange
Contractors Draft EIS/EIR**

Dear Mr. Eckert:

The Pajaro Valley Water Management Agency (PAJARO) appreciates this opportunity to comment on the subject Draft EIS/EIR. Our sole comment is that the Draft EIS/EIR should recognize PAJARO as an additional Westside Central Valley Project (CVP) agricultural service contractor potentially interested in participating in the proposed water transfer program and eligible to receive CVP transfers. The Draft EIS/EIR specifically identifies nine Westside CVP contractors as potential program participants, but PAJARO is not listed among them.

The CVP San Felipe Division authorization contemplated three service areas: Santa Clara County, San Benito County, and the Pajaro Valley in southern Santa Cruz and northern Monterey Counties. Santa Clara and San Benito County executed CVP contracts, becoming San Felipe Division contractors, while the Pajaro Valley did not. In 1999, however, PAJARO became a CVP contractor by partnering with Westlands Water District and Santa Clara Valley Water District to obtain a joint CVP assignment from Mercy Springs Water District. In 2002, CVP water rights were amended to include PAJARO in the permitted CVP place of use. Therefore, by virtue of the Mercy Springs assignment and the amendment of CVP water rights, PAJARO is now eligible to receive CVP water transfers. Furthermore, PAJARO will soon have physical capability to receive CVP water, as its conveyance facilities are scheduled for completion in the 2007-2008 timeframe, i.e. well within the 2005-2014 duration of the proposed program.

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| Project | CVP |
| Control No. | 4004429 |
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Bob Eckert
August 2, 2004
Page 2

Like several of the other Westside CVP contractors identified as potential program participants, PAJARO currently experiences a water supply shortfall in both wet years with 100 percent contract supply and in dry years with diminished contract supply. In PAJARO's coastal environment, this chronic shortfall results in groundwater pumping in excess of basin sustainable yield, lowered groundwater levels, and seawater intrusion causing contamination of coastal wells. Due to the urgency and severity of this problem, PAJARO is actively pursuing additional CVP supply opportunities, including both assignments and transfers. Accordingly, PAJARO's participation in the proposed transfer program would be entirely consistent with the Draft EIS/EIR's Purpose and Need Statement on page 1-4, which reads in part: "Assist CVP agricultural service contractors to obtain additional CVP water for the production of agricultural crops or livestock because of water supply shortages when full contract deliveries cannot otherwise be made."

PAJARO makes no attempt in this letter to quantify its maximum potential transfer amount consistent with the proposed program. However, we stand ready to assist Reclamation, the Exchange Contractors, and their consultants with this task.

Please feel welcome to contact me to follow up on quantification of Pajaro's supply needs or if I can provide additional information of any type.

Yours truly,



Charles McNiesh
General Manager

cc. Steve Chedester, San Joaquin River Exchange Contractors
Dan Steiner, URS Corporation

RESPONSE

Pajaro Valley Water Management Agency – Charles McNiesh
August 2, 2004

PAJARO-1

It is noted that the Pajaro Valley Water Management Agency (PVWMA) is recognized as an additional Westside Central Valley Project (CVP) agricultural service contractor potentially interested in participating in the proposed water transfer program and eligible to receive CVP transfers. Unfortunately the project location description in Section 2.1 said that only water users in Santa Clara and San Benito counties of the San Felipe Division would benefit, and the analysis of effects does not extend into Santa Cruz and Monterey counties. In order for PVWMA to participate, supplemental environmental documentation would be required.

SACRAMENTO MUNICIPAL UTILITY DISTRICT LETTER – PAUL OLMSTEAD



P.O. Box 15830, Sacramento, CA 95852-1830; 1-888-742-SMUD (7683)

July 26, 2004
ET&C 04-218

Bob Eckart
Bureau of Reclamation
2800 Cottage Way, MP-150
Sacramento, CA 95825

Subject: Water Transfer Program for the San Joaquin River Exchange Contractors Draft EIS/EIR (SCH # 2003101106)

Dear Bob,

The Sacramento Municipal Utility District (SMUD) is both a CVP water and power contractor. SMUD the largest Central Valley Project (CVP) Preference Power Customer, providing not only payments into the Restoration Fund, but repayment of the CVP plant-in-service and Operations and Maintenance (O&M) costs allocated to power. We have a major financial interest in the prudent management of CVP facilities and resources. In addition to the verbal comments I provided at the public meeting in Los Banos on July 7, 2004, SMUD submits the following comments on the Water Transfer Program for the San Joaquin River Exchange Contractors Draft EIS/EIR (SCH # 2003101106).

Power needed to pump water and supply power requirements to certain authorized Central Valley Project facilities has first priority and is referred to as Project Use Power (PUP). Power in excess of that needed for project use purposes is marketed in accordance with Reclamation laws as Preference Power. While PUP is critical to the operation of the CVP, the sale for Preference Power plays a key role in the repayment of the CVP Plant in-service repayment obligations.

- 1 While the EIR/EIS focuses on the environmental effects of the proposed program, power use associated with the program is absent from the EIR/EIS. SMUD recommends that the Bureau include in its analysis, any impacts to power resources brought by this proposed program.
- 2 Please identify the specific pumping loads that will be required to accomplish the proposed program. The primary impacts to power result from increased pumping energy consumed at storage and conveyance facilities. Please include the location of all pumping facilities, their potential costs, their primary beneficiaries, and how the cost of such facilities will be recovered. Please identify if any of the actions associated with this

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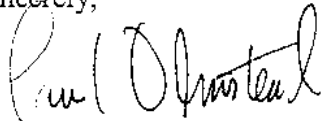
CUSTOMER SERVICE CENTER • 6301 S Street, Sacramento CA 95817-1899

- 2 program are outside of the General CVP Power Application Matrix that I provided to you at the Public hearing in Los Banos.
- 3 SMUD recommends that the USBR acquire, purchase or execute the long-term permanent water supplies necessary to provide water supplies to the refuges consistent with the Incremental Level 4 water quantities for wildlife habitat development.

SMUD agrees that conflicts regarding the use of water must be reduced, be equitable to all, be affordable, be long lasting, be implementable, and have no significant redirected impacts. SMUD supports the actions to be undertaken under this program. SMUD supports the regional strategy to maximize the efficiency of water use for beneficial uses where institutionally and financially feasible.

If you have any questions or comments, please contact me at 916.732.5716.

