

### 3.9 Merced Irrigation District

#### MASON, ROBBINS, BROWNING & GODWIN

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July 16, 2009

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RE: Comments on the Draft Environmental Assessment/Proposed Finding of No Significant Impact Under NEPA and Notice of Availability and Intent to Adopt an Initial Study/Draft Mitigated Negative Declaration Under CEQA for the Water Year 2010 Interim Flows Project, Dated June 3, 2009

Dear Mr. Phillips and Mr. Faulkenberry:

The following comments are submitted on behalf of the Merced Irrigation District ("MID").

MID-1

Throughout the report, there are general unsupported comments that the increased flows on the San Joaquin River below the mouth of the Merced River and in the Delta would be beneficial to fish. In most cases, the added flows resulting from the proposed action will be subsumed by flows from the eastside tributaries and tidal flows within the Delta. While it is true that, in general, more water may be better for fish; however, there is a point when the additional flows will have a de minimis, if any, effect on fish and fish habitat. Unless the authors can show with reasonable certainty that the additional flows are beneficial to fish, such unsupported statements should be stricken from the report.

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	Page	Comment
MID-2	4-44	The statement attributed to Baker and Morhardt (2001) is misleading. The correlation between spring flow at Vernalis and escapement is based on simplifying assumptions that all adults returned 2.5 years after their emigration as smolts and that in every year there were the same number of smolts. More importantly, at flows below 10,000 cfs there is very little correlation between flows at Vernalis and escapement, and there is a very large amount of scatter in the data. The flows contemplated in the proposed action are well below 10,000 cfs and cannot support an inference that escapement will improve because of the interim flows.
	4-45	How do you support the conclusion that the proposed project will probably have beneficial overall effects on steelhead when you have no data on steelhead? This contradicts the conclusion on page 2-32 that the small increase in flows from the proposed action are not anticipated to trigger any change in steelhead migration patterns in the San Joaquin Basin. There have been no studies to indicate flow requirements for steelhead traveling through the San Joaquin River and Delta, and there have been no studies concerning the survival of steelhead at various flows. In fact, the lack of adequate status and trend monitoring and research were cited as factors in limiting NMFS' ability to assess the viability of Central Valley steelhead populations. ( <i>Biennial Report to Congress on the Recovery Program for Threatened and Endangered Species, October 1, 2006–September 30, 2008</i> , prepared by NOAA Fisheries, p. 92.)
MID-4	4-49	A monitoring and salvage operation for steelhead could have significant effects if not performed correctly. The proposed action includes a brief description of the proposed monitoring and salvage operation, but no incidental take permit has been issued at this point in time. How can you conclude that the effects would be less than significant?
MID-5	4-49	The report concludes that the proposed action will slightly increase temperatures in the San Joaquin River in October, March, April, and May but this would have no effect on fish. According to the California Department of Fish and Game the San Joaquin River currently is impaired and does not meet the temperature needs of migrating salmon and steelhead. As a result, any increase in temperature, no matter how small, will have a significant effect on salmon and steelhead and will greatly impact the ability of MID to meet the habitat requirements of fall run Chinook salmon originating in the Merced River.

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Thank you for the opportunity to provide these comments.

Very truly yours,

MASON, ROBBINS, BROWNING & GODWIN

A handwritten signature in black ink, appearing to read "Arthur F. Godwin". The signature is fluid and cursive, with the first name "Arthur" being more prominent.

ARTHUR F. GODWIN

cc Dan Pope

## **Response to Comments from Merced Irrigation District**

**MID-1:** Unsupported statements indicating a benefit to fish of increased flows in the San Joaquin River below the mouth of the Merced River and in the Sacramento-San Joaquin Delta (Delta) have been eliminated from the text. In other cases, citations of studies have been added to support the claims. Although it is true that in most of the Delta, added flows resulting from the Proposed Action would be small as compared to tidal flows, the residual net flows have important effects on fish movements and distributions. A sentence indicating such has been added to Section 4.0 of the Final Environmental Assessment/Initial Study (EA/IS) (page 4-38 of the Draft EA/IS). Many management actions for listed fish species in the Delta include an implicit recognition of the importance of net flows.

**MID-2:** The statement attributed to Baker and Morhardt (2001) has been deleted.

Although the lead agencies do not agree with the interpretation presented in the comment related to Baker and Morhardt, the text referenced in the comment was deleted.

**MID-3:** All statements indicating that the Proposed Action would have a less-than-significant but beneficial effect on steelhead have been modified to indicate only that the effect of the Proposed Project on steelhead would be less than significant. The initial assessment was based upon potential changes in habitat conditions as affected by hydrology and used the best available science on steelhead distribution, movement, and behavior. In addition, text has been added to emphasize that little is known about the effects of flow on steelhead in the Delta.

**MID-4:** Reclamation will implement the proposed program described in Section 2.0 of the Draft EA/IS to be consistent with the San Joaquin River Restoration Settlement Act (the Act). The Act states that the Secretary, in consultation with California Department of Fish and Game (DFG), shall evaluate the effectiveness of the Hills Ferry Barrier in preventing the unintended upstream migration of anadromous fish in the San Joaquin River and any false migratory pathways. This section further authorizes the Secretary to assist DFG in making any improvements to the Hills Ferry Barrier, if necessary to avoid the imposition of additional regulatory actions against third parties. In addition, if third parties are required to install fish screens or bypass facilities to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Act states that the Federal Government shall bear the costs of installing such screens or facilities.

Reclamation has consulted with DFG and National Marine Fisheries Service (NMFS) on the potential effectiveness of the Hills Ferry Barrier and the potential need for other temporary barriers. Fall WY 2010 Interim Flows would not affect the operation of the Hills Ferry Barrier for fall-run Chinook salmon. Reclamation and DWR are developing a plan to evaluate the effectiveness of the Hills Ferry Barrier before February 1, 2010, when the barrier will be deployed. No additional screens or facilities were found necessary for the implementation of the Proposed Action. The 4(d) rule for Central Valley steelhead provides authorization to DFG to conduct such activities in addition to other research related activities permitted through NMFS.

Consistent with the Act (section 1004(h)(4)), if it is determined that any unintended upstream, migration of anadromous fish upstream from the Merced River confluence occurs and is caused by the WY 2010 Interim Flows, and such migration would result in regulatory action against third parties, the Secretary would comply with the conditions of the Act including assisting DFG in making any necessary improvements to the Hills Ferry Barrier, and bearing the costs of installing and fish screens or fish facilities necessary to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**MID-5:** Based on the water temperature table (Table 4-8 of the Draft EA/IS, water temperatures in the San Joaquin River downstream from the Merced River would be suitable for steelhead and fall-run Chinook salmon migration and/or smoltification, both with and without Interim Flows, during January of all simulated years, and most years in February. In March, both with and without WY 2010 Interim Flows, average monthly water temperatures would always exceed 56 degrees Fahrenheit (and therefore would not be suitable for smoltification), but would not exceed 65°F (and therefore would be suitable for emigration before or after smoltification). Water temperatures in April are frequently greater than 65°F without WY 2010 Interim Flows, and the WY 2010 Interim Flows would increase the temperatures by no more than 2°F. Because water temperature through March in most years will continue to be within the suitable range during Interim Flows (less than 65°F), and because April temperatures that typically already exceed healthy steelhead and Chinook salmon criteria would change slightly, the effects would be insignificant, and not adversely affect steelhead and Chinook salmon beyond their current level of effect.

To support the conclusion that WY 2010 Interim Flows are not likely to adversely affect Central Valley steelhead or its designated critical habitat, as presented in the WY 2010 Interim Flows Project Biological Assessment, linear regressions of recorded water temperature and mean daily flow were performed to estimate the correlation between temperature and flow in the Merced, Tuolumne, and Stanislaus rivers in March and April (see Table 4-8 in the Draft EA/IS). Based on this analysis, flows in these three tributaries of the San Joaquin River have a negligible correlation with water temperature. Results suggest that as water flows farther from Friant Dam, ambient air temperature conditions dominate over the flow rate in controlling the temperature. Therefore, the Proposed Action is not likely to affect temperatures on the tributaries.

