

Comments from Friant Water Users Authority

	Page(s)	Paragraph or Section Number	Specific Language from Document	Comment
FWUA- 1	1	2 nd	<i>The Proposed Action includes continuation of activities necessary to convey the flows in the San Joaquin River from Friant Dam to the Delta.</i>	The flows aren't required to make it to the Delta but to the confluence of the Merced River.
FWUA- 2	1	3 rd	<i>This document is a joint Supplemental EA/Subsequent IS to the WY 2010 Final EA/IS, and satisfies the requirements of the National Environmental Policy Act (NEPA). Reclamation and DWR are preparing this joint Supplemental EA/Subsequent IS, consistent with their lead roles in preparing the future Program Environmental Impact Statement/Report (PEIS/R) for the implementation of the Settlement and the San Joaquin River Restoration Settlement Act (Act).</i>	The fact that DWR has chosen NOT to prepare a Subsequent IS is inconsistent with this statement, as is the inclusion of a Subsequent Mitigated Negative Declaration with the FONNSI.
FWUA- 3	2-3	#5	<i>The Proposed Action will be implemented in accordance with the U.S. Fish and Wildlife Service (USFWS) 2008 Delta Smelt Biological Opinion of the Operating Criteria and Plan for the Continued Operations of the Central Valley Project and State Water Project, the National Marine Fisheries Service (NMFS) 2009 Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project.</i>	The BO's don't include IF's, so to what extent are the BO's applicable?

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FWUA- 4	3	#9	<i>The Proposed Action would not substantially deplete groundwater supplies or interfere with groundwater recharge because of a decrease in deliveries to CVP contractors, including the Friant Division long-term contractors.</i>	How can the USBR say that groundwater conditions won't be affected as we don't know the type of year that will occur next year nor the probability of water recapture?
FWUA- 5	4	#16	<i>Although the Proposed Action would involve reoperation of Friant Dam, and therefore change the distribution of water supplies (e.g., recapture and recirculation), the Proposed Action would not increase demand on water supplies or require new or expanded entitlements. The Proposed Action would have a less-than-significant impact on water deliveries.</i>	This should be explained further as noted above.
FWUA- 6	5	#19	<i>The Proposed Action will not disproportionately impact minority and disadvantaged populations or communities. Because of the limited duration and extent of the Proposed Action, and the findings that all impacts to related resources areas are less than significant or have no effect whatsoever, it is concluded that the Federal Action under consideration will not disproportionately burden minority groups, low-income populations, or Native American Tribes.</i>	If land fallowing results from a dry year next year, that won't comport with this statement unless significant supplies are recovered.

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FWUA- 7	1-2	1 st	<i>DWR does not have the same discretionary action necessary to implement WY 2011 Interim Flow releases as described in the WY 2010 Final EA/IS. Therefore, there is not a California Environmental Quality Act (CEQA) review requirement for DWR related to the release of WY 2011 Interim Flows.</i>	If the statement is correct, why is there a SMND attached to the Draft FONNSI? Also, if DWR has no CEQA review requirement, a formal statement from DWR should be provided stating that the lack of additional CEQA compliance will not interfere with the ability to recapture and recirculate Interim Flows.
FWUA- 8	1-3	3 rd	<i>... when Buffer Flows (two releases of up to an additional 10 percent of the applicable hydrograph flows)</i>	Delete the word “two”
FWUA- 9	1-3	4 th	<i>Full Restoration Flows are described in Exhibit B of the Settlement that was provided as Appendix B of the WY 2010 Final EA/IS.</i>	Change <i>Appendix B</i> to <i>Appendix A</i>
FWUA- 10	1-3	5 th	<i>The general approach to defining these actions includes evaluation of information acquired from ongoing investigations, reported in Annual Technical Reports (ATR), recommendations from the various working groups, (e.g., FMWG), such as those presented in annual implementation plans.</i>	What are annual implementation plans and where can they be found? [Didn't find them at www.restoresjr.net]

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FWUA- 11	1-4	1 st	<i>The overall need to address all issues pertinent to eventually defining restoration actions, including restoration flow, habitat restoration or enhancement, channel modifications, to accommodate the Settlement.</i>	This appears to be an incomplete sentence.
FWUA- 12	1-5	1 st (Section 1.2.2)	<i>CEQA Guidelines require a clearly written statement of objectives, including the underlying purpose of the project (Guidelines Section 15124(b)).</i>	This sentence should be deleted if there is no CEQA compliance required.
FWUA- 13	1-6	Table 1-1	<i>July 1</i>	Change to <i>June 8</i>
FWUA- 14	2-1	2.1	<i>Under CEQA Guidelines section 15125(a), the physical environmental conditions, as they exist at the time of the environmental analysis is commenced, “will normally constitute the baseline conditions by which a Lead Agency determines whether an impact is significant.” (See also CEQA Guidelines §15126.2(a).).</i>	Delete since CEQA compliance is not required.
FWUA- 15	2-2	2.2.1	<i>These tables include water that would be released for water rights purposes and other deliveries, in combination with implementation of the WY 2011 Interim Flows.</i>	Please explain what the term “other deliveries” means in this context.

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FWUA- 16	2-5	1 st	<i>The actual daily WY 2011 Interim Flow releases (the resulting hydrograph) would be subject to the application of flexible flow provisions described in Exhibit B and other ramping and flow scheduling changes, as recommended by the RA.</i>	There are 2 problems with this statement: first, FWUA does not agree that IF's are subject to the application of the flexible flow provisions of Exhibit B; second, this sentence implies that Reclamation will give IF decision making authority to the RA.
FWUA- 17	2-5	1 st	<i>...with consideration of the Settlement's flexible flow periods...</i>	See above comment.
FWUA- 18	2-5	Table 2-3	<i>Maximum Interim Flow Release from Friant Dam Under the Proposed Action (cfs)</i>	The flows listed for October 1 through February 28 do not match those in Table 1E of Exhibit B of the Stipulation of Settlement, which would represent the maximum IF release for the current Normal-Wet year. Also, the flows listed for March 1 through September 30 do not match those in Table 1F of Exhibit B of the Stipulation of Settlement, which would represent the maximum IF release (i.e. a Wet water year).
FWUA- 19	2-5	Table 2-3, footnote 1	<i>Includes both the fall and spring flexible flow periods as described in Exhibit B of the Settlement.</i>	The Spring flexible flow periods specified in the Settlement are up to four weeks before March 1 and up to four weeks after May 1. The Table does not match those dates.
FWUA- 20	2-6	1 st	<i>Additional factors considered during implementation of the release of WY 2011 Interim Flows include water supply demand;</i>	Please explain what the term "water supply demand" means in this context.
FWUA- 21	2-6	3 rd	<i>The Proposed Action includes potential recapture of Interim Flows at several diversion including...</i>	Insert "points" after "diversion"

	Page	Paragraph or Section Number	Specific Language from Document	Comment
FWUA- 22	2-7	1 st	The entire paragraph	This paragraph is somewhat confusing. Suggest it be re-written. It jumps around, both geographically and with respect to “recapture” vs. “recirculation.”
FWUA- 23	2-7	1 st	<i>No additional agreements would be required to recapture flows in the Restoration Area.</i>	The wildlife refuges have been identified as potential recapture points, and they are in the Restoration Area; therefore, additional agreements would be required to recapture flows in the Restoration Area.
FWUA- 24	2-7	1 st	<i>Continued implementation of the RPAs or other measures that are in place at the time would avoid jeopardy of protected species, including Central Valley steelhead on the Stanislaus River and Delta, and spring- and winter-run Chinook salmon, green sturgeon, and delta smelt in the Delta (see Section 2.2.8 for further discussion).</i>	This sentence seems to be out of place and does not seem to add to the understanding of the paragraph.
FWUA- 25	2-7	2 nd	<i>Reclamation would identify actual delivery reductions to Friant Division long-term contractors associated with the release of WY 2011 Interim Flows consistent with Paragraph 16 of the Settlement.</i>	Please specify the timeframe in which Reclamation will make such identification. Presumably it will be within the period this EA covers.
FWUA- 26	2-7	3 rd	<i>All recapture actions will be conducted in a manner consistent with Federal, State and local laws, and any agreements with downstream agencies, entities, and landowners.</i>	Please identify what kind of local law would override the Settlement Act.

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FWUA- 27	2-9	2.2.3, 1 st paragraph	<i>...the Restoration Flow Guidelines (included in Appendix C of the WY 2010 Final EA/IS)...</i>	Appendix C of the WY 2010 Final EA/IS specifically excludes the Restoration Flow Guidelines. See page 1-2, Section 1.2, first bullet.
FWUA- 28	2-9	2.2.3, 1 st paragraph	<i>Reductions in flow could be made, in consideration of water supply demands, presence of special-status species, potential seepage and groundwater effects, along with real time management strategies...</i>	To what does the term “water supply demands” refer in this context?
FWUA- 29	2-10	Table 2-5, footnote 7	<i>Includes existing inflow from Mud and Salt sloughs of up to 500 cfs, as defined in Exhibit B.</i>	Change “defined” to “assumed”
FWUA- 30	2-17	1 st	<i>If groundwater levels at a monitoring well exceed an identified threshold, WY 2011 Interim Flows would be reduced or diverted.</i>	The meaning and use of the term “diverted” must be explained further with specifics to address potential impacts.
FWUA- 31	2-17	3 rd	<i>Three existing wells are equipped with realtime telemetered stations, reporting to CDEC.</i>	CDEC is not defined.

