

## **Appendix D**

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



# United States Department of the Interior




In Reply Refer to:  
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NOV 30 2016

## Memorandum

To: David Hyatt, Supervisory Biologist, Resources Management Division, Bureau of Reclamation, South-Central California Area Office, Fresno, California

From: Chief, San Joaquin Division, Endangered Species Program, Sacramento Fish and Wildlife Office, Sacramento, California 

Subject: Consultation on the Interim Renewal of Water Service Contracts with San Luis Water District and Panoche Water District, 2017-2019

This memorandum is in response to the U.S. Bureau of Reclamation's (Reclamation) August 18, 2016 request for concurrence with the determination that the proposed execution of two Central Valley Project (CVP) Interim Renewal Contracts (IRCs), for the San Luis Water District (SLWD) and the Panoche Water District (PWD), from March 1, 2017 to February 28, 2019 may affect, but is not likely to adversely affect (NLAA) the federally-listed as endangered blunt-nosed leopard lizard (*Gambelia sila*), and San Joaquin kit fox (*Vulpes macrotis murtica*), and federally-listed as threatened giant garter snake (*Thamnophis gigas*). The PWD and SLWD are located in western Fresno and Merced counties. Your request was received in our office on August 22, 2016. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The Federal action on which we are consulting is the two year-renewal of CVP IRCs for PWD and SLWD beginning on March 1, 2017 and ending February 28, 2019. Pursuant to 50 CFR 402.12(j), Reclamation submitted a Biological Evaluation (BE) for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is NLAA the blunt-nosed leopard lizard, San Joaquin kit fox, and giant garter snake. No critical habitat has been designated for these species. Reclamation has determined that the renewal of IRCs for PWD and SLWD will have no effect on the Federally-listed species or critical habitats identified in Appendix A, therefore, those species are not considered further in this document.

Reclamation has requested informal consultation under the Act. In considering your request, we based our evaluation on the following information: (1) the August 18, 2016 request for consultation, (2) a BE for these IRCs dated August 2016 (3) Central Valley Project Habitat Mapping Program (CVPHMP) land use change maps between 2006 and 2011 for CVP IRC districts provided by Reclamation's Regional Office to the Service on January 6, 2016, (4) the Merced County's General

Plan Update dated 2013 (County of Merced 2013) and Public Hearing Draft of the Housing Element Update dated May 2016 (County of Merced 2016), (5) electronic mail between Reclamation and the Service, (6) information provided by Reclamation's South Central California Area Office for the 2008, 2010, 2013, and 2015 consultations involving PWD and SLWD IRCs, and other information available to the Service.

The Service's consultations on IRCs have addressed the diversions of water at prescribed diversion points and times for the use of that water on a specified land area (the contractors' service area). All IRCs, while identifying a full contract amount, recognize that the delivery of full contract amount is subject to availability of water and other obligations of the CVP (such as Central Valley Project Improvement Act (CVPIA) and consultation requirements under the Act).

Reclamation has requested concurrence with a NLAA determination for the blunt-nosed leopard lizard, the San Joaquin kit fox, and giant garter snake. The information provided for this consultation, as well as the short duration of this project, and land conversion commitment in the letter from SLWD (described below), provides the basis for the Service to concur with Reclamation's determination that these IRCs are NLAA the blunt-nosed leopard lizard, San Joaquin kit fox, or giant garter snake.

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

As noted in the County of Merced Public Hearing Draft of the Housing Element Update (County of Merced 2016), "*The Santa Nella County Water District (SNCWD) is finishing up implementation of a reorganization with the San Luis Water District to obtain a partial transfer [CVP contract assignment] of the San Luis Water District's Federal Bureau of Reclamation (Bureau) contract allocation...The SNCWD as submitted an application with the Bureau to obtain this partial transfer, and has paid the Bureau's processing fee so it should be completed in the next 12 months.*" We understand from Reclamation that such a reorganization and CVP contract assignment from SLWD to SNCWD would be a new action and would receive separate environmental review from these IRCs. We therefore are not including any effects on federally-listed species resulting from this reorganization and contract assignment in this consultation.