Temperature monitoring upstream and downstream of the Merced River Confluence during the WY 2010 Interim Flows has been added to the Proposed Action. Reclamation will coordinate with NMFS to evaluate conditions and implement actions to minimize adverse effects on Central Valley steelhead.

### 3.10 San Joaquin River Exchange Contractors Water Authority



Consisting of 240,000 acres on the Westside of the San Joaquin Valley

July 17, 2009

**JAMES E. O'BANION**  
Chairman

**ROY CATANIA**  
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**STEVE CHEDESTER**  
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Mr. Kevin Faulkenberry  
DWR SJRRP Program Manager

**RE: Comments Related to *Draft* Environmental Assessment and  
Finding of No Significant Impact/Initial Study and Mitigated  
Negative Declaration**

Gentlemen:

The San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) submit these comments on behalf of its member agencies, Central California Irrigation District, San Luis Canal Company, Firebaugh Canal Water District, and Columbia Canal Company. In addition, the Exchange Contractors fully support the comments submitted by the San Joaquin River Resource Management Coalition (RMC).

**I.** The Water Code Section 1725 and Section 1707 Transfer Petitions for Interim Flows filed with the SWRCB by the Bureau of Reclamation propose transfers and use of facilities owned by others as points of diversion or as part of the plan of operations. However, the Project Description provides no adequate information in regard to the significant environmental impacts potentially arising from the use of those facilities and the mitigation measures for impacts from that use which have not been developed or implemented as part of the project Plan, including:

SJRECWA-1A      A. The potential for failure of the Mendota Dam or potential for damage is not described and not mitigated. Mendota Dam is an aged facility with known stability concerns and underflow

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conditions. Additional water flowing into the Mendota Pool without careful management could stress the structure or cause failure. Underflow and repeated efforts to prevent undermining of the structure are currently routinely undertaken by CCID. Underflow pressures are in direct proportion to the height of water on the Dam. The EA does not describe these problems and potential impacts. It provides no measures for providing additional buttressing and/or automation of the structures and eventual replacement to absolutely prevent surcharges upon the Dam and additional pressures leading to underflow. The Project Plan for Interim Flows describes no plan to provide, if undermining of the structure develops because of the new use proposed by the United States during the irrigation season, as to how an emergency dewatering of the pool would be achieved to accomplish repairs and how the more than 300,000 acres dependent upon that facility would be supplied water during the approximate 10- to 20-day period that might be required to repair the structure.

SJRECWA-1B

B. The Project Description is incomplete. The Environmental Baseline and Project Description also fails to describe the project properly. The Mendota Dam is in an area of subsidence. Because of ground level lowering, the structure is already operated within narrow elevation differences to continue to allow irrigation water deliveries to other USBR contractors and Mendota Wildlife Area. The Project Description does not present any information as to the operational problems caused by the current elevation of this facility and condition and the additional dangers of waters entering the pool, rising over the dam and operation gates, and flowing in an uncontrolled fashion downstream or conversely the operators of the Mendota Dam not being made aware in fluctuations of flow into the Pool which reduce transfer water volume thus reducing the head and flows for operations of the users of the Mendota Dam and Pool. Water deliveries to agricultural customers may be damaged or unexpectedly interrupted by such fluctuations. The description also does not describe the overtopping of levees along Fresno Slough onto productive farm land or the City of Mendota which can possibly occur, nor the measures that would be implemented to avoid such conditions. The SJREC and its Members who, along with the SLDMWA, each control a critical part of the operations, stand ready to work to put together these needed measures with the United States, but the United States insists on conducting its efforts without admitting that this project is much more complicated and

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environmentally significant impacts.

SJRECWA-1C

C. There is no description of how the United States intends to gain joint use of the facilities. Water Code Section 1775 provides for the SWRCB to determine in certain circumstances that joint occupancy and use of facilities is appropriate. Water Code Section 1800 provides for the SWRCB to receive petitions that the existing works of a party such as Mendota Dam and Pool do not develop fully the capacity of the stream and issue orders permitting the Bureau to provide for the improvement of the works. No plan for the works or measures to demonstrate that the Bureau should be granted such a right is included within the Environmental Assessment or the Petitions for Transfer. Without a description of what measures the Bureau proposes to take or the capacities it intends to use, it is not sufficient to state that an agreement will be entered into. Such a statement constitutes a vague illusion to possible mitigation measures without specifying exactly what the mitigation measure to avoid environmental harm is, and renders the EA defective.

SJRECWA-1D

D. No Transfer Petition can be processed for use of facilities or points of redirection because the Bureau of Reclamation has no guaranteed legal access – eminent domain is unavailable. 23 California Code of Regulations Sections 775 through 777, copies of which are attached, require that as a part of an Application or Petition for Transfer that the applicant show that it can gain access to and the right to use the facilities necessary for the transfer. The Environmental Assessment does not include any such showing. Section 10005(b)(1) of the Restoration Act provides for voluntary agreements but does not provide for eminent domain. Section 10005(b)(2) refers to the 1937 Act (50 Statutes 44 Chapter 832), but that Chapter provides no authority to use eminent domain powers for the purposes of fishery and wildlife uses of water. Interim Flows which are delivered for SJREC use are already legally permissible and customary, but the Bureau's insistence on calling these flows as "fish and wildlife flows" is masking the impacts and true broad effects of the proposed project.

To be legally sufficient under NEPA, the full "project" and its implementation



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must be described. Failure to disclose a gap in authority or an undetermined means of implementing the project is both a defective description of the project and potentially ignores significant environmental impacts which will be encountered in attempting to implement the plan because it is incomplete.

SJRECWA-2

**II. Use of other points of redirection are not fully described, nor  
environmental impacts identified.**

A number of other points of redirection consisting of canals and headworks of members of the Exchange Contract are described by the EA for Interim Flows, yet the total capacity to be run through those facilities and canals is not described, and the amounts of water to be delivered for fishery and wildlife use on an interim basis through those canals or over those structures is not declared. In the case of some of the facilities, the United States Fish and Wildlife Service may have a contract or easement or the Department of Interior Bureau of Reclamation may have a contractual right to deliver water or cause water to be delivered through the facility; however, in other areas there is a limit on capacity or there is no such existing right. The Project Description does not mention whether these existing authorities would be exceeded and under what authority the right to wheel additional waters would be obtained. The project cannot be properly described or its impacts quantified or described without a declaration of the specific quantities and time schedule. Some delivery amounts for fish or wildlife purposes may prevent agricultural deliveries or drainage into the canals. Delivery schedules may interfere with development of groundwater supplies and their transportation or cause seepage or overflow on farmers' lands.

The Project Description must trace the likely amounts of water through each point of redirection, the maximum delivery for fish and wildlife purposes, the ultimate area to receive the water, and determine if the delivery schedule, together with the deliveries by the owner of the facility, would cause overtopping or damaging seepage or interfere with other customary operations. Further, any operational changes or account crediting impacts in San Luis Reservoir must be described or described as of

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no impact.

SJRECWA-3

**III. The San Joaquin River Restoration Act requires that the Project include design and pricing of each fish protection screen and device before any Interim Flows occur. Congress has determined what an adequate Project Description and Environmental Assessment would include, and this one is deficient because those designs and cost estimates are not included and not declared as feasible of funding.**

Section 10004 of the Restoration Act requires that

“ . . . prior to releasing any interim flows under the Settlement shall prepare an analysis in compliance with the National Environmental Policy Act of 1969 including, at a minimum, . . . (E) an analysis of the likely Federal costs, if any of any fish screens, fish bypass facilities, fish salvage facilities and related operations on the San Joaquin River . . . ”

The Environmental Assessment does not include a detailed design sufficient to determine the likely Federal costs of fish screening. Each diversion, gate, bypass, and canal must be described, as well as the likely fish protection devices to protect endangered species fish such as steelhead and winter run or spring run salmon or green sturgeon must be priced, and the total amount of money available for the project compared. The purpose of an Environmental Assessment is to determine if the plan for the project is complete and feasible, as well as whether the mitigation measures directed by Congress itself can be accomplished . . . before the project is commenced. This EA ignores the contents of the Act itself and is legally and factually deficient for that reason. If there is insufficient money to construct all of the fish protection facilities required, significant environmental impacts will be caused by commencing flows and not having the capability to implement even the mitigation measures required to be planned and priced by Congress in advance.