	Page	Paragraph or Section Number	Specific Language from Document	Comment
FWUA- 32	2-34 to 2-35	Last paragraph of 2-34 carried over on to 2-35	<i>Without VAMP, or any future regulatory action, VAMP flow contributions from the Merced and Tuolumne Rivers will be set based on existing flow requirements, and would not be subject to change in flow conditions at Vernalis, as could have occurred if Interim Flows contributed to Vernalis flows thus allowing releases from the tributaries to be correspondingly reduced . Without the requirement that all three tributaries provide flows necessary to meet Vernalis requirements, as under VAMP, WY 2011 Interim Flow contributions to Vernalis flows would not be cause for decreased releases in the Merced and Tuolumne Rivers.</i>	This is written in a way that assumes that in a future VAMP-like agreement the Interim Flows would be treated as part of the base flows at Vernalis, which would likely be opposed by FWUA. Please re-write so that the assumption is not made.
FWUA- 33	3-1	3.1.1, second paragraph	<i>Table 3-4 in the WY 2010 Final EA/IS (page 3-13) shows the acreages of land in use by Friant Division contractors.</i>	Replace “ <i>the acreages of land in use by</i> ” with “existing land uses in the service areas of”. However, a new Table should be provided since there is a new Friant Division contractor (see below).
FWUA- 34	3-1	3.1.1, second paragraph	<i>The 28 contractors include both agricultural and municipal and industrial (M&I) contractors. Locations of the Friant Division contractors are shown in Figure 3-2 of the WY 2010 Final EA/IS (page 3-14).</i>	There are now 29 Friant Division contractors with the partial contract assignment from Ivanhoe ID to Kaweah-Delta Water Conservation District. A new figure showing this addition should be provided.

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FWUA- 35	3-16	1 st	<i>Additionally, implementation of the Proposed Action is consistent with the Settlement and Act and is limited to one year.</i>	Just because the Proposed Action is consistent with the Settlement and Act and is limited to one year doesn't mean there can't be significant impacts. Suggest deleting this sentence.
FWUA- 36	3-18	1 st	<i>Possible modifications include reducing flow releases, upstream diversions of flows to avoid downstream impacts, or constraining flows to the upper San Joaquin River (upstream of the confluence with the Merced River).</i>	Upstream diversions of flows needs further explanation with examples of what this means and the impacts that might occur.
FWUA- 37	3-18	1 st	<i>This coordination between the agencies and Reclamation's commitment to modify flows based on real time conditions would ensure that the impacts of the WY 2011 Interim Flows would be less than significant.</i>	Insert "on Fish Biological Resources" after "Interim Flows" since the coordination described is for that purpose.
FWUA- 38	3-18	2 nd	<i>Additionally, Chapter 6 of the BA for implementation of Interim Flows during WY 2011 analyzes the impacts that would result from WY 2011 Interim Flows after incorporation of conservation measures developed to minimize potential impacts to listed species.</i>	If a FONNSI is based on the BA, the public should have an opportunity to review it as part of the public review process.

	Page	Paragraph or Section Number	Specific Language from Document	Comment
FWUA- 39	3-18	3 rd	<i>Because WY 2011 Interim Flows would be confined within the existing channel, would not increase flood flow levels, would last for only a single year, and would fall within the range of and be timed to be similar to historical flows, implementation of Interim Flows in WY 2011 would not result in adverse changes in conditions affecting fish species or their habitats in the Restoration Area, and would not result in cumulative effects.</i>	If this statement is accurate, why are the procedures mentioned above this paragraph necessary?
FWUA- 40	3-21	2 nd	<i>The SJRRP was developed to reduce resource conflicts and to aid in fish and wildlife protection.</i>	This sentence is not correct. Please delete it.
FWUA- 41	3-21	3 rd	<i>Because the Friant-Kern and Madera Canals Capacity Correction Project would not be completed until after the Proposed Action is implemented, and the Proposed Action would result in no net change in Millerton Lake water storage, there would be no cumulative effects between the Proposed Action and the Friant-Kern and Madera Canals Capacity Correction Project.</i>	The statement "...the Proposed Action would result in no net change in Millerton Lake water storage..." will have to be explained in detail.

Comments from San Joaquin River Water Authority & RMC



July 23, 2010

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RE: *Comments of the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC) to the Supplemental Environmental Assessment, Interim Flows Project-Water Year 2011 and the Draft Finding of No New Significant Impact, June 2010*

Dear Ms. Banonis:

Thank you for providing the opportunity to respond to the Supplemental Environmental Assessment (SEA) and the Draft Finding of No New Significant Impact (FONNSI) to the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). Pursuant to agreement between the Bureau of Reclamation (Reclamation), the Exchange Contractors and the RMC, as well as the San Luis & Delta-Mendota Water Authority (Water Authority), the time to respond has been extended to July 23, 2010.¹ The comments below will first address issues raised by the SEA and then by the FONNSI:

**SJRECWA
& RMC-1**

The Exchange Contractors and the RMC join in and incorporate herein the comments of the Water Authority² and the Lower San Joaquin River Levee District.

¹ See e-mail of Ali Gasdick dated June 24, 2010.

² The Exchange Contractors are a member of the Water Authority.

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Comments to Supplemental Environmental Assessment

I. General Comments.

A. Inadequate Scope of Environmental Review.

SJRECWA
& RMC-2

1) Reclamation is proposing another one-year environmental analysis for this multi-year project. The proposed action is the second year of a multi-year program. The SEA relies upon the prior environmental documents for the WY2010 Interim Flow program. There is no appreciable difference between the SEA and the prior year's Final EA/IS. Further, the Petition for Temporary Transfer of Water/Water Rights filed with the SWRCB indicates that the WY2011 transfer is part of the "implementation of the 2009-2013 Interim Flow Release Program..." (See, *Petition for Temporary Transfer of Water/Water Rights*, Application No. 234, Permit No. 11885, Supplement, pg. 7, dated June 30, 2010). This piecemealing of the San Joaquin River Restoration Program (SJRRP) is inappropriate and violates the National Environmental Policy Act, the California Environmental Quality Act and the San Joaquin River Restoration Settlement Act (Restoration Act).

SJRECWA
& RMC-3

2) As stated in § 1.2.1 (page 1-3) the Settlement in the case of NRDC, et al. v. Kirk Rodgers, et al. calls for releases of both Interim Flows and Restoration Flows. Interim Flows were to commence October 1, 2009 and continue until full Restoration Flows begin or January 1, 2014, whichever occurs first. The Interim Flows are the first phase of the Restoration Program and are not a separate and distinct part of the Restoration Program. Rather, they are designed to collect information, conduct tests, and result in mitigation measures and appropriate hydrographs for the Restoration Flows. The SEA will be used to support Reclamation's petition to the State Water Resources Control Board (SWRCB) regarding the temporary transfer of water pursuant to California Water Code §§ 1725 et seq. Inasmuch as this is a single multi-year program, neither Reclamation, the Department of Water Resources (DWR), or the Friant Division contractors may use the exemption for temporary transfers that is provided by Water Code § 1725, et seq. As is clear from the Settlement, the SJRRP is a continuous series of flows that conform to the hydrographs and limitations set forth in the Settlement and the Restoration Act. The SJRRP is not a program of discrete transfers that are separate and distinct from one another.

SJRECWA
& RMC-4

3) The issue of single versus multi-year transfers was addressed by the State Water Resources Control Board (SWRCB) in *In the Matter of Permits 15026, 15027, and 15030 on Applications 5632, 15204, and 15574 of YUBA COUNTY WATER AGENCY*, 1989 Cal. ENV LEXIS 41 (Cal. ENV 1989). In that case, the SWRCB determined that multiple single year transfers are permitted under Water Code § 1725 only if there are significant differences regarding place of use and purpose of use and if the transfers of water are effective for no more than one year. Otherwise, multiple single year transfers will be treated as a long-term transfer under Water Code § 1735, et seq. As evidenced in the comparison table included below, the

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petitions for temporary transfer submitted to the SWRCB by Reclamation for WY2010 and WY2011 are nearly identical.

Summary	WY2010 Petition for Temporary Transfer	WY2011 Petition for Temporary Transfer
Temporary Transfer	384,000 af from October 1, 2009 through September 30, 2010, including temporary storage or re-diversion of transfer water at San Luis Reservoir.	389,355 af from October 1, 2010 through September 30, 2011 [USBR is proposing to address the transfer of this water to Friant through a second environmental review.]
Purpose of Use	Add fish and wildlife preservation and enhancement	Add fish and wildlife preservation and enhancement
Place of Use	Add fish and wildlife preservation and enhancement from Friant Dam to Sacramento-San Joaquin Delta Estuary channels to the Jones Pumping Plant within SW ¼ of SW ¼ of section 31, T1S, R4E, MDB&M and also to Banks Pumping Plant within SW ¼ of section 35, T1S, R3E, MDB&M.	Add fish and wildlife preservation and enhancement from Friant Dam to Sacramento-San Joaquin Delta Estuary channels at the Jones Pumping Plant within SW ¼ of SW ¼ of section 31, T1S, R4E, MDB&M and also to Banks Pumping Plant within SW ¼ of section 35, T1S, R3E, MDB&M.