Reclamation's determination that the IRCs considered in this consultation will NLAA the blunt-nosed leopard lizard, the San Joaquin kit fox, and the giant garter snake is based on Reclamation's conclusion that CVP contract deliveries do not result in land use changes that would adversely affect federally-listed species or critical habitat. In the previous consultation completed for these IRCs (File Number 2014-F-0643), the Service requested that prior to the next renewal of these IRCs Reclamation would revise and update the Central Valley Project Improvement Act (CVPIA) CVPHPM to validate the conclusion that CVP IRCs will not result in land use changes within the districts.

Reclamation prepared and shared its 2016 CVPHMP maps and tables of habitat changes (based on information from the National Land Cover Database<sup>1</sup> comparing land use data from 2006 with 2011) with the Service on January 6, 2016. In addition, for this consultation Reclamation also analyzed potential land use changes using aerial imagery since the last IRC consultation to ensure existing operations were being conducted in a manner compatible with the continued existence and recovery of listed or proposed species, or designated or proposed critical habitat, pursuant to the Act and environmental commitments in CVPIA BiOp. Reclamation compared 2010 to 2014 to determine if there had been any changes in land use within PWD and SLWD (California Department of Conservation 2014, Google Inc. 2015). Based on this comparison, Reclamation determined that there were no land use changes to potentially suitable habitat for federally-listed species (i.e. from/to grasslands, wetlands, barren, forest, or shrub) in PWD or SLWD.

Reclamation along with the Service affirm their commitment to continue to work collaboratively to interpret and evaluate the 2016 CVPIA Mapping and to examine sensitive land use changes revealed by said mapping. This commitment is made to comply, in part, with the Biological Opinion on Implementation of the CVPIA and Continued Operation and Maintenance of the CVP, issued in November 2000, File Number 98-F-0124, pages 2-62 through 2-64 (D. Hyatt email to Service dated February 23, 2016).

### **Background and Related Consultations**

Our previous consultation on PWD and SLWD's IRCs (File Number 2014-I-0643) included a summary of consultations on CVP contract renewals that the Service has completed that are related to these IRCs. We incorporate the background and summary of related consultations here by reference.

#### Consultations on Drainage

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

In 2006 Reclamation completed an Environmental Impact Statement (EIS) and Record of Decision (ROD) under the National Environmental Policy Act (NEPA), and the Service completed a Biological Opinion (File Number 2006-F-0027) and a Fish and Wildlife Coordination Act Report in accordance with the provisions of section 2(b) of the Fish and Wildlife Coordination Act (48 stat. 401, as amended; 16 U.S.C. 661, et seq.) on San Luis Drainage Feature Re-evaluation (SLDFR). The purpose of the SLDFR project was to meet Reclamation's obligations under the Federal San Luis Unit Act of June 3, 1960, Public Law 86-488, 74 Stat. 156, Section 5, to provide drainage service to drainage-impacted lands within the San Luis Unit (including drainage impacted lands within SLWD and PWD). Once fully implemented, Reclamation anticipated in the EIS and ROD that the drainage discharge from the San Luis Unit would be reduced to sufficient standards to meet the statutory and judicial requirements imposed. Congress has not yet acted to authorize and make appropriations to implement the SLDFR ROD fully, although Reclamation has the authority and funding to complete some of the actions described in the EIS.

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<sup>1</sup> Information on the National Land Cover Database is available at: <http://www.mrlc.gov/>

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WDs\_10.19.2016.docx On December 18, 2009, the Service issued a Biological Opinion to Reclamation on the continued agricultural drainage management and disposal called the Grassland Bypass Project (GBP), involving seven agricultural water districts including SLWD and PWD (File Number 2009- F-1036). The Service concluded that the GBP is likely to adversely affect, but is not likely to jeopardize the continued existence of the giant garter snake and the San Joaquin kit fox, and not likely to adversely affect the Delta smelt (including Critical Habitat). The 2009 Biological Opinion provided reasonable and prudent measures and terms and conditions to implement those measures. The execution of Interim Renewal Contracts for SLWD and PWD will be subject to the terms and conditions as specified in the 2009 Biological Opinion.

On June 4, 2012, the Service completed informal consultation on the San Luis Drainage Feature Re-evaluation Demonstration Treatment Facility at Panoche Drainage District (File Number 2011-F-0855). The purpose of the SLDFR Demo Facility is to test the efficacy and operation of reverse osmosis treatment and selenium biotreatment technologies for agricultural drainage disposal. This facility was built within the geographical boundaries of the existing Grassland Bypass Project's Drainage Reuse Area.