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**SJRECWA-4 IV. The Project Description fails to fully or properly describe the water rights being proposed to be changed or altered by the Transfer Petitions or the impacts of accounting of water rights.**

The Petitions propose an Alternate A in each of the supplements and state that “Approval of this Petition would authorize the dedication of release of water previously stored in Millerton Reservoir . . .” The Petitions are a part of the Project; however, nowhere in the EA Project description is this information regarding stored water as the source of Interim Flows included. The document is deficient in the Project description. The SWRCB defines stored water in its regulations as “water stored for more than 30 days.” The first water arriving at a dam and reservoir is customarily treated as the first water released and attributed to the oldest water rights held at that location. The oldest water rights utilized by the Bureau at Friant Dam and Millerton Reservoir are the riparian and pre-1914 water rights of the Exchange Contractors which may be utilized only upon the condition and to the extent that the Exchange Contract is complied with.

The Environmental Assessment includes no description of the accounting procedure to be utilized to ensure that only “stored water” not subject to the Exchange Contractors rights (which the SWRCB has no jurisdiction to grant a Transfer Petition in regard to the Exchange Contractors right because they are pre-1914 rights) is released pursuant to these purported Transfer Petitions, if approved, and provides no accounting of the use and destination of the inflow of water subject to the Exchange Contractors’ rights which the Bureau is authorized to divert and utilize. This is both an insufficient Project Description and also a failure to describe significant impacts and to mitigate for them. Without such a description and accounting controls, the Transfer Petitions improperly describe the Project in terms of the water rights to be utilized for fishery and wildlife purposes. The SWRCB has no jurisdiction to grant a petition to transfer riparian water rights or pre-1914 water rights. It may be that the Bureau has an accounting procedure in mind to ensure that only stored water is utilized for its project,

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but there is no description of the system and without such a description the project is not correctly or understandably described. Substantial variances in flow rates could occur.

SJRECWA-5

- V. **Water Code Section 1745.10 and 1745.11 are conditions upon approval of a transfer of surface water. Water Code Section 1732 states that only if these section are complied with by showing that a transfer of surface water will not result in increased groundwater pumping may a transfer be approved by the SWRCB. The EA fails to include these conditions or compliance measures.**

The following comment rises because of the use of a transfer devise rather than simply treating the Interim Flows in year one as a part of a long term program. If no transfer was proposed and the water of the Interim Flows was used for existing authorized uses of the Bureau and the Exchange Contractors, Sections 1732, 1745.10 and 1745.11 would not apply. Copies of these Sections are attached. Those Sections require that the area from which the surface water was previously used be identified as a condition of approval of a transfer. They then require that the local water purveyor or District giving up the water be identified, and that that party agree that groundwater pumping by that District and private landowners will not be increased as a result of the transfer. This means that potential environmental impacts due to transferring surface water can be mitigated by enforceable conditions upon groundwater pumping the area from which the water will be taken.

This EA includes no such identification of groundwater which will not be subject to additional pumping demand and no such agreement of the Member Units of Friant that they will police each of their landowners and water users to make sure that the amount of surface water transferred through the Bureau's Interim Flow Transfer Petitions is not replaced by the District or by the landowners.

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**Conclusion**

These Petitions for Transfer and the Environmental Assessment proposed under NEPA and CEQA should be withdrawn as inadequate and incomplete. The potential of Significant Environmental Impacts exists and they have not been identified or quantified, and mitigation has not been described. The Project Description is also incomplete.

Any commenting party may join and include these comments by referring to "Comments Related to Water Rights Project Description and Water Rights, and (B) Significant Environmental Impacts Not Identified or Mitigated."

Very truly yours,

SAN JOAQUIN RIVER EXCHANGE  
CONTRACTORS WATER AUTHORITY

By   
STEVE CHEDESTER,  
Executive Director

## **Response to Comments from San Joaquin River Exchange Contractors Water Authority**

### ***Specific Comments***

**SJRECWA-1A:** The Draft Environmental Assessment/Initial Study (EA/IS) acknowledges a potential need for an agreement with Central California Irrigation District (CCID) for operation of Mendota Dam with respect to routing Water Year (WY) 2010 Interim Flows. As described in Sections 2.0 and 4.0 of the Draft EA/IS, CCID would continue to be responsible for the maintenance and operation of Mendota Dam, consistent with any agreement. Mendota Pool is held a fairly constant elevation, between elevation 14.2 feet and 14.5, to maintain water deliveries to water users in the upper end of the Mendota Pool/Fresno Slough areas. To maintain this constant elevation, releases from Mendota Dam are made through the dam gates with the boards at the dam in place. Under the Proposed Action, flows would increase through Mendota Pool and Mendota Dam; however, water levels within Mendota Pool would remain within existing operational ranges consistent with the San Joaquin River Exchange Contract.

**SJRECWA-1B:** See response to SJRECWA-1A. Consistent with the communication strategy added to Section 2.0 of the Final EA/IS, Reclamation would communicate regularly with CCID to facilitate operations of Mendota Dam and avoid impacts to the structure.

**SJRECWA-1C:** The U. S. Department of the Interior, Bureau of Reclamation (Reclamation), has not petitioned the State Water Resources Control Board (SWRCB) for a permit to improve Mendota Dam. Reclamation recognizes the use of these works by the Exchange Contractors, and the Interim Flows would receive a lower priority to the capacity of the channel (and works) than contract water deliveries of the Exchange Contractors. Deliveries of WY 2010 Interim Flows from Millerton Reservoir would be made to satisfy obligations under existing contracts and agreements; there would be no expansion of existing obligations, or increases in demands, to provide Central Valley Project (CVP) water. The text was revised for clarification.

**SJRECWA-1D:** The EA/IS is not an application or petition to transfer under the California Code of Regulations. The document describes the operation of facilities to route Interim Flows, and potential impacts associated with those operations, while acknowledging that coordination with the parties responsible for operation of such facilities may be needed. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SJRECWA-2:** See response to comment SLCC-5 and -6 in this chapter. The place of use of flows, and operations of facilities, including San Luis Reservoir, would be subject to all existing operating criteria, prevailing and relevant laws, regulations, biological opinions, and court orders in place, and could require additional agreements (see above). No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SJRECWA-3:** The Proposed Action does not include the construction or operation of fish screens, fish bypass facilities, or fish salvage facilities on the San Joaquin River. No Federal costs expenditures for these purposes are proposed under the Proposed Action. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SJRECWA-4:** As described in the Final EA/IS, the release of WY 2010 Interim Flows is assigned a lower priority than the contract water deliveries to the Exchange Contractors. Water for WY 2010 Interim Flows would have been stored in Millerton Lake and released under three water right permits from the SWRCB (11885, 11886, and 11887). Refer to the Millerton Lake Daily Operation Report and the monthly Millerton Lake Daily Operations sheets posted on Reclamation's Web Site at <http://www.usbr.gov/mp/cvo> for more information regarding how Reclamation accounts for storage to and release from Millerton. The text was revised for clarification.

**SJRECWA-5:** The Proposed Action could result in a temporary increase in groundwater pumping to offset the reduction in surface water deliveries and a corresponding small decrease in groundwater levels. However, the potential drawdown of groundwater levels in the CVP Friant Division regions resulting from a decrease in deliveries to CVP contractors due to the Proposed Action would be within the range of groundwater level fluctuations historically exhibited within the groundwater basin (see Appendix G), and are not expected to result in, create, or contribute to, conditions of long-term overdraft in the affected groundwater basin. Additional information is provided in Section 4.0 of the Draft EA/IS to illustrate results of technical analyses supporting this conclusion.