4) Further, an agency may not divide a project into lesser segments in order to truncate its environmental analysis. (*Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985).³ Reclamation must analyze the entire program at this time, and not continue to segment this program into smaller actions. (*Id.*) In addition to piecemealing the Interim Flows into multiple

³ In *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985), a group of plaintiffs sought to prohibit the U.S. Forest Service from constructing a road designed to facilitate timber extraction. The Forest Service developed an EA for the road that discussed only the environmental impacts of the road itself, but did not consider the impacts of the timber sales that the road was designed to facilitate. Subsequently, the Forest Service issued EAs for three separate timber sales. Each EA covered only the effects of a single timber sale - none discussed cumulative impacts of the sales or of the sales and the road. The Ninth Circuit held that the road construction and the timber sales were connected actions that should have been considered together in a single EIS. The court stated that agencies may not improperly "segment" projects in order to avoid preparing an EIS and instead must consider related actions in a single EIS. "Not to require this would permit dividing a project into multiple 'actions,' each of which individually has an insignificant environmental impact, but which collectively have a substantial impact." *Id.* at 758.

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SJRECWA & RMC-5 continued individual years, and the SEA from the Programmatic Environmental Impact Study (PEIS) (discussed further below), the previously released Notice of Preparation for an Environmental Impact Statement for the Mendota Pool Bypass and Reach 2B is a further segmentation of the overall restoration program.⁴

SJRECWA & RMC-6 5) Reclamation intended to complete a Programmatic Environmental Impact Study (PEIS) prior to the release of Interim Flows. It has not done so due to unexplained delays. The purpose of the PEIS is to fully analyze this multi-year program. From that PEIS it is appropriate to tier off to address various segments of the restoration activities, such as various construction projects in different reaches of the San Joaquin River or a new hydrograph that is significantly different than the Settlement. (*California ex rel. Lockyer v. United States Forest Serv.*, 465 F. Supp. 2d 942, 951 (N.D. Cal. 2006).)

B. The Restoration Goal and the Water Management Goal are Inextricably Linked.

SJRECWA & RMC-7 1) The SEA states that the water-transfer aspect of the annual flow program will be addressed in a separate environmental document. (SEA, Page 2-6, Section 2.2.2.) However, the Settlement establishes two primary goals: the Restoration goal and the Water Management goal. (page 1-3) The San Joaquin River Restoration Settlement Act (P.L. 111-11) ("Restoration Act") requires that the Secretary of the Interior analyze all impacts that may result from its actions under the Restoration Act (Sec. 10004(d)). Addressing the impacts of the water transfer portion of this action in a separate document fails to provide a comprehensive review of the entirety of the proposed action, whether considered a one-year activity (as claimed by Reclamation) or part of a multi-year action (as contented by the Exchange Contractors and the RMC). Such segmentation or piecemealing is prohibited by NEPA. (*Thomas v. Peterson*, 753 F.2d at 758; See also *Alpine Lakes Protection Soc. v. Schlapper*, 518 F.2d 1089, 1090 (9th Cir. 1975), "[c]haracterizing any piecemeal development of a project as 'insignificant' merits close scrutiny to prevent the policies of NEPA from being nibbled away by multiple increments.")

SJRECWA & RMC-8 2) The Department of Water Resources (DWR) must undertake review pursuant to the California Environmental Quality Act (CEQA) related to its actions for 2011 in pursuit of this restoration program.

SJRECWA & RMC-9 3) Reclamation states in the SEA that DWR will not undertake any discretionary actions to implement WY2011 Interim Flow Releases. Therefore, Reclamation alleges that CEQA review is not required. However, it is apparent that DWR is still responsible for actions similar to those performed in WY2010, when CEQA compliance was required. The

⁴ See "Notice Of Intent To Prepare An Environmental Impact Statement For The Mendota Pool Bypass And Reach 2b Improvements Project Under The San Joaquin River Restoration Program, Fresno And Madera Counties, California."

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**SJRECWA
& RMC-9
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SEA should identify which actions performed in WY2010 will not be performed in WY2011 and explain why CEQA compliance is not required.

4) According to program documents, the following actions must be taken by DWR to implement the Interim Flow program in 2011:

a. Monitor groundwater depth and temperature levels observed in wells permitted and installed on public lands to determine when to reduce flow releases from Friant Dam;

b. Establish control points to facilitate monitoring activities for portions of the river outside of Reaches 1A and 2A;

c. Measure water surface profiles in Reaches 1A, 2A, and 2B and collect data for future releases;

d. Collect data related to flow measurements in Reaches 1 through 3;

e. Continue monitoring water-level recorders at key locations to inform hydraulic models;

f. Conduct topographic surveys at 11 sites in Reach 2A to show localized changes in bed formations due to various flows at each monitoring location after post-flow resurveys;

g. Monitor scour chains in Reach 2A;

h. Monitor bathymetric profiles of the channel bed at two sites in Reach 2A during peak flows to determine bed form and scour changes over the event period;

i. Collect subsurface soils and groundwater data in Reach 2B to develop comprehensive evaluations for the Mendota Pool Bypass/Reach 2B Channel Improvements Project;

j. Assess 70 sites in Reaches 1 through 5 for fish passage suitability;

k. Conduct aerial photography review and field assessments to identify and map existing channel, pit, bank, tributary, and overbank sand deposits that might be active at future Restoration Flows as determined from model review;

**SJRECWA
& RMC-10**

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SJRECWA
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I. Conduct continuous “real time” water quality monitoring at River Mile 181.5 (San Joaquin River near Dos Palos, below Sack Dam) and River Mile 168.4 (San Joaquin River at top of Reach 4B).

These actions are comparable to the actions taken in the first year of the program. The SEA should state clearly that there will be no new facilities installed by DWR that could have a significant impact on the environment. Conclusory statements that DWR is not engaging in discretionary actions are not sufficient to establish that no CEQA review is required. (Compare to *Mitigated Negative Declaration, Water Year 2010 Interim Flows Project*, adopted by DWR on September 25, 2009.)

II. Specific Comments.

SJRECWA
& RMC-11

1) Purpose and Need Statement. Section 1.2.1 Project Background states that the Settlement establishes two primary goals: the Restoration goal, which is designed to restore and maintain fish populations in good condition in the San Joaquin River and the Water Management goal, the object of which is to reduce or avoid adverse water supply impacts on the Friant Division Contractors resulting from the Interim Flows and the Restoration Flows. Given that the purpose and need for the proposed action is twofold, that is, the Restoration goal and the Water Management goal, as stated above, this document must analyze both actions and not segment them into separate analyses. (*Thomas v. Peterson*, 753 F.2d at 758.) As stated by the Restoration Act, the Water Management goal is an integral part of the Settlement and is co-joined with the Restoration goal as objectives of actions taken to restore the San Joaquin River. (Public Law 111-11, Section 10004(a)(4): “The Secretary of the Interior is hereby authorized and directed to implement the terms and conditions of the Settlement in cooperation with the State of California, including the following measures as these measures are prescribed in the Settlement: (4) Implement the terms and conditions of paragraph 16 of the Settlement related to recirculation, recapture, reuse, exchange, or transfer of water released for Restoration Flows or Interim Flows, for the purpose of accomplishing the Water Management Goal of the Settlement.”)

SJRECWA
& RMC-12

2) At page 1-3, Reclamation identifies the Interim Flows as being a continuing program, not a one-year transfer⁵. At a minimum, the Interim Flow program is from October 1, 2009 until full Restoration Flows begin on January 1, 2014. Based upon the facts that the transfer involves the same source of water, the same points of diversion and re-diversion, essentially the same amounts of water, the same transferee (Friant Division), the same season of use, the same purpose of use, and the same place of use, this precludes the use of the one-year

⁵ “The Settlement identifies the releases of both Interim Flows and Restoration Flows. The Settlement stipulates the release of Interim Flows beginning no later than October 1, 2009, and continuing until full Restoration Flows begin on January 1, 2014, whichever occurs first.” (emphasis added.)

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transfer provisions under § 1725 et seq. of the Water Code and compels Reclamation to utilize the provisions of § 1735, et seq. which apply for multi-year transfers. (See, *In the Matter of Permits 15026, 15027, and 15030 on Applications 5632, 15204, and 15574 of YUBA COUNTY WATER AGENCY*, 1989 Cal. ENV LEXIS 41 (Cal. ENV 1989).)

**SJRECWA
& RMC-13**

3) Problem Statements. At pages 1-3, 1-4, the SEA cites to “problem statements” in the “Draft Annual Technical Report for Fall 2009 Interim Flows (SJRRP2010c)” and targeted actions in the “fisheries implementation plan 2009-2010 (SJRRP2010f).” These problem statements do not reflect any progress as a result of the WY2010 Interim Flows. Given that information was developed during WY2010, this information should be incorporated into the problem statements on an annual basis to reflect and catalog lessons learned.