On June 7, 2014, the Service completed informal consultation on the authorization to install, operate, and maintain pipelines rerouting drainage from the six drainage sumps that discharge into the Delta Mendota Canal (DMC), to the GBP's San Joaquin River Improvement Project's (SJRIP) drainage reuse area (File Number 2014-I-0435). Drainage from the six sumps is rerouted and released into ditches within the SJRIP where it is re-circulated and reused in the same manner as existing drainage water is managed within the SJRIP. This project re-routes approximately 1,200 acre-feet (AF) of poor quality subsurface agricultural drainage water that previously discharged into the DMC, and prevents approximately 800 pounds of selenium and 8,300 tons of salts from entering the DMC annually.

On July 8, 2016, Reclamation released for public comment a draft agreement between the United States and the Pacheco Water District, PWD, and SLWD (collectively referred to as the Northerly Districts) that would relieve the United States of significant financial obligations and legal liability regarding agricultural drainage service within these districts (Agreement). Implementation of the Agreement is contingent upon congressional authorization of enabling legislation. Under the Proposed Terms of the Agreement related to drainage<sup>2</sup>, the Northerly Districts will:

- Assume all responsibility for drainage management and disposal in accordance with all legal requirements under State and Federal law. Each Northerly District would become legally responsible for the management of drainage water within its boundaries, in accordance with Federal and State law.
- Indemnify the United States for any damages and pay compensation for any individual landowner claims arising out of litigation related to drainage. Under the Agreement, each Northerly District would agree to indemnify the United States for any landowner claims (past, present and future) arising out of a failure to provide drainage service within its respective boundaries, once the United States has provided the funding under the Agreement. In addition, each Northerly District will waive, release, and abandon all claims

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<sup>2</sup> Adapted from <http://www.usbr.gov/mp/docs/q-a-notherly-districts-drainage-settlement.pdf>

against the United States arising from the alleged failure of the United States to provide drainage service.

- Assume title to certain facilities currently owned by the United States including the SLDFR Demonstration Treatment Facility. In addition, a willing, but currently unidentified entity would be authorized to take title to the portion of the San Luis Drain from Check 19 to Milepost 78.5.
- Receive appropriated funds to assist in drainage implementation. To assist the Northerly Districts with the completion of certain drainage management actions, Reclamation would seek to provide the Northerly Districts with a total of \$70 million in funds over a 7 year period.

For the purposes of this consultation on these IRCs, we assume that any drainage service implemented in the PWD and SLWD will be consistent with the project description of the 2009 GBP Biological Opinion. The 2009 GBP Biological Opinion considered expansion of the San Joaquin River Improvement Project's (SJRIP) drainage reuse area to up to 6,900 acres. Drainage reuse is the practice of using subsurface drain water as an irrigation source for salt tolerant crops. Currently, the SJRIP is made up of almost 6,000 acres area planted with salt tolerant crops. The participating districts of the GBP (including PWD and SLWD) need to reduce drainage and selenium loads discharged into Mud Slough (North) and the San Joaquin River with the goal of achieving zero discharge by the end of December 2019. In order to achieve these discharge reductions and load limits, the GBP districts developed a drainage plan that includes expansion of the SJRIP's reuse area by up to 4,000 acres, as described in the revised Westside Regional Drainage Plan (Summers Engineering 2014). The 2014 Westside Regional Drainage Plan provided an estimated schedule for the expansion of the SJRIP that includes land acquisition and installation of infrastructure by the participating districts of the GBP beginning in June 2017, and is within the time period considered for these IRCs. We understand from Reclamation that if the SJRIP is expanded and if there is federal funding to support that expansion, this would be a separate action from the IRCs with its own environmental review. We are therefore not including any environmental effects from the possible expansion of the GBP's SJRIP in this consultation on these IRCs.

### **Project Description**

The proposed action is the execution of IRCs for SLWD and PWD from March 1, 2017 to February 28, 2019 in the amounts, and to the acreages and purposes, specified in Table 1. The IRCs provide delivery of "a maximum quantity of water subject to hydrological and regulatory constraints for up to the full contract amounts," as described in Reclamation's Memorandum and attachments on San Luis Unit (SLU) long term contract renewals dated September 27, 2005.