Sincerely,



Paul Olmstead
Water & Power Resources Specialist

RESPONSE

Sacramento Municipal Utility District – Paul Olmstead
July 26, 2004

SMUD-1

Energy resources are addressed in Section 3.2.2 which reflects the energy utilized by the Exchange Contractors in their designated service area for water development and energy used for conveyance to CVP contractors and the refugees (within CVP contract totals) and concludes that energy use was unlikely to be affected and, therefore, was not evaluated in detail. Your comment indicated that the issue is of concern to SMUD, and the additional information in our response herein.

Reclamation will continue to deliver water to both irrigation and municipal and industrial contractors within their designated service areas. **Under the proposed transfer program, no additional Project Use Power (PUP) is used to transport the water because the transferred water will not exceed Central Valley Project (CVP) contract totals.** PUP is used amongst CVP to CVP contractors for various water transfers. The approval process under the proposed transfer program will be consistent with Reclamation's PUP policy.

PUP is not available to pump non-project water or to pump project water outside the authorized service area. Under the transfer program, PUP is not provided to transfer the project water via the California Aqueduct. The recipient of such water is required to obtain other power sources to convey the water.

PUP is that electrical power and its associated ancillary service components required to provide full electric service for operation of Reclamation facilities. PUP can also be provided to those facilities designated by Reclamation as meeting authorized purposes pursuant to Reclamation law, to meet statutory and contractual obligations, and in the execution of water rights settlements. PUP is only being made available to those features of a Reclamation project in which the United States has ownership.

The amount of PUP to supply irrigation service is not to be more than the amount required to provide water delivery from that point of irrigation service by gravity unless specifically authorized by Congress. When Congress specifically authorizes such service, PUP may be used for the primary delivery of water for municipal and industrial service. Other PUP uses include station-service at Reclamation dams, power plants, pumping plants, and serving designated loads directly associated with the Federal project.

SMUD-2

Because no additional PUP is used, further information on specific pumping loads is unnecessary.

SMUD-3

Comment noted. No additional response is needed.

**SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT LETTER –
CHRYSTAL L. MEIER**



San Joaquin Valley
Air Pollution Control District

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AUG 04 2004

S.J.R.E.C.W.A.

August 3, 2004

Reference No. 20040056

Joann Toscano
Exchange Contractors
PO Box 2115
Los Banos, CA 93635

Subject: San Joaquin River Exchange Contractors Water Authority Water Transfer Program 2005-2014 – Notice of Availability of Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR)
(SCH 2003101106)

Dear Ms. Toscano:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above and has the following comments:

DEIS/DEIR §11.1.4.2 states that the District is currently classified as 'severe' non-attainment for the Federal one-hour ozone standard. The San Joaquin Valley Air Basin (SJVAB) has been downgraded, effective as of May 17, 2004, from Severe to Extreme non-attainment for the federal ozone standard.

1

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call me at (559) 230-5800 or Mr. Don Hunsaker, Supervising Air Quality Planner, at (559) 230-5800 and provide the reference number at the top of this letter.

Sincerely,

Chrystal L. Meier
CEQA Commenter
Central Region

Don Hunsaker
Supervising Air Quality Planner

c: file

RESPONSE

San Joaquin Valley Air Pollution Control District – Chrystal L. Meier
August 3, 2004

SJVAPCD-1

Comment noted. Section 11.1.4.2 has been corrected as suggested.

On August 17, 2004, Steve Chedester spoke with Ms. Chrystal L. Meier and during the conversation he was told the 10-year Transfer Program would not have any affect on air quality matters.

SOUTH DELTA WATER AGENCY LETTER – JOHN HERRICK

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherlaw@aol.com

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AUG 05 2004

S.J.R.E.C.W.A

Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Alex Hildebrand, Secretary
Natalino Bacchetti
Jack Alvarez

Counsel & Manager:
John Herrick

August 2, 2004

Via Fax (916) 978-5055

Mr. Bob Eckart
U. S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Via Fax (209) 827-9703

Ms. Joann Toscano
Exchange Contractors
P. O. Box 2115
541 H Street
Los Banos, CA 93635-1122

Re: Comments to Draft EIS/EIR
 Exchange Contractor Long Term Transfer

Dear Mr. Eckart and Ms. Toscano:

The South Delta Water Agency submits the following comments to the Draft EIS/EIR ("DEIS/EIR") for the Water Transfer Program for the San Joaquin River Exchange Contractors' Water Authority 2005-2014. Before addressing many of the specifics of the document, some general observations on, and criticism of the analysis are relevant.

1

First, the document does not tell us what happens to salt balance of the CVP service area as a result of the transfer. Each year a certain amount of salt is delivered to the Exchange Contractors in the water it receives from the Delta Mendota Canal. This water, combined with groundwater, is applied to crops, a portion is consumed and the remainder (or the unconsumed

Mr. Bob Eckart
Ms. Joann Toscano
July 29, 2004
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water) returns to groundwater, the San Joaquin River, or possibly some other area. This unused water contains the salts which were delivered by the CVP that year and any salts flushed out of the soils.

1 With the project, some of this previously unused water is now delivered to other users who will consume an additional portion of it. The result is necessarily less unused water with an overall higher concentration of salts in that water. The DEIS/EIR makes various predictions based upon model outputs, but it does not explain how the more concentrated salts move in, or exit from the service area of the Exchange Contractors and the transferees. An analysis of a portion of this salt balance was contained in the project proponent's 1999 Environmental Assessment/Initial Study for their currently ongoing transfer program. Such a salt balance allows the public and the proponents to check the predicted results from the models to determine if indeed the model input/assumptions accurately account for the salts. For example, if the salt delivered to the Exchange Contractors is 100,000 tons per year, the model must show that the Exchange Contractor's drainage, plus transferee drainage (for example, wetlands' drainage) account for this same amount of salt. If it does not, and the missing salts is not otherwise identified, then the DEIS/EIR is not accurate. That salt goes somewhere at sometime and causes effects.

This issue is extremely important as the San Joaquin River is an impaired waterway for salinity under the Clean Water Act. Pending limitations on load and concentration of discharges to the River by the Regional Water Quality Control Board's TMDL and Basin Plan Amendment process will soon require both the CVP and the Exchange Contracts to decrease the salts entering the San Joaquin River. In light of that, the DEIS/EIR should tell us where all the salt is now, and where and when it will occur with the project. Contrary to the DEIS/EIR, the greater consumption of water will most likely have a significant adverse effect on the San Joaquin River.