### 3.11 San Luis Canal Company



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RE: Comments on the Draft Environmental Assessment/Proposed Finding of No Significant Impact Under NEPA and Notice of Availability and Intent to Adopt an Initial Study/Draft Mitigated Negative Declaration Under CEQA for the Water Year 2010 Interim Flows Project, Dated June 3, 2009

Dear Mr. Phillips and Mr. Faulkenberry:

These comments are submitted by the San Luis Canal Company (SLCC). The San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition have also submitted comments to you. The SLCC hereby incorporates by reference the comments of the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition. In addition, the SLCC has the following additional comments:

- |        |  |
|--------|--|
| SLCC-1 | 1. The EA/IS fails to adequately describe the current operation of the Sack Dam and how that operation could be affected by the Proposed Action.   |
| SLCC-2 | 2. The EA/IS fails to recognize the SLCC as the owner and operator of the Sack Dam and other facilities in or near Reach 4B and how the Proposed Action will affect these facilities.  |
| SLCC-3 | 3. The EA/IS fails to adequately describe the proposed redirection of water by Reclamation at points downstream of Friant Dam. These points of redirection are identified in the change petition filed with the State Water Resources Control Board. |

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What does Reclamation propose to do with the rediverted flows? How will these rediverted flows be accounted for?

SLCC-4

4. Reach 4B essentially has no capacity to transport water. SLCC owns a number of facilities in Reach 4B that could be affected by the Proposed Action. Reclamation must complete all mitigation before any water is released into this section of the river. A map designating the SLCC service area south of the River in Reach 4B is attached. This map designates the potential acres, and facility locations, that could be influenced and need mitigation. There are three different acreage estimates based on how far potential issues arise from the Rivers edge.

		Proposed Action	Comments
SLCC-5	Page 2	Interim flows would be recaptured . . .	Requires further explanation regarding the purpose of use and place of use of these recaptured flows.
SLCC-6		"potential diversion locations . . . include Mendota Pool, Arroyo Canal . . ."	On what basis may such diversions accrue in facilities of the Exchange Contractors without their assent? This will require agreements in place before the release of interim flows.
		<b>Findings</b>	<b>Comments</b>
SLCC-7	Page 2	"Proposed Action will not significantly impact agriculture resources during temporary periods of WY 2010"	Flows that may inundate productive farmland are not existing conditions. As a result of these new flows, there is a likelihood of significant impacts to agricultural resources. The assertion that "these flows would be similar to existing conditions" is not correct.
SLCC-8	Page 3	Finding 4 lists 5 potential species.	Only 4 species are identified.
SLCC-9	Page 3	Finding 4 finds that "The spread of these invasive species has the potential to impact existing riparian habitat and sensitive natural communities."	It also has potential to materially impact SLCC water delivery facilities and systems.
SLCC-10	Page 4	Finding 9 finds that the proposed action would not substantially deplete ground	What does this mean? Does this refer

		water supplies or interfere with ground water recharge <u>because of a decrease in deliveries to CVP.</u>	to current or envisioned deliveries?
		<b>EA/IS</b>	<b>COMMENTS</b>
SLCC-11	Para 1.3.3 Page 1-5 Lines 15-18	"Reclamation will petition the State Water Resources Control Board (SWRCB) for a <u>permanent water transfer</u> to facilitate the release and recapture of interim flows <u>as well as full restoration flows.</u> "	SLCC maintains that any such transfers will be secondary to those obligations contained within the Exchange Contract.
SLCC-12	Lines 19-24	"Reclamation will submit a Petition for temporary transfer of water (less than 1 year) pursuant to California Water Code Section 1725 et seq. to address the release and diversion of WY 2010 Interim Flows. Acting on a <u>water right</u> petition, the SWRCB must consider potential impacts to other legal uses of the water, and whether there are any, unreasonable effects from the transfer on fish, wildlife, or other instream beneficial uses."	The Section makes no reference to acquiring contracts, and agreements with the Exchange Contractors for the use of facilities owned and controlled by the Exchange Contractors to the extent of the proposed uses thereof by Reclamation is provision of Interim Flows. How does Reclamation plan to accommodate the Exchange Contractors' potential reliance on San Joaquin River water released from Friant to meet SLCC agricultural demands in years when exchange contract water is unavailable from other sources (e.g. Shasta deliveries via the Jones Pumping plant and Delta Mendota Canal).
SLCC-13	Para 1.4.2 Page 1-6 Lines 32-38	DFG—Assist with monitoring and recovery of steelhead in the San Joaquin River between Mendota Dam and the confluence of the Merced River.	Steelhead that get past the Hills Ferry Barrier will have will have significant passage issues at Sack Dam. These need to be addressed prior to the release of interim flows.
SLCC-14	Lines 34-35	Central California Irrigation District—Release interim flows from Mendota Dam to the San Joaquin River.	CCID is not a state organization.
SLCC-15	Para 2.2	Proposed Action	It is critical that Reclamation obtain


	Page 2-5 Lines 1-23		agreements with individual Exchange Contractors for use of their facilities at designated points of diversion prior to the release of interim flows. How confident is Reclamation in its estimation of flows reaching downstream points? There is a potential for damage to lands downstream by flooding or seepage.
SLCC-16	Page 2-9 Lines 11-19	The Proposed Action includes "potential diversion locations . . . include Mendota Pool, Arroyo Canal . . ."	On what basis may such diversions accrue in facilities of the Exchange Contractors without their assent? This will require agreements in place before the release of interim flows.
SLCC-17	Para 2.2.1 Page 2-12 Lines 11-23	Water recirculated to the Friant Division.	How will this be accomplished? The EA/IS does not evaluate the effects of recirculation on SLCC water deliveries.
SLCC-18	2.2.3 Page 2-27 Lines 6-38		Implementation agreements must be in place before interim flows begin. SLCC <u>owns</u> and operates Sack Dam
SLCC-19	Page 2-28 Lines 8-14	All agreements must be in place before introducing interim flows.	Discussions regarding operating agreements have not taken place. Interim flows may not be released into the Exchange Contractors system until agreements have been reached.
SLCC-20	2.2.5 Page 2-30	Seepage monitoring	Is such monitoring possible before flows begin in October 2009? Shouldn't area be surveyed first?
SLCC-21	3.8.3 Page 3-47	Salts	What are effects of interim flows on salt levels in the San Joaquin River? What is the potential for the interim flows to cause salt damage due to seepage and therefore elevating groundwater into the root zone?