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

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

<b>CVP Contractor</b>	<b>Water Service Contract Amount (acre-feet)</b>	<b>Area (acres)</b>	<b>Primary Contract Use</b>	<b>Contract Period</b>
Panoche Water District	94,000	39,936	Agriculture	03/01/17-02/28/19
San Luis Water District	125,080	66,458	Agriculture	03/01/17-02/28/19

**San Luis Water District***Water Resources*

The SLWD is located in western Merced and Fresno Counties. The District serves 64,502 acres of which 30,954 acres are annually irrigated (SLWD 2012). The district has a CVP contract for 125,080 AF/year, for delivery from either the DMC or the San Luis Canal (SLC). Although water deliveries by SLWD historically have been almost exclusively used for agricultural use, development in the extreme northern portion of SLWD near the community of Santa Nella has resulted in a shift of some water supplies to M&I use. The district currently supplies approximately 800 AF/yr to 1,300 homes and businesses. The SNCWD treats the CVP water sent from the SLWD to service the Santa Nella Community (USBR 2016).

Surface water deliveries from the CVP are SLWD's only long-term water supply. The district does not own any groundwater wells and has no long-term contracts for surface water or groundwater supplies. Private groundwater sources are limited; there are approximately 22 privately owned and operated groundwater wells that provide water to 6,000 acres in SLWD, or only about 5 percent of the acreage within SLWD. The majority of the SLWD's water users do not have access to groundwater that can be used for irrigation (USBR 2016).

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

*Land Use*

Land use in SLWD includes agriculture in the east, with grazing land concentrated on the west side of the district. Almonds are the most prevalent crop in SLWD, but grains, forage and row crops also are grown (USBR 2016). Increasingly, agricultural land use in SLWD has shifted to higher value permanent crops as contract deliveries have declined and cost of transferred water has increased over time (USBR 2014b).