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Second, and with apologies to the drafters, it is unclear if the DEIS/EIR describes the effects of the entire project or just the additional effects of moving from the ongoing project to the proposed project.

The document states that under the No Action Alternative there would result no transfer or exchange of water from the Exchange Contractors to either "interior or to any other potential water user" and that the Exchange Contractors would integrate their existing conservation, tail water recapture, etc., into their existing operations (see DEIS/EIR at page 2-3).

However, the document goes on to state at page 2-10,

2

... No Action differs from existing conditions in terms of the Exchange Contractors' recent provision of transfer water. Existing conditions would include the recent provision of up to 71,600 acre-feet of transfer water (Water Year 2003, see Table 1-1) to CVP agricultural and M&I water users and wildlife areas. Those transfers were made by use of water developed by the Exchange Contractors through several of the sources of water described for the action alternatives. Absent the transfer from the Exchange Contractors, the predictable response by Interior would be to obtain similar refuge water supplies from other sources, excluding the Exchange Contractors. The hydrology of the San Joaquin River would experience no change in terms of the transferees' use of the same amount of transfer water. A slight difference in San Joaquin River hydrology could be anticipated by Interior's response to acquire water from entities other than the Exchange Contractors that have a hydrologic connection with the

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San Joaquin River. The assumed amount of such acquisitions and the resultant effect upon San Joaquin River hydrology is considered negligible. *Therefore, the No Action setting is assumed to equal existing conditions in terms of San Joaquin hydrology.* (Emphasis added.)

The document also states that for the "existing condition/No Action Alternative setting the Exchange Contractors already develop this water either for existing transfers. . ." or for their own purpose.

2

This language, and the references in the document to the incremental additional amounts necessary for this project to provide the total amount analyzed suggest that the analysis is simply examining the effects of the incremental additional amounts of transfer above and beyond the current ongoing transfers. If this is true, the analysis incorrectly examines the effects of the project as it would only be examining a portion of the effects of the project. I believe it is clear that the authorization for the current transfers is short term and set to expire at the end of this year. In that case, absent this project there would be no transfers allowed by the Exchange Contractors and therefore an analysis of the effects of this project should include analysis of the total amount of the transfers and not a portion thereof. If the reader misunderstands what is going on in the DEIS/EIR, I apologize but suggest that the document make it clear whether or not all of the to-be transferred water is examined or merely a portion of it.

3

Third, there still appears to be confusion regarding the limitations on transfers under CVPIA. Notwithstanding any USBR regulations regarding transfers, CVPIA is very clear as to how it limits transfers. Section 3405 therein which deals with transfers states: "... all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water right, settlement contracts, or exchange contracts . . ." are subject to

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3

the statute. CVP water is defined in Section 3403(f) as, "all water that is developed, diverted, stored, or delivered by the secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water rights acquired pursuant to California law."

4

Clearly, a transfer by the Exchange Contractors is controlled by CVPIA limitations. One such limitation is Section 3405(a)(1)(I) which states, "The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer."

This limitation is softened by subsection (M) which states, "Transfers between Central Valley Project contractors within counties, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs A and I of this paragraph."

Therefore, unless a transfer is between the Exchange Contractors and another CVP contractor within the same county, watershed, or area of origin, The Exchange Contractors cannot transfer water produced by groundwater substitution, tailwater recovery, or conservation as none of those are decreases in consumptive use. The final EIS/EIR should better clarify this point so the public can determine compliance with the statute. [It appears the Exchange Contractors no longer claim that transfer water is a result of decreasing irretrievable losses as per prior environmental documents. The DEIS/EIR makes only one small reference to this method in a footnote, but has no examination or description by which the transfer water would be produced through the prevention of such losses.]

The following address specifics contained in the DEIS/EIR.

Mr. Bob Eckart
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5

1. The project purpose is too narrow in that it limits the USBR to only purchases from the Exchange Contractors. By limiting the purpose, alternative purchases from other sellers are eliminated even though such other purchases might result in additional environmental benefits. For example, purchases and exchanges that first put additional water in the San Joaquin River are not considered.

6

2. The description of the No Action, No Project, existing and future conditions is less than clear. It appears that the authors are trying to make a distinction which is necessary to allow them to analyze only the incremental effects that this project has over the existing transfers (see above).

7

3. The analysis inadequately deals with the project's effects on San Joaquin River water quality objectives to which the USBR is obligated to meet. The Bureau is required to meet the agricultural objective (salinity standard) at Vernalis, a similar salinity standard at three interior South Delta locations (which become more onerous on April 1, 2005), and a fishery objective at Vernalis which includes both pulse flows (April 15 - May 15) and a flow standard (February 1 - April 14 and May 16 - June 30). The document is mostly silent with regard to all of these but the Vernalis Salinity Standard.

8

The Bureau's own modeling (see the final EIS/EIR for the San Joaquin River Agreement) as well as the SWRCB's environmentally equivalent document supporting D-1641 indicate that operating New Melones under the Interim Operations Plan or IOP, and relying only on New Melones' releases to control salinity at Vernalis results in numerous predicted water quality violations of the Vernalis salinity standard. In fact, in below-normal, dry, and critical years, the violations are predicted in most every July and August. However, the DEIS/EIR states repeatedly, "[D]uring transfers it is assumed that the New Melones' releases would continue to provide compliance with the objectives; therefore, no change in water quality would occur." (See

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page 4-24). The Bureau cannot author a document which assumes that changes in San Joaquin River salinity will be offset by New Melones' releases when it has already produced a document stating that there is an insufficient supply in New Melones for this purpose. The existing condition is insufficient water to meet the Vernalis salinity standard and there is no operational scenario or plan of action to supplement New Melones' releases. The proposed transfer may not be the cause of the Bureau's inability to meet the standard, but an analysis of the effects of the transfer cannot assume the standard will be met and thereafter conclude the project will have no effects.

9

Further, the DEIS/EIR makes no reference to the other three South Delta salinity standards, which under D-1641 change from 1.0 EC during the entire year to 0.7 EC from April through August (and 1.0 the remainder of the year). Again, since we know the Bureau has no plan for meeting these standards, one cannot assume the effects of the project on compliance will be insignificant.

10

In addition, the Bureau is required to meet the flow standard also measured at Vernalis. Numerous recent communications between the Bureau and the SWRCB, as well as two requests by the Bureau for urgency change permits indicate that (1) the Bureau has not and will not consistently meet this standard; and (2) the Bureau has not budgeted water from any source to consistently meet this standard. The DEIS/EIR makes no mention of this or the effects on this standard resulting from the project.