**SJRECWA
& RMC-14**

4) At page 1-4 listed under the Problem Statement Issues, the SEA identifies water quality conditions for spring run Chinook salmon. There is no similar listing for water quality conditions that affect the agricultural use of water. Yet, in implementing the Interim Flow program during 2010, agricultural water users experienced high salt problems associated with deliveries from the Delta Mendota Canal (DMC). While these problems were eventually resolved by the local water agencies during 2010, they caused significant reductions in well water supplies associated with the Mendota Pool pumpers and the DMC Warren Act contracts. Additional attention, based on a specified implementation or monitoring plan, needs to be paid to this issue to avoid water supply impacts to third parties as the water agencies adjust their operation to address the variations in flows down the San Joaquin River.

**SJRECWA
& RMC-15**

5) Section 1.2.2 contains the statement of purpose and need for the proposed action. Reclamation has truncated the purpose and need for the proposed action by only focusing on Interim Flows and not addressing the Water Management goal. The Restoration goal and the Water Management goal are interlinked by the legislation and Settlement. Reclamation must analyze these two actions in the same document. (See Comment II.1, above.) In addition, omitted from the Purpose and Need statement are the data acquisition actions. As noted in the second bullet of Section 1.2.2 on page 1-5, the objectives of the proposed action are to “collect data to better evaluate flows, temperatures, fish needs, biological effects, and seepage losses, and water recirculation, recapture and reuse opportunities for future Interim Flows and Restoration Flows.” One of the important provisions of both the Settlement and the Restoration Act are the protections against third party impacts. These provisions should be incorporated into the purpose and need statement as they are integral to the success of the program.

**SJRECWA
& RMC-16**

6) This recitation of purpose incorrectly states the actions that occurred in 2010 and will occur again in 2011. In fact, it is Reclamation’s intent to actually recapture flows that have been released down the San Joaquin River as part of the Interim Flow program. During 2010, Reclamation did in fact recapture flows and credited to the Friant Division water stored in San Luis Reservoir. Approximately 50,000 acre feet of water may be potentially credited to the Friant Division. The same is expected to occur in 2011. (In fact, Reclamation has stated that in

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SJRECWA & RMC-16 continued [excess of 300,000 af is available for recapture by Friant.) Reclamation has too narrowly characterized the proposed action as being only to study the impact of flows, and not the actual recapture of those flows to fulfill the Water Management goal. (SEA, pg. 1-5.)

SJRECWA & RMC-17 [7) Section 1.3.2 at top of page 1-7 should inform them public that the reason flows were reduced to 700 cfs below Sack Dam was because above that level seepage damage occurred. Whether seepage damage occurred at a lower level of flow is uncertain as flows were not benched in 100 cfs increments below 700 cfs.

SJRECWA & RMC-18 [8) Further at page 1-7, Reclamation concedes that it intended to have a final PEIS and related environmental documents issued prior to October 1, 2010. Reclamation concedes that "due to unanticipated schedule changes, it is unlikely that finalization of the PEIS/R, issuance of the ROD, and acquisition of all required permits for post-WY2010 Interim Flows will occur prior to September 30, 2010. Therefore, it is critical that an alternative environmental review and permitting process be undertaken to allow for an additional year for Interim Flows for WY2011." (page 1-7) The law does not permit a lead agency to avoid NEPA compliance simply due to delays on its part. (See *Forest Serv. Emples. for Env'tl. Ethics v. United States Forest Serv.*, 397 F. Supp. 2d 1241, 1253 (D. Mont. 2005), explaining that federal agencies cannot circumvent NEPA by delaying the commitment of resources until it is too late.)⁶ Reclamation has already identified that a programmatic document is necessary to fully analyze the Restoration program. It cannot avoid this obligation and piecemeal its analysis by conducting annual environmental reviews. (See *Cal. ex rel. Lockyer v. United States Dep't of Agric.*, 459 F. Supp. 2d 874, 908 (N.D. Cal. 2006), finding that limited NEPA reviews are not a substitute for a programmatic analysis of environmental effects.) Rather, NEPA requires that actions be delayed until the appropriate environmental documentation has been completed, regardless of the reasons for such delay. (See *Natural Resources Defense Council, Inc. v. Morton*, 337 F. Supp. 170, 172 (D.D.C. 1972), holding that concerns about project delays should not be permitted to eviscerate the fundamental requirements of NEPA.) In addition at page. 1-7, *Purpose and Need*, the first sentence indicates that the groundwater monitoring network will be continued in the 2011. The SEA must inform the public of the data from the 2010 groundwater monitoring, including the circumstances surrounding the limitation of downstream flows below Sack Dam to 700 cfs, because of the seepage impacts to neighboring lands. Without mitigation, including physical facilities, WY2011 flows will require further constraints to avoid continuing to impact neighboring lands.

⁶ In the *Forest Services* case, employees of the agency sued the U.S. Forest Service alleging that the agency used a chemical fire retardant for decades but never prepared an EIS or consulted NEPA. The Forest Service argued that it was too late to involve NEPA, so the use of chemical fire retardant was immune from NEPA. However, the court held that if the forest service succeeded in this argument "federal agencies can circumvent NEPA by delaying the "irretrievable commitment of resources" until it is too late for NEPA review." 397 F. Supp. 2d at 1253. The court found that the agency's decision not to consult NEPA was unreasonable.

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**SJRECWA
& RMC-19**

9) Additionally at page 1-7, Reclamation states that the SEA has been prepared using the existing WY2010 Interim Flows Project-Final Environmental Assessment and Finding of No Significant Impact/Initial Study and Mitigated Negative Declaration document to form the basis of the SEA and proposed FONNSI, and therefore those documents are incorporated by reference into the SEA. In order to obviate the need for extensive commenting where this SEA raises essentially the same issues as the WY2010 Interim Flows Project, the Exchange Contractors and the RMC hereby incorporate by reference all of the comments that they submitted to the prior year's environmental documents as well as the comments they submitted to the SWRCB. For convenience, copies of those documents are attached hereto. [Comments attached as Attachment 1.]

**SJRECWA
& RMC-20**

10) Section 2.2, *Proposed Action*, states that the Interim Flows would be released as limited by downstream channel capacities and potential material adverse impacts from groundwater seepage, and consistent with federal, state and local laws, and any agreements with downstream agencies, entities and landowners. This description of flow criteria is vague. The SEA should identify the limitations of downstream channel capacity and the potential material adverse impacts from groundwater seepage, to the extent that either have been identified or quantified by the flows for WY2010. Further, the SEA should identify those agreements with downstream agencies, entities and landowners that have been entered into pursuant to the Restoration program that will affect the release of Interim Flows.

**SJRECWA
& RMC-21**

11) At page 2-2, *Proposed Action* the first sentence acknowledges the "potential material adverse impacts from groundwater seepage" and the 2010 data supports the supposition, yet the data is not presented anywhere to inform the reader about the impacts and hence the constraints on the project as noted in our comments above. The project description needs to constrain the 2011 project flows to the volume of water and/or river stage that has been determined by the seepage impact studies until the impacts have been mitigated. (We would expect that those flows will be between 350-700 cfs in most reaches, however, some landowners are experiencing impacts at lower flow levels. See letter from James Nickel to Jason Phillips dated July 21, 2010, attached hereto as Attachment 2.) The recommendations of the RA are that, only recommendations. They may reflect the goal of optimizing the opportunity to release hydrologically-supported amounts of water into the channel but they must be in compliance with the Settlement and the Restoration Act and not cause unmitigated impacts. (Note, Sec. 10004(d) of the Restoration Act prohibits unmitigated impacts.)

**SJRECWA
& RMC-22**

12) Section 2.2.1 contains Table 2-1, which sets forth an example of the estimated maximum regulated non-flood flows under the proposed action in a wet year. Pursuant to this table, it appears that flows above the damage thresholds may be released to various reaches of the San Joaquin River where high groundwater has resulted and caused damage. Yet, the SEA is devoid of any discussion of the various flow levels, groundwater monitoring thresholds and impacts that resulted in WY2010.

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**SJRECWA
& RMC-23**

13) At the end of Section 2.2.2 at pages 2-4 and 2-5, the SEA discusses the maximum flow available for recapture at Mendota Pool. This discussion fails to consider losses at the Mendota Pool which were documented during the WY2010 Interim Flows. Further, there is no discussion of recapture at other locations that were designated as points of re-diversion under the water transfer permit.

**SJRECWA
& RMC-24**

14) Section 2.2.3 at page 2-5, Interim Flow release ramping is discussed and it is indicated that flows will be held at constant levels to allow surface water and groundwater conditions to stabilize before the next increase. There is no discussion of the rates of increase, how long it will take for river flow (or river stage, as applicable) and adjacent groundwater conditions to stabilize and at what increments the increases (or decreases) will be made. During WY2010, the following information was developed as a result of the Interim Flows regarding these factors:

- A) Monitoring information confirmed the prediction of the SJRRP technical staff that the water level in the river directly affects the water levels in the adjacent groundwater.
- B) It has been established that river seepage has negatively impacted areas within Reaches 2B and 3, and the majority of Reach 4A west of the river.
- C) The site specific seepage assessments need to be accomplished at each of the sites identified as seepage impacted, including assessment of actual or potential crop damage, and to establish the last known safe flow level that does not cause seepage related damages.
- D) River stage elevations need to be tied to surrounding ground elevations in order to predict river stage versus the seepage induced groundwater elevations and design flow hydrographs that avoid impacts.