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

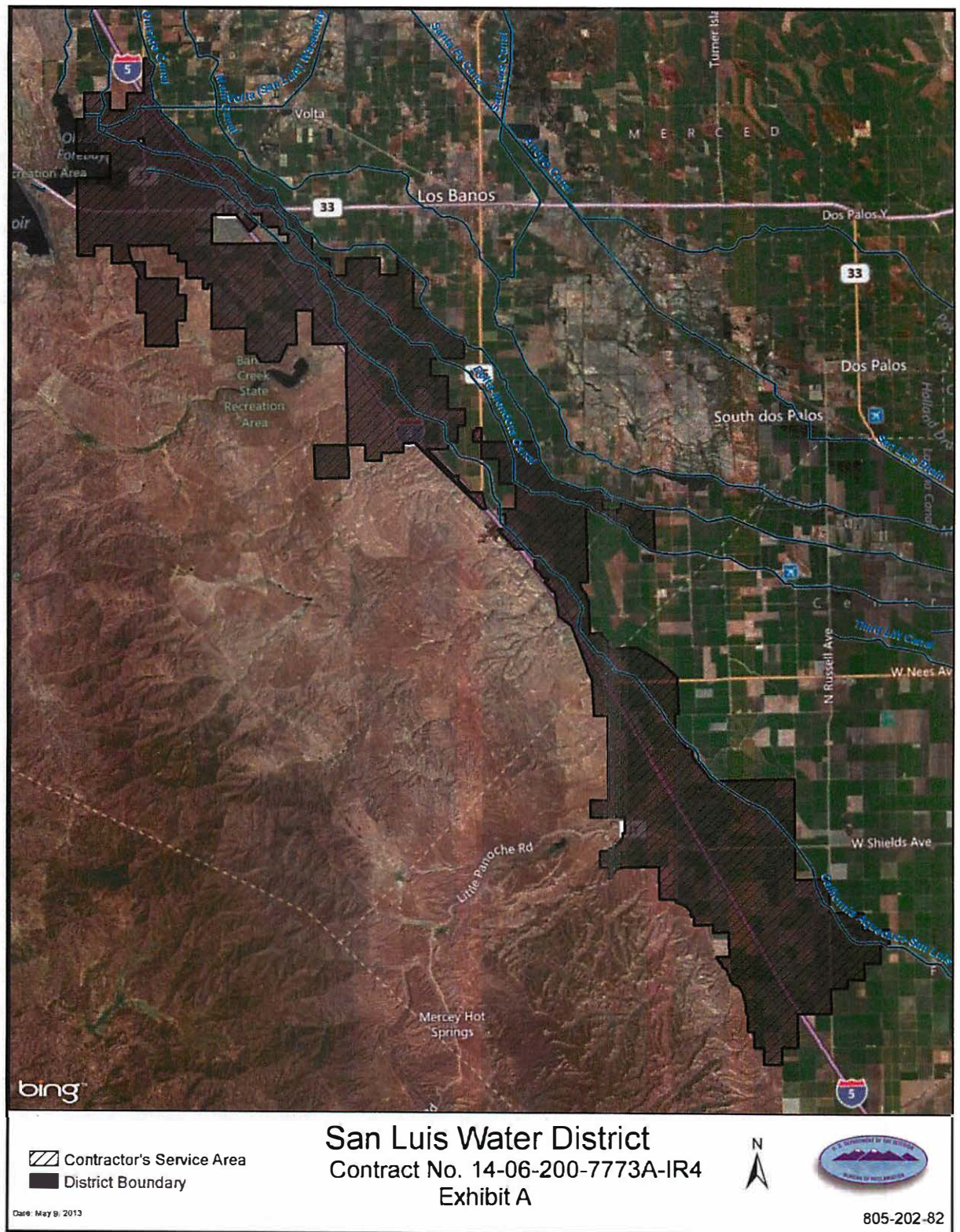
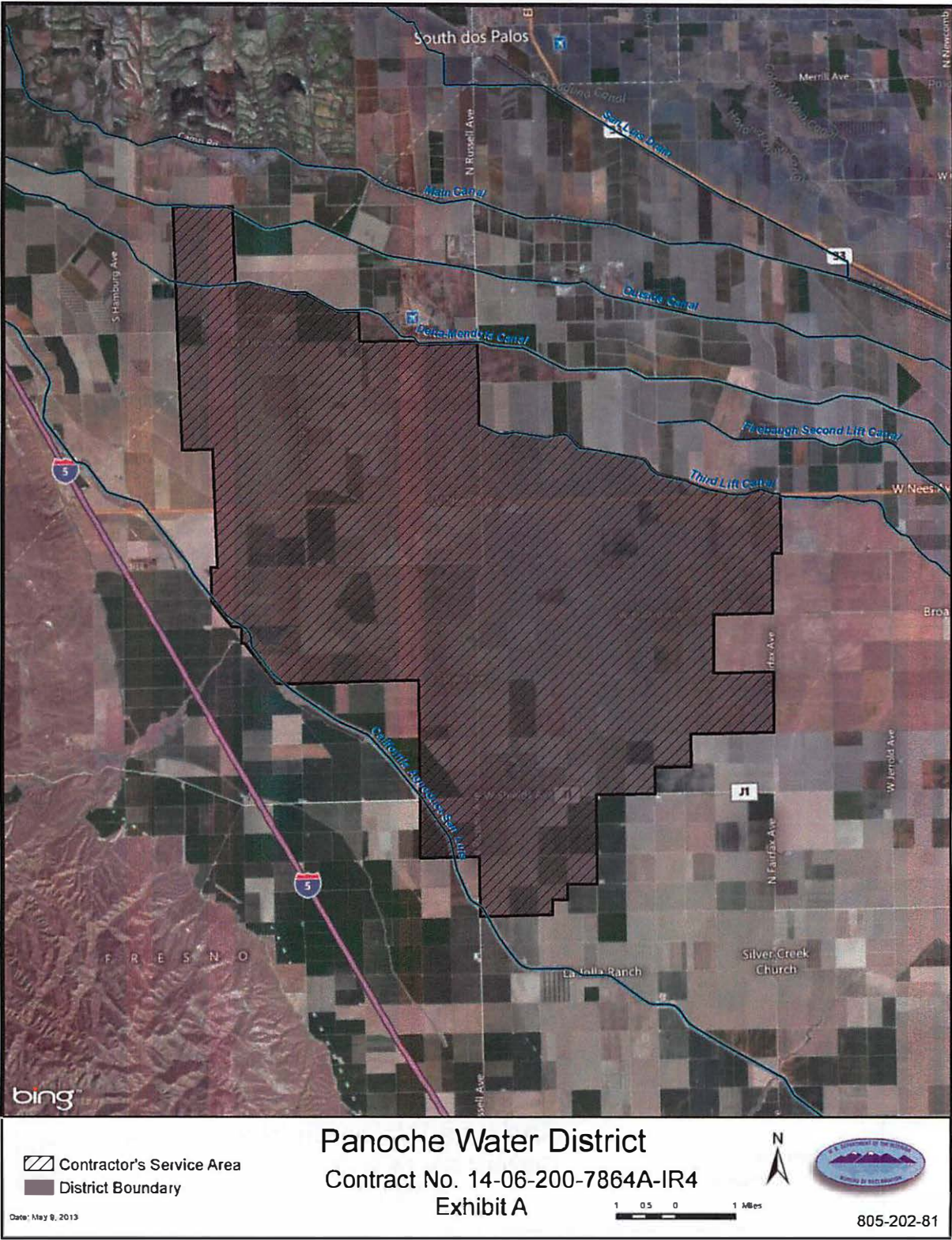