11

To further complicate the problem, the Bureau decided this year to release more water than the IOP allocates for water quality (to meet the salinity standard at Vernalis). Although this helps maintain permit required water quality protections, it adversely effects the Bureau's ability to meet all of its New Melones' obligations, including the salinity standard and the flow standard, in future years. Hence, current Bureau actions make it less likely that releases are available to

Mr. Bob Eckart
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11 | correct changes resulting from the project.

12 | On a related issue, the DEIS/EIR makes a number of references to the project's effects on "existing flow" as that pertains to the San Joaquin River Agreement. The document indicates no significant effects result from its decrease of existing flows as the San Joaquin River parties will provide the difference in order to meet the target flows. I assume the parties to the SJRA will comment on this assumption; but for purposes of this DEIS/EIR, one cannot assume no effects will result because some other party is mitigating this project's effects.

13 | 4. The document inadequately analyzes existing and future drainage from the Exchange Contractors. The document states on page 4-5, "Although difficult to quantify, some drainage exits the Exchange Contractor's service area to Salt and Mud Sloughs." However, in the EA/IS for the ongoing transfers, the same authors go to great lengths to quantify and describe amounts of salt and surface and subsurface drainage from the wetlands and from the Exchange Contractors. This DEIS/EIR however makes no similar analysis or disclosures for the project.

14 | 5. As in prior documents, the DEIS/EIR focuses on averages. Without examining the actual highs and lows of water quality and flows, the specific adverse effects of the project are lost. For example, the document states on page 4-1 that late summer flows at Vernalis average "about 2,000 CFS." At this moment, Vernalis flows are approximately 1,000 CFS. This means the effects shown in the modeling results may be only half of what the actual effects are.

15 | 6. Similar to an earlier comment, the DEIS/EIR constructs "assumed" existing water quality conditions at Vernalis in Table 4-3. The Table specifies that the existing standard of 0.7 EC will "exist" in July and August in below-normal, critical, and dry years. As stated above, there is no basis for such a conclusion if the Bureau's source of water to meet that standard is predicted to be insufficient.

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16 7. The documents evaluation criteria includes effects on Delta water supply but makes no mention of the effects on parties other than the export projects who use that supply. There are appropriative water right holders both on the San Joaquin River and in the Delta. Changes in flows at any time of the year can effect those parties' abilities to divert water. Hence, if adverse effects to the exporters can be significant, so can effects to other diverters. As an example, the effectiveness of temporary tidal barriers (the partial mitigation of the adverse effects the export projects have on local diverters) depends on inflow to the Delta from the San Joaquin River. Interruption of their supply is not examined in the document even though a decrease in that supply can seriously affect them.

17 Further, although Delta interests dispute the legality of Term 91 in any area of origin or Delta permit, the effects on triggering this term are unexamined in the DEIS/EIR. Decreased inflow of abandoned water directly affects when the conditions triggering Term 91 are present. This triggering precludes some diversions and therefore is a potential effect that should be examined in the document.

18 8. The DEIS/EIR appears to make some false assumptions regarding the quality of water leaving the Exchange Contractor's control both now and under the project scenario. Appendix "B" references some estimates of water quality at two points (see page 24 therein) rather than simply supplying existing data for the water quality of the drainage. Even if there are gaps in the data (which is doubtful), the Regional Board has extensive data and estimates on the water quality in the areas which add to the San Joaquin River. The importance of this is reflected in the document's conclusion that the Exchange Contractor's drainage to the San Joaquin River will remain the same whether or not the project proceeds. This is of course incorrect. The quality of the Exchange Contractor's drainage (both surface and subsurface) is a function of their current practice of selling a portion of their settlement contract amount. If under the no project

Mr. Bob Eckart
Ms. Joann Toscano
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18

scenario they receive their full allotment and continue their "water development" practices (tailwater recovery, conservation, groundwater pumping), they will have more water than they can use and thus the concentrations of salts in the water will be lower. Put another way, if the Exchange Contractors start receiving another 70,000 acre-feet of DMC water (of approximately 300 TDS), that will dilute their existing drainage and thus improve the San Joaquin River during all times of drainage activity, not just during times the DEIS/EIR indicates effects may result under the project.

19

9. Under any scenario, the document concludes that groundwater pumping has no effect on drainage or accretions to the river. Insufficient information is provided to confirm this assertion. Given the relationship between groundwater levels and accretions, the document should clarify whether any of the groundwater pumping is actually done to lower groundwater levels to allow crop production rather than part of "developing new supply." Such actions could well increase both surface and subsurface flows depending on how high the groundwater is and its proximity to the river and its tributary channels.

20

10. Many modeling results indicate that "no change in flow" results because changes are "counteracted" by New Melones' releases to maintain flow requirements (see, for example, page 4-16). As shown above, this cannot be assumed or expected.

21

11. The document regularly concludes that decreasing tailwater/return flows to the River helps improve water quality in that channel. This is not necessarily true if other discharges are of a worse quality; the Exchange Contractor drainage may help dilute that water depending on the volumes and concentrations involved. More importantly, decreases in flow can effect the ability of downstream diverters to exercise their rights. As we have seen this summer, when flows at Vernalis reach approximately 1,100 CFS, some diversions will not operate even though there may be enough water in the channel to supply their needs. Therefore, even though a

Mr. Bob Eckart
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decrease in Exchange Contractor drainage may improve water quality, that is only half of the examination, and the document is therefore insufficient.

22

12. The document often refers to potential in-basin and out-of-basin transferees. This distinction seems to be related to CVPIA transfer limitations, yet Section 3405(a)(1)(M) refers to "counties, watersheds, or other areas of origin." The document should clarify how it interprets "basin" in comparison to the statute's terms.

23

13. On page 4-22, the document states the assumption that approximately 23 percent of delivered Level 4 water would return to the river as supply. In the previous EA/IS, it states that, "65% of the Delta-Mendota Canal water delivered to the wetlands would be discharged back to the river (at page 3-6 therein). This difference appears significant and should be clarified.

The importance of this relates to New Melones' ability (or lack thereof) to meet the Vernalis and three interior South Delta salinity objectives. Recent data on releases for water quality indicate that there has been a significant shift in the times when water quality releases are needed. From 1991 to 2003 (see enclosed), releases in February, March, and April are substantial in frequency and in volume. This appears to coincide with the greater deliveries to the wetlands and their increased discharges. Because of the wet years during that short time frame, it is unclear if August water quality needs are actually less than before or if they have been effected by the purported increases in wetlands' discharges during that month. Regardless, it appears that the increased deliveries to the wetlands have increased the burden on New Melones, not eased it as the DEIS/EIR indicates.