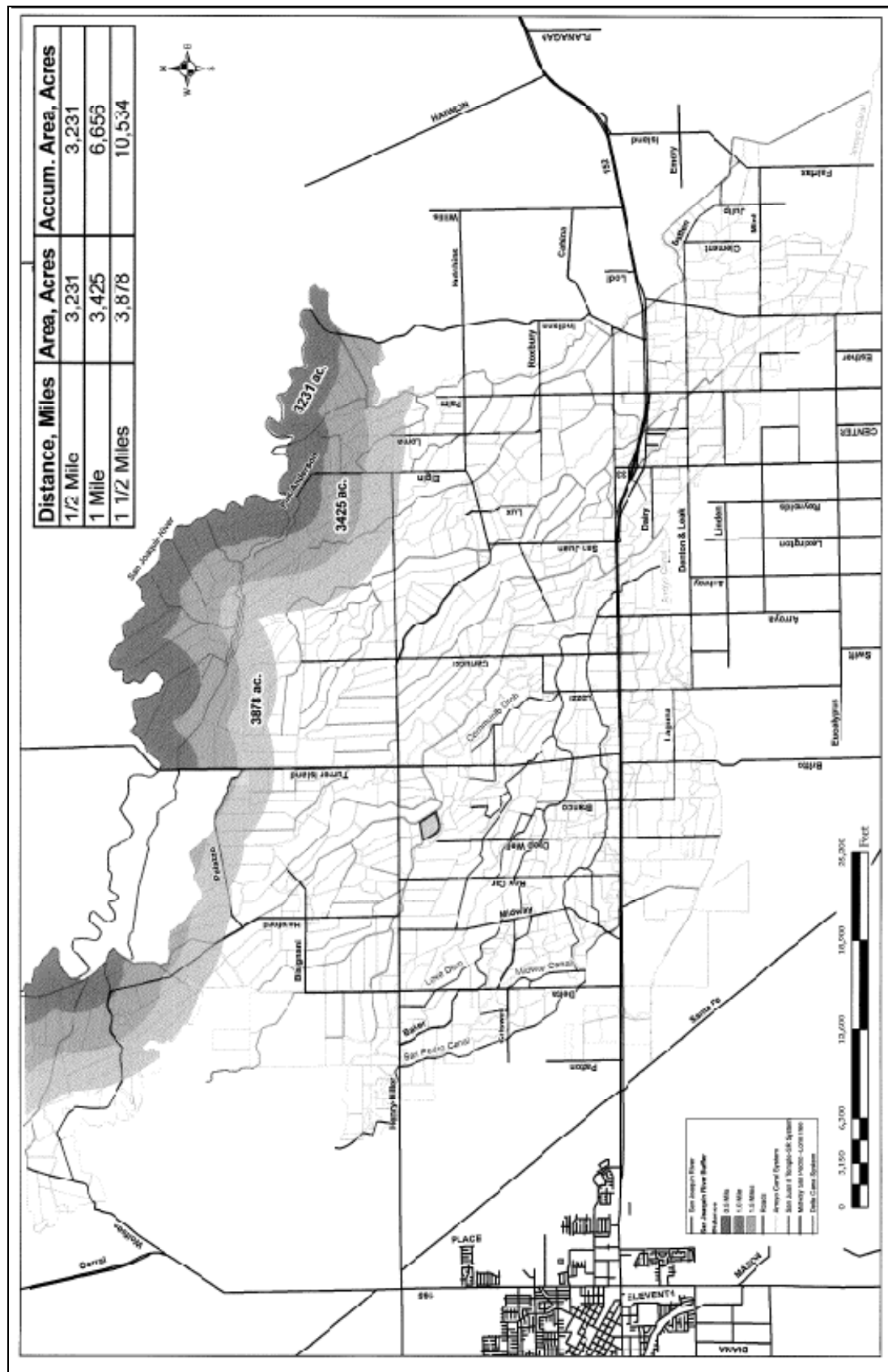
SLCC-22	3.8.4 Page 3-51 Lines 32-40	Geology	The geologic description of Reach 4 indicates that it can only handle limited flows. What is the capacity of this reach?
SLCC-23	3.11.3 3-64 Lines 37-41	The estimated flow capacity in reach 4A is approximate 4,500 CFS beginning at Sack Dam.	What is the source of this number?
SLCC-24	Page 3-65 Line 1-3	The Reach 4B1 has design capacity of 1500 CFS and Sand Slough Control Structure is designed to maintain this design discharge, but the existing capacity is estimated at less than 100 CFS.	Isn't this inconsistent? Why the difference between the design capacity and the estimated capacity? There is also the significant potential for ground water seepage in this reach.
SLCC-25	3.11.3 Page 3-77 Line 34-39	Seepage and waterlogging	The statement that riparian landowners along reach 4A between Sack Dam and Highway 152 have reported seepage problems on adjacent lands downstream of Sack Dam at flows in excess of 600 cfs acknowledges the potential for seepage damage from the Proposed Action.
SLCC-26	Page 3-85 Table 3-24		What is the source for the column labeled "Estimated Hydraulic Capacity with No Freeboard"?
SLCC-27	3.5.2	Reach 4B  "Reach 4B1 no longer conveys flows because the Sand Slough central structure directs all flows into the bypass system"	Not true. Levee district keeps closed because of potential for seepage and the carrying capacity of the reach being zero at various locations.
SLCC-28	Page 4-7 4.2(a)	Conversion of farmland  "Interim flows would not convert lands designated as prime farmland. Unique farmland or farmland designations, but the temporary inundation would not require a change to the designations or create a long	What about damage to permanent crops? The EA/IS fails to adequately acknowledge the effects caused by seepage. Further, if interim flows do flood adjacent land, isn't it likely that long term flooding or seepage may occur? The EA/IS fails to identify

		term adverse effect.”	lands lost to production in the long term.
		<b>Appendix “D” Seepage Monitoring</b>	
SLCC-29	Page 1-2 Line 9	Seepage	Should include both the San Joaquin River and the flood channel.
SLCC-30	Page 2-3 Line 1-5	“When San Luis Canal Company is not fully diverting additional water diversions can assist with reducing seepage impacts in reach 4A and downstream. Use of Sack Dam response will require agreements with San Luis Canal Company.”	SLCC agrees that the use of Sack Dam will require agreements before this option may be used. How will such a diversion to be accounted for? Will it be credited to SLCC as a delivery of its water supply under the Exchange Contract?
SLCC 31	3.3 Page 3-2	Levee Patrols  “Levee patrols will be conducted in coordination with the lower San Joaquin Levee District to assist with identifying adverse impacts to third parties from the ground water seepage.”	Who performs the levee patrol and what are the standards employed? Who pays for their services?

If you have any questions concerning these comments please feel free to contact me at (209) 826-5112.

Sincerely,

  
Chase Hurley  
General Manager  
San Luis Canal Company



## **Response to Comments from San Luis Canal Company**

### ***Attachments: Map***

**SLCC-1:** The Draft Environmental Assessment/Initial Study (EA/IS) acknowledges a potential need for an agreement with San Luis Canal Company (SLCC) for operation of Sack Dam with respect to routing Water Year (WY) 2010 Interim Flows. As described in Section 2.0 of the Draft EA/IS, SLCC would continue to be responsible for the maintenance and operation of Sack Dam, consistent with any agreement. Additional text was added to Section 2.0 to describe coordination activities that would occur during WY 2010 Interim Flows. These coordination activities are intended to communicate changes in river flows that could affect the operations of Sack Dam.

**SLCC-2:** See response to comment SLCC-1. The text was revised to reflect that SLCC owns Sack Dam in the Final EA/IS. The Proposed Action is not anticipated to affect other facilities owned by SLCC.

**SLCC-3:** The diverted flows will satisfy Central Valley Project (CVP) obligations in lieu of deliveries of exported Delta water. Recirculation of diverted WY 2010 Interim Flows from the Sacramento-San Joaquin Delta (Delta) to CVP Friant Division long-term contractors could require agreements between the U. S. Department of the Interior, Bureau of Reclamation (Reclamation), California Department of Water Resources (DWR), Friant Division long-term contractors, and other south-of-Delta water users, as described in Section 2.0 of the Draft EA/IS. Any such agreements are not required for implementation of the Proposed Action and are not described in the EA/IS. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-4:** The areas identified on the attached map are within the study area evaluated for impacts in the Draft EA/IS. The Proposed Action does not include conveyance of WY 2010 Interim Flows through Reach 4B1; therefore, no impacts are identified and no mitigation measures are required in Reach 4B1. The Proposed Action includes routing of WY 2010 Interim Flows through Reach 4B2. The map provided does not identify any areas of concern or facility locations in Reach 4B2. The analysis presented in the Draft Environmental Assessment/Initial Study did not identify potential impacts to facilities in Reach 4B2 (which has an estimated existing channel capacity of 4,500 cubic feet per second (cfs)). No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

### ***Specific Comments***

**SLCC-5:** Purpose and place of use of any diverted flows would be consistent with existing CVP water rights. Reclamation would deliver WY 2010 Interim Flows in place of contractually obligated water supplies consistent with water supply demands at those locations. This process is described throughout the Draft EA/IS. The text was revised to clarify this.