Figure 2. CVP Contract Service Area Boundary for Panoche Water District



Reclamation analyzed potential land use changes in SLWD using aerial imagery from 2010 to 2014. There were two (2) land use changes noted from the southern portion of SLWD totaling approximately 7.9 acres:

- 1) 7.2 acres of vacant lands (maintained dirt access road and adjacent shoulder) were converted to agricultural lands along the San Luis Aqueduct, near Eagle Field Rd and Poleline Rd (36.89331, -120.7947).
- 2) And, 0.7 acres of semi-agricultural was converted to agriculture near the Hamburg Intake Canal off of Eagle Field Road, Firebaugh, CA (36.89465, - 120.7825).

In the northern portion of SLWD, there were three (3) areas of land conversion during 2010 to 2014, totaling approximately 44.5 acres:

- 1) A 19 acre conversion from agriculture to urban lands at Parreira Almond Processing Co (21490 01tigalita Road Los Banos, CA; 36.9795 - 120.8711).
- 2) 24 acres of agricultural lands was converted to urban in Gustine, CA (37.1029 - 121.0224).
- 3) And, 1.5 acres of agricultural lands were allowed to return to grazing land in Gustine, CA (37.04182, -120.9779).

There was no conversion of grazing land or natural vegetation to urban or agricultural lands during the 2010-2014 period.

#### *Santa Nella Development*

The area in the vicinity of Santa Nella near the junction of Interstate 5 (I-5) and State Route 152 (SR 152) has become a pinch point for the north-south movement of wildlife along the western side of the San Joaquin Valley. The past development of the San Luis Reservoir, O'Neill Forebay, the SLC, DMC, Outside Canal, Los Banos Reservoir, the commercial and residential development around Santa Nella, agricultural development east of I-5, and the presence of I-5 and SR 152 themselves have created substantial barriers to the north-south movement of wildlife in the region. Several planned developments are contemplated in western Merced County, including Villages of Laguna San Luis (Villages), Fox Hills, and continued development under the Santa Nella Community Plan as denoted in Table 2 (County of Merced 2013, 2016).

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

**Table 2. Summary of Impacts to Biological Resources in the Vicinity of the Community of Santa Nella<sup>3</sup>**

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

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

#### *Conservation Measure*

As denoted in a letter dated August 1, 2016, from Janet Gutierrez, Acting General Manager of SLWD (commitment letter), SLWD has committed to not delivering CVP water to new M&I development or previously uncultivated land without confirmation that compliance through Section 7 or Section 10 of the Act has occurred. The SLWD commitment letter is provided in Appendix B.

#### Panoche Water District

##### *Water Resources*

The PWD is located in western Merced and Fresno Counties. The PWD has a CVP contract for 94,000 AF/year, delivered from either the DMC or the SLC (USBR 2016). The District serves approximately 38,000 acres of which about 37,436 acres are irrigated annually (PWD 2014). The District does not provide any CVP water for Municipal and Industrial (M&I) purposes. M&I use

<sup>3</sup>Adapted from Merced County 2030 General Plan Final PEIR, October 2013.

within PWD are not expected to increase during the term of this IRC because it is unlikely that agricultural land would be converted to other land uses (USBR 2016).