24

14. Undisclosed modeling inputs appear to assume that absent the Exchange Contractors providing water to the wetlands, the Bureau will purchase water from other entities which drain into the river, and hence the No Project scenario will have similar conditions (see

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page 4-31). Such an approach is unreasonable as the other purchases may come from somewhere else, for example, exchanges of water with Kern County Water Agency Water Bank.

25

15. In examining the effects of transferring water to agricultural interests, the document concludes the return flows from the transferees is of better quality than the Vernalis flow. (See page 25 of Appendix B.) This seems incorrect and is based on estimates rather than existing known data. All agricultural users end up concentrating the salts in the water delivered to them. Even assuming an average efficiency rate for the agricultural users, the 3-400 TDS water provided to them should become drainage water with a concentration in excess of 455 TDS (or 0.7 EC).

26

16. The document states that Westlands Water District has no hydraulic connection to the San Joaquin River. I recall the Exchange Contractors submitting substantial evidence during the Bay-Delta hearings that groundwater levels in WWD affect the "head" of the subsurface waters in the Exchange Contractor's service area and therefore affects the amounts of accretions to the river. I also recall that there have been lawsuits on this topic.

27

17. In examining the effects of the transfer to agricultural interests, the document concludes any increase in consumptive use by the transferees is offset by decreased in consumptive use by the Exchange Contractors, "of CVP water." It is unclear what point is being made by this statement. If the Exchange Contractors farm the same acreage and sell water to other agricultural interests, there is an increase in net consumptive use; that is the purpose of selling water to contractors who receive less than 100 percent of their contractual amount. Analyses to the contrary would appear to be merely hypothetical musings. If no one needed more water, there would be no need for the project. By focusing only on the effects on CVP water, the authors appear to intentionally ignore the overall water situation and the interplay between surface, subsurface, and delivered waters.

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18. The DEIS/EIR is deficient in its cumulative analysis. Numerous existing and proposed projects are ignored which, when combined with the effects of this project will result in significant adverse effects. The SJRA, additional sales for that purpose by Merced Irrigation District and others, South San Joaquin Irrigation District sale of water to urban areas, (b)(2) allocations from New Melones, ongoing TMDL and basin plan amendment processes for dissolved oxygen and salt and boron, the Grasslands Bypass Project, proposed EWA purchases, and other projects either specifically or may in the future decrease San Joaquin River dilution flow and increase salinity concentrations in the river. The above projects which have already been subject to environmental review indicate these effects, but conclude that each project's effects are insignificant. However, when combined, they most certainly result in significant adverse effects. One percent here, five percent there, ten percent somewhere else eventually equals significant adverse effects especially when New Melones can't meet its water quality obligations. The DEIS/EIR completely fails to make this cumulative analysis.

29

19. Section 13 of the DEIS/EIR is entitled, "Mitigation Monitoring and Reporting Program" and lists various significant and potentially significant effects of the project. It appears that the mitigation offered is to do future monitoring and then hope the Bureau will actually mitigate any real effects. The ineffectiveness of this approach is highlighted when the document asserts that the Bureau will operate New Melones under the IOP "to meet flow requirements and water quality standards at Vernalis." As explained above, operating under the IOP does not meet flow and salinity standards and current operations are not according to the IOP.

Just as importantly, the mitigation commitment is to determine afterwards the effects on exports and then cure that effect. Effects on New Melones will somehow be cured by changes in deliveries to and practices of the wetlands, with no specifics being given. It would appear extremely doubtful that the Bureau, even if it determines that the delivery of Level 4 refuge water

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has adverse effects on New Melones, will decrease the amount of water delivered to the wetlands in order to protect New Melones' inability to meet existing permit conditions. I believe the technical term for this situation is the fox guarding the hen house. This lack of firm commitment and lack of specifics on how mitigation will occur is insufficient under CEQA and NEPA.

Conclusion. The analysis fails to accurately describe the effects of the increased salt concentration and less dilution water resulting from a transfer which increases the net consumptive use of the water. The DEIS/EIR goes through numerous analyses and identifies decreases in San Joaquin River flow and increases in salinity concentrations that will result from the project. These effects are labeled as either insignificant or subject to mitigation. However, it appears that the analysis covers only the incremental additional effects of the Exchange Contractor's increasing the amount of water they transfer above and beyond that amount they currently transfer. Important to this analysis is the fact that the currently authorized transfers will soon no longer be authorized and therefore should not be included in the base line condition for such an analysis. In addition, the document fails to examine the effects on other downstream water users but instead only focuses on the effects of additional exports to which the Bureau has an interest. Finally, the document's cumulative effects analysis ignores the numerous ongoing and proposed projects which all incrementally adversely affect water quality and flows on the San Joaquin River and thus in combination with this project, constitute significant adverse effects. For the above reasons, the SDWA believes that the DEIS/EIR is insufficient and does not support approval of the proposed project. SDWA requests that the environmental and other documents referenced herein, for the projects referenced herein, and SDWA's comments thereto be included as part of the Record.

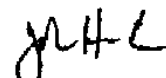
The Central Delta Water Agency joins in these comments.

/ / / / /

Appendix E
Comments and Responses

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Very truly yours,


JOHN HERRICK

JH/dd

RESPONSE

South Delta Water Agency – John Herrick
August 2, 2004

SDWA-1

The comment is broad reaching and expansive concerning water and salt management in the San Joaquin Valley, but not critical to analysis developed for the EIS/EIR. The proposed transfer is for a 10-year period, during which water will be transferred from one set of users to another. The same amount of water exported from the Delta will occur with or without the transfer, and will carry the same amount of salts into the Valley with or without the transfers. Consequently, the salt balance of the CVP service area is unchanged, and further detailed analysis of it is not necessary in our attempt to focus the environmental analysis on the specific issues associated with potential physical changes in the environment and avoiding encyclopedic material. The change in the return of flows and salts is analyzed as an incremental change in conditions compared to the Existing/No Project condition of the San Joaquin River. The changes in flow and salt conditions identified in the analysis can be associated with a change in the “salt balance,” however, that answer is not germane to any current flow or quality standard. The analysis has been developed to evaluate the potential impacts to the San Joaquin River in terms of flow and quality. The Exchange Contractors will be addressing the TMDL process comprehensively and independently of this transfer program.