**SLCC-6:** Diversions at Exchange Contractor facilities would be made consistent with existing contracts and water demands, as under current contractual obligations.

Reclamation delivers water to the Exchange Contractors under the San Joaquin River Exchange Contract. The diversion of WY 2010 Interim Flows at Exchange Contractor facilities would satisfy the San Joaquin River Exchange Contract, as described in Section 2.0 of the Draft EA/IS. Under this contract, Reclamation can deliver water to Mendota Pool or the Arroyo Canal to fulfill contract obligations through the Delta-Mendota Canal (DMC) or through the San Joaquin River at its discretion. The text was revised to clarify this.

**SLCC-7:** Please see response to comment RMC-69.

**SLCC-8:** The fifth species is sponge plant. The text was revised to clarify this.

**SLCC-9:** The sentence was revised to reflect potential for invasive species to affect water delivery systems. The Invasive Species Monitoring and Management Plan (mitigation measure Bio-1; Appendix F) includes measures to monitor and document the response of invasive species to the release of WY 2010 Interim Flows. The plan also includes measures to control and manage the dispersion of invasive species as a result of the release of WY 2010 Interim Flows.

**SLCC-10:** The finding refers to the potential decrease in deliveries to the CVP Friant Division long-term contractors as a result of the release of Interim Flows.

**SLCC-11:** Concur. The text was revised to clarify this.

**SLCC-12:** As described in the Proposed Action, Exchange Contract deliveries will have priority over Interim Flows. Section 2 of the Environmental Assessment/Initial Study describes all agreements that may be necessary to route Interim Flows through Exchange Contractor facilities. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-13:** In consultation with the National Marine Fisheries Service, and as described in Section 2.0 of the Draft EA/IS, it was agreed that because of the low likelihood of presence of steelhead, the barrier would not be put in place in the spring, but that monitoring and salvage, if needed, would take place during the Interim Flow period. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-14:** The text was revised to reflect comment in the Final EA/IS.

**SLCC-15:** Reclamation delivers water to the Exchange Contractors under the San Joaquin River Exchange Contract. The diversion of WY 2010 Interim Flows at Exchange Contractor facilities would satisfy the San Joaquin River Exchange Contract, as described in Section 2.0 of the Draft EA/IS. Under this contract, Reclamation can deliver water to Mendota Pool or the Arroyo Canal to fulfill contract obligations through the Delta-Mendota Canal or through the San Joaquin River at its discretion. With regard to seepage as a result of the Proposed Action, see responses to comment CVFPB-2 and RMC-3.

**SLCC-16:** See response to SLCC-15.



**SLCC-17:** As described in Section 2.0 of the Draft EA/IS, recirculation of recaptured Interim Flows would be subject to available capacity within CVP/State Water Project (SWP) storage and conveyance facilities, and would be consistent with existing operating criteria, prevailing and relevant laws, regulations, biological opinions, and court orders in place at the time the water is pumped. Additional mutual agreements between Reclamation, DWR, Friant Division long-term contractors, and other south-of-Delta CVP/SWP contractors may be required for conveyance of recaptured Interim Flows. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-18:** See responses to SLCC-1 and -2. The text was revised as suggested.

**SLCC-19:** Concur. The text was revised to reflect comment.

**SLCC-20:** Seepage monitoring cannot be completed without flows in the San Joaquin River and bypass system; however, geotechnical surveys are being conducted for lands for which access has been granted. The lead agencies continue to seek access from landowners to assess baseline conditions. The Seepage Monitoring and Management Plan will inform future decisions on the release of flows. Text in the Seepage Monitoring and Management Plan revised for clarity.

**SLCC-21:** The potential impacts of the Proposed Action on San Joaquin River salinity levels are described in Section 4.9 of the Draft EA/IS. The potential effects of increased groundwater levels are discussed in Sections 2.2.5 and 4.9. Text in the Seepage Monitoring and Management Plan revised for clarity on the assessment as it relates cropping patterns.

**SLCC-22:** The capacity of Reach 4 is variable, as described in Section 3.11 of the Draft EA/IS. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-23:** This capacity is the design capacity (with 3 feet of freeboard), and is supported by scoping comments received from the San Joaquin River Resource Management Coalition (2007) and by the Draft San Joaquin River Restoration Study Background Report (McBain & Trush, 2002). No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-24:** The design capacity is the capacity that the channel was estimated to have when the San Joaquin Flood Control Project was constructed. The design capacity was used, in part, to establish the required capacity for the Sand Slough and Eastside Bypass. The current capacity is limited in part because of dense vegetation in the channel and road crossings designed for lower flows. The Environmental Assessment/Initial Study does not assess the potential for seepage within this reach because the Proposed Action does not include conveyance of WY 2010 Interim Flows through this reach. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLCC-25:** Concur. The best evidence available at the time the Draft Environmental Assessment/Initial Study was released suggested that the nondamaging flow capacity in Reach 4A is greater than 600 cfs. The Seepage Monitoring and Management Plan describes the actions to be taken if unanticipated seepage were to occur as a result of the Proposed Action at flows below the capacity estimated using the best available information. Text in the Seepage Monitoring and Management Plan revised for clarity.

**SLCC-26:** The source of the data is results of modeling performed by Mussetter Engineering, Inc., as presented in the Draft San Joaquin River Restoration Study Background Report (McBain & Trush, 2002). This source is referenced beneath the table. Text in the Seepage Monitoring and Management Plan revised for clarity.

**SLCC-27:** The text was revised for clarity.

**SLCC-28:** Please see response to comment RMC-69 in Chapter 4.

**SLCC-29:** The text was revised as suggested.

**SLCC-30:** See responses to comments SLCC-1 and -6. In the event that additional diversions in excess of SLCC demands are needed into the Arroyo Canal to avoid seepage impacts, Reclamation will work with SLCC to find a mutually agreeable resolution on accounting for these deliveries.

**SLCC-31:** Lower San Joaquin Levee District staff would perform the patrols, consistent with standards currently applied for patrols during flood conditions. See response to comment RMC-45 in Chapter 4. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

## 3.12 San Luis & Delta-Mendota Water Authority and State Water Contractors

**San Luis & Delta-Mendota Water Authority**



P O Box 2157  
Los Banos, CA 93635

**State Water Contractors, Inc.**



1121 L Street, Suite 1050  
Sacramento, CA 95814

July 20, 2009

Via E-mail: [InterimFlows@RestoreSJR.Net](mailto:InterimFlows@RestoreSJR.Net)  
Mr. Jason Phillips  
SJRRP Program Manager  
U.S. Bureau of Reclamation  
2800 Cottage Way, MP-170  
Sacramento, CA 95825-1898

Via E-mail: [Faulkenb@Water.Ca.Gov](mailto:Faulkenb@Water.Ca.Gov)  
Mr. Kevin Faulkenberry  
SJRRP Program Manager  
Cal. Department of Water Resources  
3374 Shields Avenue  
Fresno, CA 93726

*Re: Environmental Assessment, Proposed Finding of No Significant Impact,  
Initial Study, and Draft Mitigated Negative Declaration for the San Joaquin  
River Restoration Program's Water Year 2010 Interim Flows Project*

Dear Mr. Phillips and Mr. Faulkenberry:

The San Luis & Delta-Mendota Water Authority and the State Water Contractors (collectively, "Water Agencies") submit the following comments on the draft environmental assessment, proposed finding of no significant impact, initial study, and draft mitigated negative declaration ("Draft EA/FONSI/IS/MND") for the San Joaquin River Restoration Program's ("SJRRP") Water Year 2010 ("WY 2010") Interim Flows Project ("Proposed Project"). The Water Agencies present their comments with the hope they will be addressed, the Draft EA/FONSI/IS/MND will be revised, and the final EA/FONSI/IS/MND will thereby comply with the mandates of the National Environmental Policy Act and the California Environmental Quality Act.