Attached hereto as Attachment 3 is an analysis by the Central California Irrigation District (CCID) of the impacts that resulted from the WY2010 flows to groundwater levels in river Reaches 3 and 4A (See, "Report on the Effects of San Joaquin River Interim Restoration Flows on Shallow Groundwater Within CCID"). The report shows that there are abnormally high levels of groundwater that are the result of increased river flows. The report also demonstrates that these high groundwater levels are not the result of other factors such as rainfall or irrigation. Further, the report documents the difficulties associated with the use of the Sand Slough Control Structure as a means to mitigate flow impacts to adjacent lands. Due to physical limitations and the need for refurbishment of the Structure, flow backs up behind the Structure resulting in damage to adjacent lands. Due to the inability to move water efficiently to the Eastside Bypass, water levels were as high as 1.84 feet below the surrounding ground surface for most of March and April and the first 10 days of May. Further, at the higher flows, during most

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of March, April and portions of May and June, the water surface in the river was between 2.4 and 1.8 feet below the surrounding ground surface. This has had a significant impact on the groundwater levels in Reach 4A.

CCID has maintained and monitored shallow groundwater observation wells within its service area since 1983. The District has typically measure depth to groundwater, and taken water samples to measure both electroconductivity (EC) and boron. During the 2010 interim flow period CCID has monitored the depth to groundwater more frequently and have reported the information to the SJRRP. CCID has about 56 shallow observation wells within the area which it has been monitoring. Of these, groundwater levels at 25 wells are being impacted by Interim Flows.

The impacts to the adjacent land from groundwater being raised by Interim Flows Affects plant growth and production, as follows:

- 1) Lack of oxygen. If soil saturation is sufficient, and waters become depleted of oxygen, roots can die quickly, within hours depending upon several factors.
- 2) Root Pruning. The fine roots which are very important for nutrient uptake, growth and yield are damaged or killed. This may lead to nutrient deficiencies.
- 3) N₂ fixation. N-fixing bacteria live in nodules which can slough off during saturated conditions, reducing N fixation.
- 4) Since the roots are damaged, re-growth is compromised, and some plants may be killed.
- 5) These effects are exacerbated under some conditions, such as with elevated temperatures and high BOD, tight soils or high EC.
- 6) Stage of growth, variety and other factors may affect the extent of damage. Depth of water table is likely a major variable.
- 7) Length of time of saturation, the layering, the structure as well as the texture of the soil will determine the extent of the damage.
- 8) Disease issues such as phytophthora can be major issue under saturated soil conditions.
- 9) High humidity near the soil surface, due to saturated soils, creates conditions for diseases, such as sclerotinia, and leaf diseases, and slow the drying of the soil (leading to compaction during harvest), and delays drying of the crop, causing

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windrow damage.

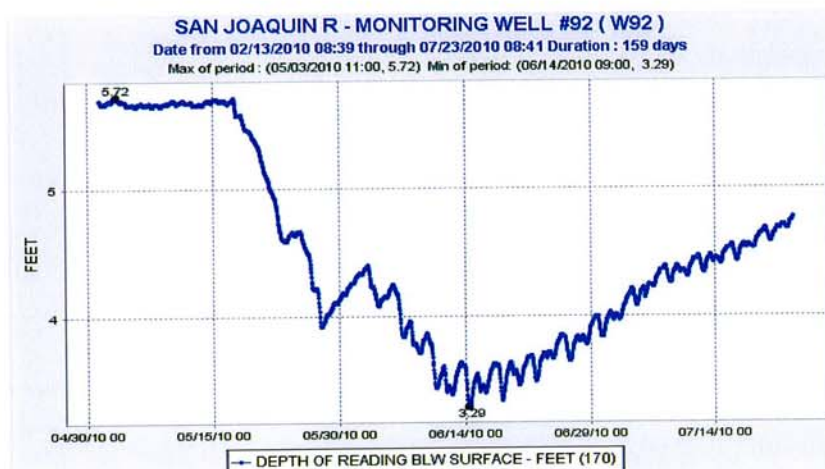
15) In order to protect adjacent lands from impacts associated with Interim Flows, the SJRRP should have taken a number of proactive steps.

a. **Actively coordinate** with adjacent agencies and landowners who monitor existing observation wells. On a real-time basis, as called for in the Seepage Management Plan (SMP).

b. **Proactively avoid seepage** and other impacts, considering the information provided by the cooperating parties, and aggressively reduce flows to safe levels if necessary.

c. **Organize the SJRRP's Monitoring Program.** The Program's monitoring program is not yet usable. Appendix F - Groundwater Atlas of the SEA indicates only one transect contemplated by the Program in Reach 4A below Highway 152, although in an area of extreme seepage concern, are not installed yet. The CCID observation wells in this area indicated significant seepage impacts. Evidently, however, the program installed two observation wells on the Nickel property that telemeter depth data which is posted on CDEC.

SJRECWA
& RMC-25



The hydrograph is consistent with the CCID data submitted to the SJRRP. The shape of this hydrograph indicates damage to field crops, which has been verified in field work and analysis by the landowner.

d. **Adjust or reduce flows** the in response to SJRRP data. Though not

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in the Seepage management plan the SJRRP communicated with the RMC in February of monitoring thresholds they intended to utilize in determining Interim Flow rates. They were not used or were not effective.

e. **Activate the mitigation program.** As an example, the program was notified several times this spring of potential seepage impacts to surrounding groundwater from interim flows. Attached is such a communication to the program from CCID in which the program was advised to reduce interim flows and perform the site visits to lands adjacent to the wells to assess impacts as prescribed by the Seepage Management Plan. In response the program actually did reduce interim flows in Reaches 3 and 4A from about 750 cfs to about 350 cfs for two weeks in mid-May. Thereafter the Interim Flows were raised again to 750 cfs. The program never performed assessments at all the sites. In addition, the program never has referenced the river stage elevations at key points to the adjacent ground and groundwater levels which would be necessary to detect potential for river seepage damages as are seen within reach 4A.

f. **Perform:** Of the five potential actions to address the nonattainment of the of the seepage management objective for 2009: (1) Restriction on Ramping Rate, (2) Reduction of Interim Flow at Friant Dam, (3) Redirection of Interim Flows at Chowchilla Bypass Bifurcation Structure,(4) Delivery of Interim flows to Exchange Contractors at Mendota Pool, and (5) Delivery of Interim Flow to the Exchange Contractors and/or Refuges at Sack Dam; only one was implemented – (4) Delivery of Interim flows to Exchange Contractors at Mendota Pool.

SJRECWA
& RMC-26

16) At page 2-6, additional factors to be considered during implementation of the release of WY2011 Interim Flows, includes Mendota Dam Operations and Sack Dam Operations. The SEA should be specific as to how dam operations will be accounted for, what types of adjustments may need to be made, the anticipated impacts to the Restoration Flow program, any potential interference with water supply deliveries, and other operational considerations. Further, the other factors discussion includes the potential for seepage and real time management strategies. Again, more specificity is needed as to how seepage and real time management strategies will be addressed as well as the implications for any environmental impacts as a result thereof or mistakes made while managing for seepage or on a real time basis.

SJRECWA
& RMC-27

17) Section 2.2.2 discusses the recapture and recirculation of Interim Flows. This section identifies that the proposed action “includes potentially recapturing WY2011 Interim Flows, to the extent possible, at locations along the San Joaquin River and/or in the Delta,...” (page 2-6) Yet, the same section indicates that Reclamation is working with the Friant Division long-term water contractors to prepare a separate environmental assessment to determine possible mechanisms to re-circulate water by exchange, transfer or delivery. This is inappropriate segmentation of this project. (*Thomas v. Peterson*, 753 F.2d at 758.) Rather, Reclamation must discuss and assess the impacts of the recirculation program within this same document.

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18) The Recapture and Recirculation language discussed under Section 2.2.2. discusses recapturing Interim Flows at locations along the San Joaquin River and/or the Delta including a variety of potential diversion sites. At the top of Page 2-7 the SEA states that implementing the proposed action could increase flows entering the Delta from the San Joaquin River.

SJRECWA
& RMC-28

Based on actions taken in WY2010, it is clearly understood by the USBR that the only location available for recapture and recirculation for WY2011 Interim Flows is the Mendota Pool; similar to what was accomplished this year. If USBR is to manage Interim Flow recapture/recirculation for locations other than the Mendota Pool, then the first sentence in Paragraph #2 on page 2-7 beginning with "Recaptured water available for transfer to" must be changed. To be consistent, recapture water could come from water that passes downstream of Mendota Pool. Therefore, the USBR needs to develop a similar management plan of how those flows would be accounted for similar to the plan in place at Mendota Pool.

With respect to Table 2-4, recirculation/recapture of flows at anywhere near the maximum levels would be in direct conflict with the goals and objectives of the Interim Flows. Interim Flows have a dual purpose, and recapturing/re-circulating flows anywhere near these levels only meets the Water Management goals of the Interim Flows and not Restoration goals.

SJRECWA
& RMC-29

19) Section 2.2.2 also notes that recirculation or recapture of water may require agreements between Reclamation, DWR, Friant Division contractors, and other South-of-Delta CVP/SWP contractors. What types of contracts would be needed? To the extent such contracts are needed, they should be considered and analyzed in this SEA. Reclamation has sufficient information at this time regarding the operation of the CVP to determine what information will be necessary. Further, such agreements may require CEQA compliance by state and local agencies. Therefore, such agreements should be identified and terms defined as early as possible in order to afford the state and local agencies the opportunity to determine whether or not CEQA compliance will be required.