SDWA-2

The analysis evaluates the effects that could occur to the San Joaquin River, New Melones, and the CVP/SWP Delta supply. In the context of effects to the San Joaquin River (and its subsequent effects to New Melones and the CVP/SWP Delta supply) the Existing/No Project condition assumes the continuation of the development of water by the Exchange Contractors and the continuation of the delivery of Level 4 supplies to the refuges, consistent with recent levels. The development of water by the Exchange Contractors will not change absent the transfers, and Reclamation has a mandate to continue deliveries to the refuges. See responses SEWD-2 and SEWD-3 for a detailed discussion of deliveries under No Project/No Action and recent deliveries. The document states the nexus between developed water and disposition, inclusive of non-transfer water deliveries that will be provided by Reclamation.

The comment indicates some confusion by the reader in the scope of an environmental effects/impacts analysis under NEPA and CEQA where the focus must be on the incremental effects of the Proposed Action over a designated baseline (existing conditions and No Action/No Project). The descriptions address the overall program; however, the analysis of environmental effects focuses on the incremental effects plus the cumulative effects where these can be considered without speculation.

In 1992, the CVPIA was adopted by Congress. Section 3406(D) provided in part that

“ . . . the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland

habitat areas on units of the National Wildlife Refuge System in the Central Valley of California. Los Banos, Volta, North Grasslands, and Mendota State wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California . . . Provided, that the Secretary shall be obligated to provide such water whether or not such long term contractual agreements are in effect . . .

“(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with Level 4 of the ‘Dependable Water Supply Needs’ Table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation.”

Section 3403(J) defines “Refuge Water Supply Report” as the 1989 report of the Department of Interior. Whether or not there is a transfer from the Exchange Contractors to permit a proper CEQA/NEPA process, the current condition of water being supplied from the Delta Mendota Canal to the Refuges is required both because this is the law and because of the current physical environment.

Under CEQA and NEPA, legal enactments and programs approved by Congress are not subject to discretion or change. Further, in January of 2001 a final EA/IS on the San Joaquin Valley Refuge Supply Alternatives was completed by the Bureau of Reclamation and the environmental impacts and alternatives of supplying water to the Refuges was fully examined.

Under NEPA 40 CFR 1502.14, 1500.1(a), in some circumstances an EIS must examine alternatives that are outside an agency’s jurisdiction or power and in conflict with law or Court orders if they are reasonable. However, this is not a basis for ignoring the current physical environment, which includes water transfers from the Exchange Contractors for refuge use. If this EIS/EIR were to examine an alternative in which no refuge water was available or no transfer of Exchange Contractor water would be provided for refuge use, the objects of NEPA and CEQA of providing a scientific and accurate description of the current human environment and the likely changes in that environment from the project or its reasonable alternatives would be ignored. As 46 *Federal Register* 18026 as amended 51 *Federal Register* 15618: “Forty Most Asked Questions Concerning NEPA Regulations,” Question 3, states:

“Therefore, the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, project impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.”

While the No Action/No Project Alternative does state that it “would result in no transfer or exchange of water from the Exchange Contractors to either Interior or to any of the other

potential water users.” Section 2.2 further states that “if water was not transferred from the Exchange Contractors, water would be transferred from other sources.” Therefore, as the commenter has noted, the No Action setting is assumed to equal existing conditions in terms of San Joaquin River hydrology.

Existing conditions, as described in response STOCKTON-5, are the physical conditions of the Proposed Project at the time of the Notice of Preparation. The Notice of Preparation for this project was filed in October 2003, and at that time, the ongoing transfer program of annual transfers of up to 84,000 acre-feet was in place. Therefore, this EIS/EIR correctly examines the environmental impacts of transferring up to 130,000 acre-feet of water, which is an incremental amount above existing conditions of up to 84,000 acre-feet, as well as a smaller program and the new component of temporary, rotational land fallowing.

A subset of these comments refers to the appropriateness of utilizing the provision of 71,600 ac ft annually to the Refuges from the Exchange Contractors as the baseline or the No Action/ No Project Alternative. It is suggested that the proper analysis would be to assume that no water transfer from the Exchange Contractors for Refuge use would occur. It is unclear whether this commenter suggests that it be assumed that no Exchange Contractor water is delivered to the refuges or that water be delivered to the refuges from some other source, or that water be transferred for other uses and purposes.

The Courts have provided guidance in those situations under CEQA where previous actions or policies have led to changes in the environment, and have answered the question of whether it should be assumed, for purposes of the baseline or no action alternative, that the previous changes should or could be reversed. In Remy, Thomas, Guide to California Environmental Quality Act, 10th Edition, p. 162-7, it is emphasized that the existing physical conditions of the environment are the baseline to measure and analyze environmental impacts, and that some theoretical condition should re-authorization of a project not be granted is not the proper baseline when an EIR is being prepared. *Environmental Planning and Information Council v. County of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 352; *Christward Ministry v. Superior Court* (4th Dist. 1986) 184 Cal.App.3d 180, 186-187; 14 CCR 15125, 15126.6; *Black Property Owners Assoc. v. City of Berkeley* (1st Dist. 1994) 22 Cal .App.4th 974, 985-986.

Under NEPA, even if a current practice or program could be discontinued, the proper baseline and the basis for considering a no action alternative is the existing physical conditions. *American Rivers v. Federal Energy Regulatory Commission* (9th Circuit 1999) 187 F.3d 1007 (FERC not required to consider a Dam as removed and not in operation).

SDWA-3

See Sections 1.2, 1.3, and 2.4 of the EIS/EIR. Transfers between Central Valley Project contractors within counties, watersheds or other areas of origin are deemed to meet the conditions if they can demonstrate the amount water irretrievably lost to beneficial uses compared to that portion of water which is in excess of the quantity of water required to meet the consumptive use, leaching requirement, and cultural practice needs of crops, provided and that said excess quantity has percolated into an unusable groundwater aquifer or has flowed unavoidably to a saline sink.

Under Reclamation guidelines for implementation of the water transfer provisions of CVPIA, a complete written transfer proposal is submitted to Reclamation for review and approval, and we determine whether contractors can demonstrate the consumptive use criteria identified under CVPIA. Written descriptions of a transfer proposal include a proposed monthly schedule of deliveries. The schedule identifies the quantity and the recipient of the water. The proposal also includes a detailed location map of the area(s) proposed to receive the transferred water, including documentation supporting claim of right to the quantity of water being transferred. Identify the Central Valley Project (CVP) facility/facilities required to facilitate transfers for conveyance, pumping and/or storage to ensure the water is not conveyed outside our place of use as depicted under the water right permits. All transfers outside the water rights permitted place of use will require prior approval by the SWRCB.