In addition to its CVP IRC water, PWD has entered into a long-term water supply contract with the Central California Irrigation District and Firebaugh Canal Water District. This agreement provides 3,000 AF/yr in supplemental water to PWD through 2033. The District has also entered into an agreement with San Luis Canal Company. This agreement provides up to 5,000 AF/yr of supplemental water to PWD through December 31, 2021. Both sources supplement anticipated ongoing shortages in the CVP contract supply and provide that total deliveries to PWD cannot exceed the CVP IRC contract total quantity. The District acquires other water supplies when available through transfers with other contractors during years of shortages in their CVP contract allocations (USBR 2016). Some groundwater is also used within PWD. There are 42 privately owned and operated groundwater wells in the District's service area in addition to one District-owned well. Because of its poor quality, groundwater is primarily used as contingency during CVP water shortages (PWD 2014).

### *Land Use*

Land use within the service area of PWD is predominately agriculture, where a wide variety of crops are grown, including pistachios, almonds, and forage and row crops.

Reclamation analyzed potential land use changes in PWD using aerial imagery from 2010 to 2014. There were three (3) observed land use changes noted within PWD service area from 2010 to 2014, totaling approximately 8.6 acres:

- 1) A 4 acre conversion from urban (industrial) to agricultural lands located at the northeast corner of W Nees Ave and N Millux Ave, in Firebaugh, CA (36.85080, -120.6178).
- 2) A 3.4 acre conversion from agriculture to urban land use occurred at Peri & Sons (48845 W Nees Ave, Firebaugh, CA 93622; 36.84699, -120.6704).
- 3) And, 1.2 acres converted from vacant lands to agriculture at Courtney Ave and N Cambria Ave, Firebaugh, CA (36.86349, -120.6904).

There was no grazing land or natural vegetation converted to urban or agricultural lands during this time period.

### **Effects of the Action**

#### Direct Effects

We address the effects of future implementation of IRCs, including the effects of interrelated and interdependent actions, as effects of the Federal action, not as part of the environmental baseline. There will be no direct effects to listed species associated with the proposed execution of the interim contracts considered in this biological opinion for the 24 month period beginning March 1, 2016, through February 28, 2018. The proposed Federal action will continue deliveries of water to SLWD and PWD. No construction of new facilities, installation of new structures, or modification of existing facilities is required or planned. Execution of the SLWD's and PWD's IRCs are the actions that allow for the delivery of the Federal CVP water, and thus any effects anticipated would be indirect, rather than direct.



**Indirect Effects**

Indirect effects are effects caused by or result from the proposed action, will occur later in time, and are reasonably certain to occur, and would not occur “but for” the project. Indirect effects may also occur outside of the area directly affected by the action. Indirect effects to listed species or suitable habitat have likely occurred as a result of the delivery of CVP water to the individual water districts or municipalities during the life of the existing or previous water delivery contracts. Many of these activities took place prior to implementation of the Act in 1973 and prior to the listing of the species considered in this consultation and were not subject to the provisions of the Act. Land use decisions subsequent to that time have continued to result in adverse effects to the species and suitable habitat and have not been authorized incidental take under section 9 or 10 of the Act.

There is no new growth anticipated within PWD and the service area lacks any native or grazing lands (PWD 2014). The SLWD is predominately comprised of agricultural lands, but some grazing land occurs along the western border of their service area. Excluding the Santa Nella Community, little growth is projected for the SLWD (SLWD 2012). SLWD has provided a commitment letter stating they will not provide CVP water to developed or converted habitat lands without confirmation from Reclamation or other evidence that compliance with the Act (USC 16 Section 1531 et seq.) has occurred with respect to the subject land either through section 7 or section 10 (Appendix B).

**Cumulative Effects**

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Numerous activities continue to result in loss and degradation of habitat used by listed threatened and endangered species in the action area for this consultation. Habitat loss and degradation affecting both animals and plants continues as a result of urbanization, oil and gas development, road and utility right-of-way management, flood control projects, livestock grazing, and continued agricultural expansion. Listed animal species also are affected by poisoning, shooting, increased predation associated with human development, and reduction of food sources. All of these non-federal activities are expected to continue to adversely affect listed species in the action area.

Conversion of land for agricultural purposes continues to be the most critical threat to listed species. Although the increment of habitat loss attributable to urban development appears to be increasing, these activities remain less significant than agriculture for most species. Agricultural conversion is generally not subject to any environmental review and is not directly monitored or regulated. In addition, CVP water is used for groundwater recharge by some districts in the San Joaquin Valley. Such recharge may allow nearby landowners to pump groundwater for uses that may affect listed species.