SJRECWA
& RMC-30

20) Section 2.2.2 discusses potential impacts on existing biological opinions, court rulings and impacts on listed species in the Delta. The SEA states that "recapturing water downstream of the Restoration Area could increase fish entrainment risks." These increased risks need to be ascertained and, pursuant to Article 10004(d) of the Restoration Act, mitigated.⁷

SJRECWA
& RMC-31

21) Table 2-4 at page 2-8 contains examples of the amount of water available for

⁷ (d) MITIGATION OF IMPACTS.—Prior to the implementation of decisions or agreements to construct, improve, operate, or maintain facilities that the Secretary determines are needed to implement the Settlement, the Secretary shall identify—

(1) the impacts associated with such actions; and

(2) the measures which shall be implemented to mitigate impacts on adjacent and downstream water users and landowners.

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recapture or recirculation. The table suggests that an Interim Flow and riparian release amount at the head of reach 2B of 1,220 CFS could result in a recapture of all but 5 CFS at Mendota Pool. Just below the Table 2-4 on page 2-8, it is noted that “flows that reach the Mendota Pool are not the same as those that reach the head of reach 2B due to channel losses in reach 2A. Therefore, the overall quantity of water available for recapture and recirculation is somewhat lower due to these losses.” By this table it appears that Reclamation is suggesting that there is only a 5 CFS loss as flows reach Mendota Pool. Yet, the experience of Mendota Pool operations is contrary to this estimate. Reclamation should identify the experienced losses at the Pool and how this will affect operations. Section 2.2.3 discusses *Settlement Flow Schedules* and indicates that reductions could be made in consideration of water supply demands, seepage, groundwater effects, and other causes. Again, there is no discussion of Reclamation’s experience during the WY2010 year.

**SJRECWA
& RMC-32**

22) Further at pg. 2-7, the SEA acknowledges that flows are limited by channel capacity and impacts such as seepage into adjacent lands. It would be useful again to use the 2010 data to inform the public that the current limit below Sack Dam is no more than 700 cfs based on the 2010 seepage impacts. While that flow rate could change somewhat based on further monitoring information gathered during the 2011 flow releases, it is a clearer starting point than relying on the 2010 EA since it is now known that the flow will most likely be constrained *until mitigation is in place*.

**SJRECWA
& RMC-33**

23) At page 2-12, Section 2.2.3 discusses the report of “San Joaquin River Interim Flow Unsteady Hydraulic Modeling” prepared on August 25, 2009 (Appendix D). The Model was completed well in advance of any of the actual Interim Flows. The predictions of the model as it related to the timing and magnitude should have been calibrated to the actual performance of the system before it was used to support further Interim Flows.

**SJRECWA
& RMC-34**

24) Section 2.2.4, *Flow Considerations by Reach*. The first paragraph describes the flow regime from Friant and describes some of the controlling factors including the groundwater elevations. There is no description of how the groundwater elevations are used to impart any changes to the flow regime. The SEA would benefit from explanation and incorporation of the “seepage” threshold process developed during the 2010 interim flow project. The agreed upon threshold process and its results illuminate the need for both the flow changes and for mitigation to bring the impacts below a significant environmental impact.

**SJRECWA
& RMC-35**

25) Further in Section 2.2.4, the SEA admits that the environmental analysis of the impacts of flows by each reach of the San Joaquin River are identical from WY2010 to WY2011. (page 2-12) As it states: “[c]onsiderations within each reach and below the Merced River confluence or describe in detail in Section 2.2.2 of the WY2010 Final EA/IS ... and have not changed for this supplemental EA.” (*Id.*)

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This statement is remarkable for two reasons. First, it admits that the first year and second year Interim Flow environmental considerations are identical. If no more, this should confirm that this is not a one year stand alone water transfer subject to Water Code Section 1725, *et seq.* As is evident from the SEA, when compared on almost a word for word basis with the WY2010 Final EA/IS, the second year program is identical to the first year program. Second, the fact that the considerations within each reach below Friant Dam have not been adjusted in light of the first year Interim Flow studies admits that Reclamation has failed to include in this year's environmental analysis the information and lessons learned from last year's Interim Flow program.

Last year, Reclamation argued that the WY2010 water transfer was a one year stand alone program that qualified for Water Board approval as a one year transfer since it was not linked to subsequent year programs. While the Exchange Contractors and the RMC do not accept this statement, nevertheless the Water Board concluded that Reclamation was correct. However, if the purpose of the WY2010 flows was to study the river, the lessons learned from those flows are not discussed in the WY2011 SEA. There is no discussion of seepage impacts, river operations to avoid such impacts, Mendota Pool operations, etc. If one reads the SEA, it is impossible to discern that information gathered during the WY2010 Interim Flows is useful in guiding how implementation of the future year Interim Flows and Restoration Flows will occur.

SJRECWA
& RMC-36

26) Again in Section 2.2.4, Reclamation indicates that flows will be gradually and incrementally increased above the level of 350 cfs according to the hydrograph (Exhibit B) flow schedules. Apparently the maximum release for WY2011 interim flows during the fall will be 700 cfs. There is no discussion of the basis upon which flows will be gradually and incrementally increased above 350 cfs. In fact, the reason for an incremental increase is to assess flooding and seepage damage. It has been established through the WY2010 interim flows that there is a direct relationship between river stage and seepage impacts in several areas along the river. (See analysis by Exchange Contractors included with these comments.) Consistent with the Water Board's conditions in the Permit (condition 9), Reclamation should set forth the basis for any increases above 350 cfs and the considerations and mitigation measures that will be taken to avoid impacts to adjacent landowners.

SJRECWA
& RMC-37

27) Further in Section 2.2.4 at page 2-13, Interim Flows will commence February 1, 2011 and will be "incrementally increased based on channel capacities, information collected on changes in the shallow groundwater elevations, recommendations of the RA, and consistency with Exhibit B of the Settlement." In the event channel capacities or information collected on changes in the shallow ground water elevations or recommendations of the RA are inconsistent with Exhibit B of the Settlement, how will those inconsistencies be resolved? Which will take precedence?

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& RMC-38

28) Further in Section 2.2.4 at page 2-13, Reclamation indicates that if flood flows are

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being released no Interim Flows would be released in addition. Historically flood flows have been available to the Exchange Contractors and CVP contractors. How will these flood flows be credited to the Exchange Contractors and/or the CVP contractors as opposed to crediting for meeting Exhibit B flows?

**SJRECWA
& RMC-39**

29) Section 2.2.5 indicates that implementing the WY2010 interim flows will require coordination with federal, state and/or local agencies as well as landowners. What types of agreements will be necessary? What is the basis for these agreements? What obligations will be imposed or expected of the parties to these agreements?

**SJRECWA
& RMC-40**

30) Further in Section 2.2.5, Reclamation indicates it has initiated discussions with numerous entities that are involved in implementing the proposed action. Which entities are these and what is the nature of the discussions? Reclamation anticipates that coordination will be accomplished similarly as in WY2010. Last year, the California Department of Water Resources (DWR) was one of the agencies participating in the proposed action. Will DWR be participating this year? If so, in what manner? If not, for those actions that DWR performed last year, who will perform them this year?

**SJRECWA
& RMC-41**

31) Further in Section 2.2.5 at page 2-14, the SEA indicates that implementation of the proposed action could increase Delta inflow by as much as 1,300 cfs and that the additional inflow could be available for export for recirculation to the Friant Division. If recapture of these flows to the benefit of the Friant Division increases take at the pumps, other CVP contractors will be jeopardized. Any pumping on behalf of the Friant Division that decreases the "headroom" available to other CVP contractors pursuant to the biological opinions that affect operation of the delta pumps, whether for the CVP or the State Water Project (SWP) would result in impacts to other water users, contrary to the mandate of the Restoration Act.

**SJRECWA
& RMC-42**

32) Section 2.2.6 contains a discussion of vehicular traffic detour plans. Such plans should be spelled out now and analyzed in the SEA. Generalized statements of detour plans are unacceptable since such detours are likely to cause drivers (farmers) to travel many miles outside of their normal routes, resulting in lost time, increased expenses, increased usage of gasoline and other petroleum products, and increased air pollution. See comments provided by the Exchange Contractors and the RMC in their comments to the WY2010 Environmental Assessment.

**SJRECWA
& RMC-43**

33) Further again in Section 2.2.6 commencing at page 2-16, Reclamation discusses the "Seepage Monitoring and Management Plan." As mentioned above, the discussion is devoid of any indication of lessons learned during WY2010. Reclamation is relying upon the "seepage monitoring and management plan" that it used for WY2010. Unfortunately, Reclamation has failed to modify the plan to take into account the placement of numerous monitoring wells, experience during the WY2010 with seepage impacts and the relationship to river stage, incremental increases in flows and triggers to halt such flow increases, and the types of impacts that were experienced in WY2010. This section is vague and contains no information that would

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**SJRECWA
& RMC-43
continued**

inform the public of the steps that Reclamation will be undertaking to avoid or mitigate for seepage. Further, Reclamation has indicated that it will not have available until the end of July a "Public Draft Annual Technical Report" that will provide information on the effects of WY2010 seepage (personal communication between Chris White, Manager of Central California Irrigation District, and Reclamation staff.) The Technical Report will include both measurements and studies from this spring pulse and help us to formulate plans for next year.