Conservation measures included: Groundwater substitution - Bucket for bucket groundwater for surface water. Water available for transfers will be subject to the amount of water available annually under water service, repayment contracts, water rights settlement, etc. Groundwater substitution includes a groundwater basin study or evaluation of groundwater supplies to ensure the transferor will have no significant long-term adverse impact on groundwater conditions in the transferor's service area. It is deemed to meet the quantity of water. See also response SDWA-4.

SDWA-4

The Bureau has determined that the proposed transfer program is consistent with CVPIA Section 3405 and meets the criteria for transfers, subject to the approval process for each specific transfer proposed under the Program. Reclamation considers that transfers within the Delta export service area based on conservation measures are deemed to meet the requirement or reduction in consumptive use or irretrievable loss. The Delta export service area includes the San Felipe division and the EWA replacement water for CVP contractors in this same area. Section 2.4 explains limitations on the proposed transfers from the Exchange Contractors. Furthermore, groundwater substitution (see Section 2.3.1) is not subject to the "reduction in consumptive use" criteria. Recovering irretrievable losses is a component of this 10-year water transfer.

Data are provided annually to Reclamation to determine the amount of tailwater "reuse" compared to surface water deliveries. A like amount of surface water that would have normally been delivered if not for the "reuse" is considered conserved water and made available for transfer.

SDWA-5

The CEQA Guidelines (15124) state that:

"The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact."

In addition Section 15124(b) continues:

"A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a

statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.”

The project purpose is established at the prerogative of the lead agencies. Other related projects (and therefore, additional purposes) are called out in Section 1.3. Purchases by Reclamation from other agencies besides the Exchange Contractors would be covered in other environmental documents as needed to supplement the current documents for the refuges and CVPIA. Purchases and exchanges to rewater the San Joaquin River serve a separate purpose and would require substantial expansion of the current analyses. Proposals to rewater the San Joaquin River have not been sufficiently defined pending development of specific plans to accomplish such objectives.

SDWA-6

See response SDWA-2 above.

SDWA-7

The analysis determines changes to flow and quality conditions due to the transfers as measured against a baseline condition representing the San Joaquin River and Delta, and their controlling influence upon the operation of New Melones and the CVP/SWP. The “interior South Delta locations” do not currently control the operations of New Melones or upstream CVP/SWP facilities; therefore, consideration of those objectives would not alter the analysis. Regarding flow at Vernalis, the analysis specifically does analyze and address objectives at Vernalis. Just as results are presented concerning quality changes at Vernalis, and the meeting of quality objectives (e.g., Table 4-12), flow conditions at Vernalis, including the meeting of flow objectives, are illustrated and discussed (e.g., Table 4-11). The nexus between flow changes in the river and reaction by New Melones releases has been fully discussed (page 4-16, immediately following Table 4-11).

SDWA-8

The cited documents indicate that Reclamation cannot always meet the water quality and flow objectives at Vernalis, and the EIS/EIR does not purport to change that conclusion. The analysis methodology developed for the EIS/EIR was specifically designed to not enter into an analysis of how often the objectives at Vernalis will be met. The analysis methodology identifies monthly periods within a year when a particular objective is likely to be controlling operations, regardless of whether or not Reclamation has the ability to meet the objective. The effects of the transfers are displayed for each month in terms of changes to Vernalis flow and quality; however, only during periods that standards control New Melones operations or CVP/SWP Delta supply are the effects to New Melones and the CVP/SWP supply illustrated. This methodology develops results that illustrate the potential incremental change to New Melones and CVP/SWP Delta supply regardless of whether or not Reclamation meets the objectives.

SDWA-9

See response SDWA-7. Flow objectives have been addressed in the analysis.

SDWA-10

See response SDWA-7. Flow objectives have been addressed in the analysis.

SDWA-11

Although Reclamation may at times operate outside of the confines of the New Melones Interim Plan of Operations (IOP), the IOP is still the guiding instrument for current operations. Anomalies to that operation will be recognized in the annual transfer approval analysis as the actual operation of New Melones Reservoir is documented.

SDWA-12

Any effect upon the “existing flow” for the purposes of the SJRA and VAMP will self-correct in actual operations with the adjustment of flows to meet VAMP flow targets provided by San Joaquin River Group entities, including the Exchange Contractors.

SDWA-13

The analysis incorporates recent, gaged information concerning the Exchange Contractors’ discharges to Mud and Salt sloughs. The cited statement concerning the “difficulty” has been modified.

SDWA-14

The methodology used for the analysis utilizes depictions of monthly conditions for five different year types. Although in any particular year the actual values may not precisely match an analysis condition, the analysis is adequate to explore the range of effects that might occur. Further, the annual transfer approval process accommodates the fact that any year’s specific circumstance will likely vary from any year specifically analyzed in the EIS/EIR. The annual transfer approval process incorporates projected and actually experienced hydrologic circumstances.

SDWA-15

See response SDWA-8.

SDWA-16

The analysis evaluates the known hydrologic parameters necessary for CEQA/NEPA documentation of flow and quality effects to the San Joaquin River. The comment suggests that there are effects occurring to others but does not specify what hydrologic parameter is possibly affected.

SDWA-17

The small magnitude of the flow impacts to Delta inflow will not affect the prediction and implementation of Term 91 constraints upon water users.

SDWA-18

The analysis values for the quality of water leaving the Exchange Contractors at Mud and Salt Sloughs are reflective of recent, actual gaged flow, which flow is reflective of recent Exchange Contractor operations including the re-capture of discharges for transfer or internal use. Contrary to the commenter's conclusion, under the No Project scenario the Exchange Contractors will not have "more water than they can use" and concentrations to the river will be diluted (implying the Exchange Contractors will release more water). As stated in the EIS/EIR, under the No Project scenario the Exchange Contractors will integrate the recapture water into their systems, likely reduce their use of groundwater and maintain the same level of discharges to Mud and Salt Sloughs. The quality of water leaving the Exchange Contractors will likely improve, not due to additional dilution, but instead because the combined source of water used by the Exchange Contractors will improve because of the replacement of lower quality groundwater with higher quality DMC deliveries. This circumstance would slightly change the depiction of the No Project condition at the boundary of the Exchange Contractors, and in terms of affecting the assumed baseline conditions at Vernalis, the effect would be smaller due to the blending of other flows that occur throughout the rest of the San Joaquin River. The analysis methodology performs an incremental mass balance using the assumed baseline conditions as the basis of flows and quality. The suggested refinement in analysis would slightly change the bases to which the project would be compared, with the incremental effect of the project resulting in nearly the same effects as currently analyzed.