The Water Agencies support the Stipulation of Settlement in *Natural Resources Defense Council, et al. v. Kirk Rogers, et al.* ("Settlement") and actions taken consistent with the legal mandates and authorities provided under the San Joaquin River Restoration Settlement Act, Public Law 146-359 ("Act"). However, as more fully explained below, the Water Agencies are concerned the description of the Proposed Project is not consistent, and the Proposed Project may not satisfy the Purpose and Need, as sections of the Draft EA/FONSI/IS/MND indicate the Proposed Project, if implemented, would violate the Settlement and the Act. They are also concerned that

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the Proposed Project is not placed into proper context, as the Draft EA/FONSI/IS/MND fails to discuss the effects of the Proposed Project in relation to all potentially relevant statutes, laws, programs, and agreements.

SLDMWA&SWC- 1.  
1

The Draft EA/FONSI/IS/MND Does Not Provide A Consistent Description Of The Proposed Project Or A Project Description That Is Consistent With The Purpose And Need

The purpose and need for the Proposed Project is to implement the San Joaquin River Restoration Program ("SJRRP"), as established by the 2006 Stipulation of Settlement in *Natural Resources Defense Counsel, et al. v. Kirk Rodgers, et al.*, and authorized by the San Joaquin River Restoration Settlement Act, Public Law 146-359. (Draft EA, pp. 1-1). As such, the Proposed Project is explained as "the release of WY 2010 Interim Flows according to the Settlement and the Act." (Draft EA, pp. 2-5). The Proposed Project, as does the Settlement and Act, contemplates the potential recirculation or recapture of the releases. In all cases, however, it should be beyond reasonable dispute that the intent of the Settlement and the Act are, and the Proposed Project should be, limited to recirculating or recapturing of releases in a manner that does not adversely affect the Water Agencies' members. (See, e.g., Act, Public Law 146-359, § 10004(a)(4)). The Proposed Project does not reflect that intent and limitation consistently. The intent and limitation are also not properly reflected in the purpose and need.

The Draft EA/FONSI/IS/MND does explain the Proposed Project would include the recapture of water, "subject to *available capacity* within CVP/SWP storage and conveyance facilities, including the Jones and Banks pumping plants, the California Aqueduct, the DMC, San Luis Reservoir and related pumping facilities, and other facilities of CVP/SWP contractors." (Draft EA, pp. 2-9, 2-12, 2-26)(emphasis added)). The Draft EA/FONSI/IS/MND includes other limitations on the recirculation or recapture of water. (Draft EA, p. 2-9). However, nowhere does the Draft EA/FONSI/IS/MND provide a clear and direct statement that the recirculation or recapture of water will not cause any adverse impact to the Water Agencies' members. In fact, language and modeling results presented in the Draft EA/FONSI/IS/MND suggest such impacts are acceptable.

SLDMWA&SWC-  
1a

A. The Project Description And Direct Impacts Analyses Are Inconsistent With The Settlement And The Act.

Although in places the Draft EA/FONSI/IS/MND could be read to provide the protections to third parties intended and/or required by the Settlement and Act, other

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sections of the Draft EA/FONSI/IS/MND, including the modeling, undermine such an interpretation. For example, the description of the Proposed Project provides that the "maximum quantity of WY 2010 Interim Flows that could be diverted from the Restoration Area ["recirculated"] is limited by the combined diversion capacity at all identified diversion points." (Draft EA, p. 2-27.) The Draft EA/FONSI/IS/MND provides similar statements elsewhere. None of those statements are limited. There is no clear constraint that limits the Proposed Project's use of capacity to capacity available only after the obligations to/needs of the Water Agencies' members are met.<sup>1</sup>

SLDMWA&SWC- Further, the Draft EA/FONSI/IS/MND presents the results of modeling, which  
1b indicate the Proposed Project could adversely impact the quantity and/or timing of water conveyed at the Harvey O. Banks (Banks pumping plant) and C.W. Jones Pumping Plants (Jones pumping plant) or stored in San Luis Reservoir. Attachment 1 to the Draft EA/FONSI/IS/MND presents a number of tables, depicting modeling results. Some of those tables (Tables 70-75) present the monthly averages of simulated pumping by the CVP and SWP at the Jones and Banks pumping plants, respectively. The tables show at least one month in each water year type in which the Proposed Project will negatively impact CVP/SWP pumping rates – some of which the significance should be beyond reasonable dispute. For example, Table 75 shows a 5 percent adverse impact to CVP/SWP pumping during August of critically dry years. Tables 121-126, which show changes to San Luis Reservoir, provide similar data. The modeling of Proposed Project impacts suggests the Proposed Project may, at times, reduce San Luis Reservoir storage. Again, there are no statements in the Draft EA/FONSI/IS/MND that the Proposed Project will avoid the impacts identified in the modeling, that the Proposed Project will be implemented in a manner consistent with the Settlement and the Act.

SLDMWA&SWC- B. Potentially Significant Indirect Impacts Of The Project Are Not Disclosed.  
1c

The CVP and SWP are significantly regulated pursuant to the federal Endangered Species Act. The Draft EA/FONSI/IS/MND does not take into account the significant effect the Proposed Project may have on the ability of the CVP/SWP to comply with those regulations. It fails to analyze potential indirect impacts from any potential increased regulatory burdens, for example, resulting from the increased take of

<sup>1</sup> To provide necessary protection to the Water Agencies' members, the Proposed Project should include accounting measures that ensure the quantity of recirculated or recaptured water made available to the Friant contractors is limited to water resulting from Proposed Project and available at the point of re-diversion (i.e., measures that account for potential losses from depletions, diversions by others, reoperation of facilities on tributaries to the San Joaquin River, etc.). The existence of and the manner in which such an accounting would be carried out is not apparent in the Draft EA/FONSI/IS/MND.

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listed species that could occur when implementing the Proposed Project.<sup>2</sup> For instance, if the Proposed Project results in additional pumping at the Jones and/or Banks pumping plant and that additional pumping causes the incidental take of fish authorized under a biological opinion (i.e., Delta smelt, winter run salmon, etc.), the take could contribute to the CVP and/or SWP reaching or exceeding take limitations imposed in a biological opinion. Under those circumstances, the Proposed Project could foreclose the ability of the CVP and/or SWP to deliver water to the Water Agencies members that would otherwise be delivered in the absence of the Proposed Project. There are no statements in the Draft EA/FONSI/IS/MND that suggest the Proposed Project will be implemented in a manner to avoid those types of impacts.

SLDMWA&SWC- 2. Effects of the Proposed Project In Relation To All Potentially Relevant Statutes,  
2 Laws, Programs, and Agreements.

Section 6.0 of the Draft EA/FONSI/IS/MND describes a number of statutes, laws, programs, and agreements. However, nowhere in that section or elsewhere does the Draft EA/FONSI/IS/MND discuss the authority of the State Water Resources Control Board ("State Water Board") and California Regional Water Quality Control Board in relation to water quality. As an example and at a minimum, the Final EA/FONSI/IS/MND should discuss the State Water Board's periodic review of the 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay-Delta Plan"). In particular, the Final EA/FONSI/IS/MND should explain that the State Water Board will review water quality objectives (i.e., the San Joaquin River flow objective), which could result in the State Water Board assigning to the United States Bureau of Reclamation responsibility for meeting objectives, responsibility that could burden operation of the Friant Division of the CVP.

SLDMWA&SWC- 3. Other Errors Or Inconsistencies  
3a

A. The Draft EA/FONSI/IS/MND does not consider the potential effects of the Proposed Project, with the constraints imposed on the CVP and SWP by the 2008 biological opinion issued by the United States Fish and Wildlife Service for CVP and SWP operations ("Smelt BiOp") or the June 2009 biological opinion issued by the National Marine Fisheries Service for CVP and SWP operations. Sections of the Draft EA/FONSI/IS/MND are inconsistent with those BiOps. For example, Old River and Middle River ("OMR") flows listed in Appendix G, Tables 76 to 81, exceed the allowable

<sup>2</sup> In addition, the SWP may be subject to regulation under the State Endangered Species Act. Such regulation, if valid, could increase the burdens on the SWP. Therefore, Final EA/FONSI/IS/MND should consider the Proposed Project in context with State ESA regulation.