In addition, at the end of the first line of the second paragraph of the discussion of the Seepage Monitoring and Management Plan, the locations of monitoring wells should also indicate they were installed on private property in addition to those installed on public property. Further on in the same paragraph it should be acknowledged that while groundwater thresholds have been developed to protect against seepage impacts, those thresholds may be further modified as additional information becomes available.

**SJRECWA
& RMC-44**

34) Reclamation indicates that some monitoring wells have been installed with real time telemetered stations. Other wells are being installed with hourly dataloggers which will be downloaded twice a year. What is the value of these dataloggers if they will only be downloaded twice a year? This is of no value for real time operations. It will only measure damage after damage has occurred.

**SJRECWA
& RMC-45**

35) Further at pg. 2-16, in the last paragraph, first sentence "monitoring wells have been permitted and installed on public and private lands including transects (for example, public land, Highway 152, private, river stretch 4a, Nickel property) along the San Joaquin River in the Restoration Area..." Later in the same paragraph, "thresholds have to be developed or revised in consideration of nearby..." This section could also benefit from being informed by the data obtained in the WY2010 monitoring program.

**SJRECWA
& RMC-46**

36) Also at pg. 2-16, the "threat zone" for groundwater rise below crops is preliminarily described here but could benefit from the "threshold" document referred to above. Also, work was done to evaluate the impact of rising water tables on soil salinity. Capillarity brings salt into the soil profile above the zone of saturation. The 2010 program measured soil salinity in various locations, but no data has been brought forth that presents the result of those efforts. The "Groundwater Atlas" locates many wells but none of the data is presented. Similarly, the SEA states there is available groundwater measurement data from the 2010 project, but there is no summary or qualitative assessment of the data such that it informs the SEA in terms of the likely flow restrictions or the need for mitigation.

**SJRECWA
& RMC-47**

37) Table 2-9 indicates that seepage impacts will include evaluation of easements necessary for seepage mitigation. Where will the locations be for easements to be evaluated?

**SJRECWA
& RMC-48**

38) Table 2-10 at page 2-23 lists actions for the WY2010 Interim Flows that are

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- SJRECWA & RMC-48 continued** undertaken by each agency. DWR is listed as being responsible for the bulk of the items. Will DWR be undertaking any of these measures for WY2011? If so, which ones? If not, which actions undertaken by DWR for WY2010 will now be performed by other agencies for WY2011? Please identify each agency and the tasks they will be performing. If neither DWR nor any other agency are performing any of the activities listed in Table 2-10, please explain why those activities are not being undertaken for WY2011.
- SJRECWA & RMC-49** 39) At pg 2-27, *Water Quality Monitoring* the data summarized here is not presented in a factual form. A table or summary of all the stations should be in an Appendix. A reference map is needed which appears to be Figure 2 in Appendix E.
- SJRECWA & RMC-50** 40) Further at pg. 2-27, *Water Temperature*, same problem at comment immediately above.
- SJRECWA & RMC-51** 41) At pg. 2-29, *Bed Sediment Analyses Results*, needs location map.
- SJRECWA & RMC-52** 42) Section 2.2.8 at pgs. 2-33 and 2-34, the SEA discusses the Hills Ferry Barrier. The last sentence of this discussion states that “[t]he need to maintain a barrier at Hills Ferry during the spring period, prior to reintroduction, is to be evaluated by CDFG as part of the SJRRP fishery investigations...” This action is contrary to law as prescribed by Section 10004(h) of the Restoration Act. That section requires maintenance of the Hills Ferry Barrier and mandates that the Secretary work with CDFG to improve the barrier as necessary to prevent upstream migration.⁸
- SJRECWA & RMC-53** 43) At pg.2-34, *VAMP*, the first paragraph, last sentence says: “The WY2011 Interim Flows have the potential to increase flows.....up to 1300 cfs. This is misleading, as flows cannot increase without mitigation from seepage impacts and the capacity and structural integrity for flow through Sack Dam.
- SJRECWA & RMC-54** 44) Table 3-1 at page 3-3 sets forth a summary of changes to the effected environment and an environmental consequences analysis from the WY2010 Final EA/IS. With respect to agricultural resources, the SEA contends there are no changes to the existing conditions although

⁸ Section 10004(h) provides: “(4) TEMPORARY FISH BARRIER PROGRAM.—The Secretary, in consultation with the California Department of Fish and Game, 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. If that evaluation determines that any such migration past the barrier is caused by the introduction of the Interim Flows and that the presence of such fish will result in the imposition of additional regulatory actions against third parties, the Secretary is authorized to assist the Department of Fish and Game in making improvements to the barrier. From funding made available in accordance with section 10009, if third parties along the San Joaquin River south of its confluence with the Merced River are required to install fish screens or fish bypass facilities due to the release of Interim Flows in order to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Secretary shall bear the costs of the installation of such screens or facilities if such costs would be borne by the Federal Government under section 10009(a)(3), except to the extent that such costs are already or are further willingly borne by the State of California or by the third parties.

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**SJRECWA
& RMC-54
continued**

additional information made available through implementation of the WY2010 Interim Flows may result in minor changes to the environmental consequences analysis. The SEA should set forth with specificity the information obtained through the WY2010 Interim Flows and how that information may result in changes to the environmental consequences analysis, e.g. seepage impacts. Seepage impacts have been experienced in Reaches 2, 3 and 4. Further, it is indicated in the environmental consequences analysis that recaptured water available for transfer to the Friant Division could range from zero to whatever is the quantity of water under interim flows that reaches the Mendota Pool. The SEA does not discuss the impacts on the Friant Division if no water is available for transfer or any incremental amount above zero to the full amount of water otherwise lost to the Friant Division from the release of flows.

**SJRECWA
& RMC-55**

45) Further in Table 3-1 at page 3-5 a discussion of hazards and hazardous materials is set forth. There is no discussion of the increased drug related activity that has developed over the past year as a result of the availability of additional flow in the San Joaquin River in areas that were historically dry. This increased drug activity will also affect the availability of public services as more law enforcement personnel and hazardous materials teams will be needed to address this new criminal activity that is the direct result of the restoration program.

**SJRECWA
& RMC-56**

46) Section 3.1.2 discusses terrestrial resources and indicates that the environmental consequences analysis for terrestrial resources may have changed from WY2010 to WY2011. How have they changed? No documentation is provided.

**SJRECWA
& RMC-57**

47) Section 3.1.4 discusses hydrology and water quality. This section is devoid of any discussion of the water quality impacts that occurred during WY2010 when Delta Mendota Canal (DMC) water quality was substantially degraded as a result of reduced flows due to diversions by the exchange contractors and others at the Mendota Pool. Further, data collected during WY2010 should be disclosed so that the public will be able to assess the current assumptions of the physical and biological system. There is no discussion regarding how the interim flows for WY2010 may have caused adjustments to current assumptions of the physical and biological system or the development of a better understanding of the interrelationships between the river's hydrologic processes such as river stage, roughness, geometry, and interaction with the unconfined aquifer.

**SJRECWA
& RMC-58**

48) In Section 3.2.1 at page 3-11, the SEA concludes that no further analysis of hazards and hazardous materials need be undertaken. Yet, as set forth above, there has been increased drug related activity. An analysis of this impact needs to be conducted. Similarly, an analysis of the impact on public services as set forth above needs to be undertaken.

**SJRECWA
& RMC-59**

49) At pg. 3-12, *Public Services*, the SEA supposes that the impact on public services is less than significant. However, as is the case of groundwater impacts to landowners, compliance with Water Board conditions and invasive species analysis, there is no data to confirm that another year will not increase the need for services and rise to the level of a significant impact.

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**SJRECWA
& RMC-59
continued**

Local knowledge was not called upon, nor did the SEA report on contacting any service agencies to determine if increased activities occurred. Anecdotally, local representatives of the RMC did see a significant increase in visitors, illegal activities (cannabis growing in and near the project) and vandalism (Sand Slough Control Structure) in the stretches of the river that were accessible to the public or private areas that were intentionally trespassed on. Furthermore, Reclamation documented impacts that occurred to Columbia Canal Company facilities. A memorandum (copy provided upon request) on water over-topping of a Mendota Pool levee during peak 2010 Interim Flows was prepared by Reclamation Fresno office staff. Columbia Canal staff had not only the threat of levee failure and property inundation, but unanticipated water management activities to shuttle the water away from the adjacent property (the MLT property) which already had encroachment of seepage into the root zone. This was the highest encroachment during the entire 2010 flow and seepage measurement process. A better monitoring and reporting system is needed before the any additional interim flows are contemplated. The data and analysis are currently insufficient to support a FONNSI.

**SJRECWA
& RMC-60**

50) In Section 3.2.3 at page 3-15, Reclamation indicates that recirculation of recaptured water to the Friant Division could require agreements between Reclamation, DWR, Friant Division contractors, and other south of Delta CVP/SWP contractors. Reclamation further indicates that a separate environmental assessment is being undertaken to determine possible mechanisms to either exchange or deliver to the Friant Division contractors water recaptured and stored in San Luis reservoir. This analysis should be included in this SEA, rather than in a separate environmental assessment. As set forth in our initial comments, piecemealing of projects is prohibited under both NEPA and CEQA. The SEA must discuss the impacts of less than 100% recovery of Friant releases for Interim Flows upon the agricultural activities within the Friant Division. In addition, if increased groundwater pumping will occur, an analysis of the impacts on the groundwater basin needs to be understood.