SDWA-19

The groundwater aquifer associated with the groundwater pumpage affected by this transfer is discontinuous with accretions to the river.

SDWA-20

See responses SDWA-8 and SDWA-11.

SDWA-21

The commenter does not perform the correct analysis, and alludes to the need to keep flow with a quality greater than objectives in the river for the purpose of diluting flows of worse quality. When performing the analysis to the downstream control point at Vernalis, removal of water with a quality worse than what occurs at Vernalis (by the Exchange Contractors) will improve the quality of water at Vernalis.

Regarding the protection of downstream diverters, the analysis currently incorporates all known requirements affecting New Melones and Delta operations.

SDWA-22

For purposes of this environmental analysis, Reclamation considers that transfers between CVP contractors in the Delta export service area, i.e., the area of the Westside and San Benito and Santa Clara Counties, that is served by water exported at the Tracy Pumping Plant, is within the scope of Section 3405. Water transferred between contractors in this area does not affect the

level of pumping at Tracy Pumping Plant and is the functional equivalent of “counties, watersheds or other areas of origin.”

SDWA-23

The citation of assumptions from the previous EA/IS is inappropriate, and reconciliation of the assumptions is not required. The EIS/EIR analysis is based on new or confirmed assumptions, including a new mathematical model depicting the refuge operations. See Appendix B for a description of the assumptions.

This EIS/EIR analysis explicitly evaluates flow and water quality effects within the San Joaquin River to the downstream point known as Vernalis. These effects include an evaluation of the potential water supply effects to New Melones Reservoir, including changes to river flow in the Stanislaus River. The analysis also includes potential effects to Delta inflow and the effect that flow changes may have an impact to CVP/SWP water supply as upstream reservoir storage may be affected.

The explicit effect of changes to flow and quality at Vernalis upon water quality conditions at downstream San Joaquin River and interior delta locations was not done in this analysis and is outside of the scope of this technical evaluation. The anticipated flow changes at Vernalis due to the project are recognized as being one of many factors that will affect Delta water quality conditions. The water quality conditions downstream of Vernalis are currently the explicit subject of other forums, including the South Delta Improvement Project being examined by the DWR and Bureau of Reclamation. Modeling is underway to evaluate the factors affecting flow, water level and quality in the area results could be used when finalized to evaluate this transfer project’s potential effect. Measures are currently being developed by DWR and the Bureau of Reclamation to manage water in that area.

SDWA-24

Regarding assumptions in the analysis, an assumption is included regarding the source of water acquired by Reclamation to provide Level 4 deliveries to the refuges absent purchases from the Exchange Contractors. These sources include Delta supplies and South of Delta supplies. See response SDWA-2 for further discussion of the No Action scenario.

See response STOCKTON-3 regarding the assumption of supplies for the refuges absent the transfers from the Exchange Contractors.

SDWA-25

The assumption for incremental surface return flows from incremental deliveries to agricultural users is based on similar assumptions used within other modeling processes. The underlying assumption is that returns will be reflective of the source of water delivered, degraded due to district surface water system effects. In this analysis it is unknown whether the incremental delivery will offset other sources or water to the user, or if the delivery will increase land use because of a pre-transfer shortage in CVP supply. It is assumed that the quality of delivery is reflective of water delivered from the DMC (250 $\mu\text{S}/\text{cm}$ – 750 $\mu\text{S}/\text{cm}$, 162 ppm – 487 ppm TDS), degraded by 20 percent (e.g., $\times 1.2$). This assumption results in the return ranging between

194 ppm and 585 ppm, TDS, depending on month and year type (see Appendix B), which at times is in excess of the quality objective at Vernalis.

SDWA-26

The EIS/EIR statements regarding the connectivity of Westlands Water District to the San Joaquin River are made in the context of potential hydrologic affects due specifically to potential transfers from the Exchange Contractors. The Exchange Contractors maintain the position that subsurface flows occur from Westlands Water District into the service area of the Exchange Contractors. This is a baseline condition that occurs with or without the transfers. A condition of the Exchange Contractors for transfers to Westlands Water District requires Westlands Water District to provide analysis that demonstrates that transfer water provided to Westlands Water District does not aggravate this situation. Thus, the context of the statements that WWD has no direct “surface” water connection to the San Joaquin River is correct.

SDWA-27

Consumptive use may not increase as a result of the transfers. For instance, a transfer may allow the substitution of surface water for groundwater use by the transferee. In some instances, an increase in consumptive use may occur (e.g., the Exchange Contractors’ consumptive use remains the same, but the transferee’s consumptive use may increase because the land would otherwise have been temporarily idled due to a less than full CVP supply delivery.

SDWA-28

We cannot speculate on future projects but the analysis has correctly included what is reasonably foreseeable in its assumptions. The issue is to what extent other existing and proposed projects are included in the No Action baseline as reasonably foreseeable and quantifiable and what is not included under No Action and should be addressed under a separate cumulative analysis either as a type of projection or as an attempt to add up other approved projects. Appendix B explains that the baseline hydrologic setting represents “recent hydrology and circumstances” including the Grassland Bypass Project and Decision 1641 for Delta operations. Others included in the baseline are the San Joaquin River Agreement/VAMP flows, and other actions that have led to the recent occurrence of water quality and flow conditions in the San Joaquin River. The cumulative effects discussion on page 4-66 puts the proposed transfer program into its regional context. The text of Section 1.3 has been modified to reflect the Regional Board TMDL and Basin Plan amendment process. The Exchange Contractors will be developing a plan to address new TMDL requirements for salt and boron, and the specific data for that project will be developed in the future. Both Reclamation and DWR are revising current models including CALSIM to incorporate recent regulatory requirements, and these improvements will serve as a check on defining cumulative effects including their significance.

SDWA-29

See responses STOCKTON-13, STOCKTON-15 and STOCKTON-18 regarding the Reclamation responsibility for San Joaquin River flow and quality objectives at Vernalis, and the mitigation of impacts to New Melones.