Cumulative effects on many species are severe enough to substantially reduce the likelihood of long-term survival and recovery of these species. The IRCs and ongoing CVP operations contribute to the threat to these species.



Many of the private actions that will occur as an indirect effect of receiving CVP contract supply would also occur without the Federal water deliveries. Those actions that will occur without Federal water deliveries from the proposed action will result in cumulative effects.

### **Conclusion**

The information Reclamation provided for this consultation, including the written commitment from SLWD in Appendix B, and the short duration of this project provides a sufficient biological basis for the Service to concur with Reclamation's determination that the IRCs for SLWD and PWD are NLAA the San Joaquin kit fox, blunt-nosed leopard lizard, or giant garter snake. Our concurrence with your NLAA determination concludes this consultation for this action. Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary. If you have any questions on the biological opinion, please contact Thomas Leeman, Chief, San Joaquin Valley Division, at the letterhead address or at (916) 414-6544.

### **Attachments**

## Literature Cited

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- [USBR] U.S. Bureau of Reclamation. 2016. Biological Evaluation for U.S. Fish and Wildlife Service, Central Valley Project Interim Renewal Contracts for Panoche Water District and San Luis Water District 2017-2019, 16-021. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 19 pp. and 3 appendices.
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- . 2014b. Biological Evaluation for the Central Valley Project Interim Renewal Contracts for Panoche Water District and San Luis Water District 2015-2017. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 18 pp. and 2 appendices.

- \_\_\_\_\_. 2010. Draft Finding of No Significant Impact and Draft Environmental Assessment on San Luis Water District's and Panoche Water District's Water Service Interim Renewal Contracts 2011 – 2013. U.S. Bureau of Reclamation, South-Central California Area Office, Fresno, CA, 40 pp. and 4 appendices.

**Appendix A. Federally threatened and endangered species and/or critical habitat potentially within the Action Area that Reclamation has determined would not be affected by the proposed action.**

Common Name	Scientific Name	Federal Status	Critical Habitat
California condor	<i>Gymnogyps californianus</i>	Endangered	Designated
California red-legged frog	<i>Rana draytonii</i>	Threatened	Designated
California tiger salamander Central CA DPS	<i>Ambystoma californiense</i>	Threatened	Designated
delta smelt	<i>Hypomesus transpacificus</i>	Threatened	Designated
Fresno kangaroo rat	<i>Dipodomys nitratoides exilis</i>	Endangered	Designated
giant kangaroo rat	<i>Dipodomys ingens</i>	Endangered	None
San Joaquin woolly-threads	<i>Monolopia (=lembertia) congonii</i>	Endangered	None
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	Threatened	Designated
vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	Threatened	Designated
vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	Endangered	Designated

**Appendix B.**

Chris Hurd  
*President*

Bill Diedrich  
*Vice President*

Mike Wood  
*Tax Assessor/Collector*



Tom Teixeira  
*Secretary/Treasurer*

Grant Craven  
*Director*

Lan Martin  
*General Manager*

August 1, 2016

Enna Leal  
Repayment Specialist  
Bureau of Reclamation  
1243 N. Street  
Fresno, CA 93721-1813

Dear Ms. Leal:

The Interim Renewal Contract No. 14-06-200-7773A-IR4 for San Luis Water District (San Luis) expires on February 28, 2017. Subsection (a) of Article 2 of your IRI, dated January 1, 2009, and referenced in the successive Interim Renewal Contracts and so stated (in part): "... this interim renewal contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two (2) years in length".

Please accept this letter as our official request to renew our Interim Renewal Contract 14-06-200-7773A-IR4 for a period of two (2) years beginning March 1, 2017 through February 28, 2019.

In addition, San Luis will not deliver Central Valley Project water to development or converted habitat, without confirmation from Reclamation or other evidence that compliance with the Endangered Species Act has occurred with respect to the subject land, either through Section 7 or Section 10 of the Act, by San Luis.

If additional information is needed, please contact me at the District office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janet Gutierrez".

Janet Gutierrez  
Acting General Manager

Cc: San Luis Water District Board of Directors  
Tom Berliner, District Counsel



## Appendix C.

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

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

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

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

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BUREAU OF RECLAMATION

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