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reverse flow limits under the Smelt BiOp for most months under both the No Action and Proposed Action scenarios.

SLDMWA&SWC- B. The values listed in Table 4-40 do not match the October–February values  
3b listed in Appendix A, Tables 70-75.

SLDMWA&SWC- 4. Conclusion  
4

For the reasons stated above, the Water Agencies respectfully request that the Draft EA/FONSI/IS/MND be revised to address the above-stated concerns. In addition to correcting the "other errors" noted above and discussing the authority of the State Water Board and California Regional Water Quality Control Board, the descriptions of the Purpose and Need and the Proposed Project should be revised to state clearly that implementation of Proposed Project shall not have adverse impacts to the Water Agencies' members (no adverse change in quantity or timing of water deliveries, no increased financial burdens).

SLDMWA&SWC- The following definition should be included and used to define "available  
5 capacity".

Pumping and conveyance that is available at the C.W. Jones Pumping Plant, at the Harvey O. Banks Pumping Plant, in the Delta-Mendota Canal or in the California Aqueduct, after satisfying all statutory and contractual obligations to make deliveries through Delta facilities,<sup>3</sup> including but not limited to: (1) obligations related to Level 2 and Level 4 refuge water supplies, (2) obligations under existing or future water service, exchange, and other settlement contracts to Central Valley Project contractors entitled to Central Valley Project water through Delta Division facilities, (3) all obligations under existing or future transfer, exchange or other agreements involving or intended to benefit Central Valley Project and/or State Water Project contractors served water through Delta Division facilities, including the Environmental Water Account, Yuba Accord, or similar programs, (4) obligations under existing or future long-term water supply contracts involving State Water Project contractors served State

<sup>3</sup> For purposes of this definition, "Delta facilities" should mean those existing and future Central Valley Project and State Water Project facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the C. W. Jones Pumping Plant, Delta Mendota Canal, O'Neill Forebay, O'Neill Pumping/Generating Plant, San Luis Reservoir, Clifton Court Forebay, Harvey O. Banks Pumping Plant and the California Aqueduct.

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Water Project water through Delta Division facilities, and (5) all water delivery obligations established by the State Water Project Water Supply Contracts, including, but not limited to, the categories of deliveries set forth in Article 12(f) of such Contracts.

SLDMWA&SWC-  
6

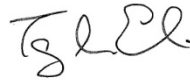
And, the Final EA/FONSI/IS/MND should state clearly the modeling results that show adverse changes to CVP/SWP pumping and storage (whether quantity or timing) are not reflective of how the Proposed Project will be implemented. That because of the Settlement and the Act, implementation of the Proposed Project will not cause any adverse effect to the CVP/SWP (except the contemplated impacts within the Friant Division).

Thank you for your consideration of the comments.

Very truly yours,



Daniel G. Nelson  
Executive Director  
San Luis & Delta-Mendota Water Authority



Terry L. Erlewine  
General Manager  
State Water Contractors



## **Response to Comments from San Luis & Delta-Mendota Water Authority and State Water Contracts (SLDMWA & SWC)**

**SLDMWA&SWC-1:** Recirculation of Interim Flows would be subject to available capacity, where available capacity is defined as capacity available after satisfying all statutory and contractual obligations to existing or future water service or supply contracts, exchange contracts, settlement contracts, transfers, or other agreements involving or intended to benefit Central Valley Project/State Water Project (CVP/SWP) contractors served water through CVP/SWP facilities. The text was revised to clarify this.

**SLDMWA&SWC-1a:** As described in Section 2.0 of the Draft Environmental Assessment/Initial Study (EA/IS), the Proposed Action is constrained by channel capacity, the potential for adverse material seepage impacts, Federal, State, and local laws, and future agreements with downstream agencies, entities, and landowners. Table 2-3 in the Draft EA/IS identifies Reach 1 Holding Contracts in cubic feet per second and Table 2-4 in the Draft EA/IS identifies infiltration losses identified in Exhibit B of the Settlement that are anticipated reductions from the Friant Release schedule. As stated above, recirculation would be subject to available capacity within CVP/SWP storage and conveyance facilities. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLDMWA&SWC-1b:** See response to comment RMC-74 in Chapter 4.

**SLDMWA&SWC-1c:** See response to comment RMC-9 in Chapter 4.

**SLDMWA&SWC-2:** As described in Section 4.0, the Water Quality Control Plan for the Sacramento and San Joaquin river basins, adopted by the Central Valley Regional Water Quality Control Board in 1998, is the regulatory reference for meeting Federal and State water quality requirements, and lists existing and potential beneficial uses of the San Joaquin River. The current Basin Plan review is anticipated to provide regulatory guidance for total maximum daily load standards at locations along the San Joaquin River. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLDMWA&SWC-3a:** As stated in the project description, the pumping of Water Year (WY) 2010 Interim Flows would be consistent with any biological opinions (BO) in place at the time of pumping. The effects of pumping on Federally listed species and their habitat are permitted consistent with BOs, as applicable. Other impacts of the June 2009 National Marine Fisheries Service (NMFS) BO, such as the potential for reduced recapture of WY 2010 Interim Flows, are assessed in the Draft EA/IS, which analyzes the potential for no recapture of WY 2010 Interim Flows.

**SLDMWA&SWC-3b:** The main document does not have the referenced Table 4-40. Appendix A does not have the referenced Tables 70 – 75. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

**SLDMWA&SWC-4:** Comment noted.

**SLDMWA&SWC-5:** The text was revised to define “available capacity” as suggested in the comment with a few editorial changes. Other sections of the Draft EA/IS that discuss recirculation and available capacity refer back to Section 2.

**SLDMWA&SWC-6:** See response to SLDMWA&SWC-1.

### 3.13 San Luis Delta-Mendota Water Authority and Westlands Water District

SLDMWA&WWD - 1

**Gasdick, Alicia**

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**From:** Courtney K. Frieh [cfrieh@diepenbrock.com]  
**Sent:** Monday, June 29, 2009 5:25 PM  
**To:** interimflows@restoresjr.net  
**Subject:** FW: Request for Extension on Comment Period for EA on the San Joaquin River Restoration Program's Water Year 2010 Interim Flows Project

SLDMWA&WWD - 1

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**From:** Courtney K. Frieh  
**Sent:** Monday, June 29, 2009 5:06 PM  
**To:** 'interimflows@restoresjr.net'; 'faulkenb@water.ca.gov'  
**Cc:** Jon D. Rubin  
**Subject:** Request for Extension on Comment Period for EA on the San Joaquin River Restoration Program's Water Year 2010 Interim Flows Project

Gentlemen,

This e-mail follows up on my phone conversations with Margaret Gidding and Brad Hubbard today. On behalf of the San Luis Delta-Mendota Water Authority and Westlands Water District, I requested a 14-day extension to submit comments on the Environmental Assessment, Proposed Finding of No Significant Impact, Initial Study, and Draft Mitigated Negative Declaration for the San Joaquin River Restoration Program's Water Year 2010 Interim Flows Project. We are requesting an extension based upon the volume of the document and the complexity of the underlying subject matter. Given the short amount of time remaining in the comment period, it will be difficult to provide substantive comment by the current deadline. For the above reasons, San Luis Delta-Mendota Water Authority and Westlands Water District respectfully request an extension of the comment deadline to July 20, 2009.

Due to the impending current deadline, please respond to this request no later than close of business tomorrow, June 30, 2009. Please contact me if have any questions or need further information.

Courtney K. Frieh  
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Sacramento, California 95814  
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**Response to Comments from San Luis Delta-Mendota Water Authority and Westlands Water District**

**SLDMWA&WWD-1:** A 14-day extension of the public review period was provided.