**SJRECWA
& RMC-61**

51) Further in Section 3.2.3, Reclamation indicates that the program will reduce allocations to Friant Division contractors and that increased groundwater pumping will occur. There is no analysis to support a conclusion that groundwater pumping to make up for the loss of up to 389,355 afy of surface water will not exacerbate the long term groundwater overdraft in the San Joaquin Valley, particularly in light of the three years of increased pumping during the drought of 2006-2009.

**SJRECWA
& RMC-62**

52) At pg. 3-16, second paragraph last words, the potential impact to agricultural resources is not "less than significant" due to the as of yet unmitigated impacts of seepage, loss of water to the Friant Division, and related increased groundwater pumping due to the loss of surface water.

**SJRECWA
& RMC-63**

53) In Section 3.2.3 at page 3-18, is a discussion of hydrology and water quality. As set forth above, lessons learned from the WY2010 interim flows should be set forth and appropriate mitigation measures to avoid seepage impacts should be discussed. Further, supplemental water

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& RMC-63
continued**

quality monitoring is needed to assess the biological condition of the food supply in the water column; For example, IBI, benthic invertebrate surveys or other indicator assessments are needed to determine if the flow regimes will support the food supply for migrating salmonids. Failure to monitor in these early stages could result in a fatal flaw and wasted water and taxpayer's money if the food supply should turn out to be insufficient for the returning fish. If such activities have been consistently conducted, the SEA makes no mention of them.

**SJRECWA
& RMC-64**

54) At Section 3.2.4 the SEA discusses the potential for a significant adverse impact by accelerating the spread of invasive plant species. It further indicates that this affect would be less than significant with mitigation. What is Reclamation's mitigation plan? How does this program compare with the plan implemented in WY2010?

**SJRECWA
& RMC-65**

55) Section 3.2.4 at page 3-21, also discusses the impact that the project may have on human beings. This is an appropriate location to discuss increased crime associated with marijuana cultivation along the San Joaquin River.

Comments on the Finding of No New Significant Impacts (FONNSI)

**SJRECWA
& RMC-66**

56) FONNSI pg. 2 - #2. This section reports that there will be no significant impact to agricultural or forest land resources but that the 2011 flows may inundate farm land and grazing land. Flooding of farmland may render the land useless for farming if the flooding occurs during the growing season. Reclamation has set forth no information as to when flooding may occur, the duration of flooding or the extent thereof. Absent evidence of a *de minimis* impact, this impact will require mitigation for impacted landowners. Mitigation activities have been discussed as the result of the 2010 project but no mitigation is proposed in the SEA and mitigation measures have not been implemented to date. The information from the 2010 Interim Flows is included as plates in the EA appendices but there is no effort to summarize or present the results, especially lands that were impacted. The data from this project had the capability of informing the subsequent project of actual impacts. However, the available information was not incorporated into the 2011 EA. Without mitigation, the impacts to private lands rise to the level of significant and that results in a failure of the document to meet the needs of a FONNSI and in fact would lead to the need for the more comprehensive "programmatic" document already under construction. This failure could be remedied by the completion of the programmatic process, including comments and a ROD, however, it would speculative to assume such a process could be completed before the interim flows are scheduled. Without mitigation, the lack of adequate environmental documentation would preclude 2011 interim flows. Furthermore the finding is factually incorrect in that the "by-pass" channels, especially the flood channels under the purview of the LSJLD, do not typically carry flow under existing conditions. The system is operated for flood waters only.

**SJRECWA
& RMC-67**

57) FONNSI – pg. 2 - #4. This section discusses the impact of flows on terrestrial

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& RMC-67
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resources including the spread of invasive species. The EA reports that the 2011 flows have the potential to increase the amount of five invasive plant species. This is extracted from the 2010 EA and the summary needs to reference Appendix F of the "2010" EA. Appendix F of the 2011 EA is the groundwater monitoring plates. The mitigation proposed is a monitoring effort followed by controls if the species impact riparian habitat, sensitive natural communities or water delivery systems. The monitoring and control program lacks any performance measures (significance thresholds) to determine the impact and a mitigation threshold. Is it 10% increases of the invasive species, 50%, ET of significant amounts (quantified) of water, damage to natural communities and structures? Without performance measures (significance thresholds) the monitoring is meaningless. Unmitigated, the impacts could rise to level of significant and once again render the EA useless, especially since a second year of water in previously dry areas could sustain any increased amounts of invasive species. No monitoring results were presented for comparison prior to the 2010 flows and no reports of increases or other changes were reported in this EA.

**SJRECWA
& RMC-68**

58) FONNSI – pg. 3 - #6. The findings in this section refer to regulations known as the "Section 106 process". The reader needs further explanation by way of a footnote or other assistance to determine the scope and impact of this regulation on the adequacy of the EA.

**SJRECWA
& RMC-69**

59) FONNSI – pg. 3 - #9. The findings in this section state that groundwater conditions will not be exacerbated. Yet, this area of the San Joaquin Valley is already in overdraft. (See USGS report at <http://pubs.usgs.gov/pp/1766/>) To conclude that there will be no loss of agriculture due to the dedication of up to 389,355 afy of water, Reclamation has assumed that the most likely source of makeup water is groundwater. (See Petition to Transfer Water, pg. 7, "Decreases in deliveries to Friant Division contractors due to the proposed transfer could result in increased groundwater pumping to offset surface water deliveries.") Any significant amount of groundwater pumping will exacerbate the existing overdraft condition. (See Attachment 4, article from the Valley Voice, entitled "Drought & Pumping Impacts Could Hit Valley's Eastside," September 2008, citing Ron Jacobsma regarding the loss of water, inability to re-circulate and impacts to groundwater unless the Delta is fixed. None of this is discussed in the SEA.)

**SJRECWA
& RMC-70**

60) FONNSI – pg. 4 - #13. The findings in this section state that public services will not be significantly impacted. Yet there is no assessment of the impact of documented increases in criminal activity resulting from the action. (See, *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm'n*, 449 F.3d 1016, 1028 (9th Cir. 2006), holding that the increase of criminal activity (terrorism) must be analyzed under NEPA).

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Conclusion

Thank you for the opportunity to comment on the SEA. The Exchange Contractors and the RMC look forward to your response to these comments as well as those by the Lower San Joaquin Levee District and the San Luis & Delta Mendota Water Authority.

Sincerely yours,

San Joaquin River Exchange Contractors
Water Authority (Exchange Contractors)

By 
Steve Chedester, Executive Director

San Joaquin River Resource
Management Coalition (RMC)

By 
Mari Martin, Chairperson

Enclosures: Attachments 1 - 4

cc. SJR Exchange Contractors, Board of Directors
RMC, Board of Directors
Ms. Victoria Whitney, SWRCB, w/enc.
Mr. Kevin Faulkenberry, DWR, w/enc.
Mr. Daniel G. Nelson, SL&DMWA, w/enc.
Mr. Reggie Hill, LSJLD, w/enc.

Comments from San Luis & Delta-Mendota Water Authority & SWC

San Luis & Delta-Mendota Water Authority



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Via e-mail: InterimFlows@restoresjr.net
And U.S. Mail

Michelle Banonis
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U. S. Bureau of Reclamation
2800 Cottage Way, MP-170
Sacramento, California 95825

*Re: Draft Supplemental EA/Proposed FONNSI for the San Joaquin River
Restoration Program's Water Year 2011 Interim Flows Project*

Dear Ms. Banonis:

**SLDMWA
& SWC-1**

The San Luis & Delta-Mendota Water Authority and the State Water Contractors (collectively, "Water Agencies") submit the following comments on the draft supplemental environmental assessment and finding of no new significant impact ("Draft SEA/FONNSI") for the San Joaquin River Restoration Program's ("SJRRP") Water Year 2011 Interim Flows Project ("Proposed Project"). As the Water Agencies have expressed previously, they support the Proposed Project. That support, however, is based, in part, upon the United States Bureau of Reclamation implementing the SJRRP, including the Proposed Project, consistent with the underlying principle that it will not harm third parties, including the member agencies of the Water Agencies.¹ Implementation of the SJRRP in Water Year 2010 highlighted risks that future actions to implement the SJRRP, including the Proposed Project, might not adhere to the no-harm principle; risks that are simply unacceptable to the Water Agencies. They include:

¹ The Water Agencies define harm as any impact that deprives the members of the Water Agencies of water that would otherwise be available in the absence of the Proposed Project, any impact that affects the reliability of the Water Agencies members' water supply, and any impact that increases the financial costs associated with the Water Agencies members' water supply (cost to water purchase, operation and maintenance costs, etc.).

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& SWC-1

Within the Delta – The risk of harm: (1) if recirculation relies upon capacity not in excess of that needed to move water for the benefit of the Water Agencies' members, or (2) if recirculation causes the incidental take of species protected under the federal Endangered Species Act, and, for the State Water Project, state Endangered Species Act.

Upstream – The risk of harm as a result of Reclamation re-operating Friant Dam or New Melones Dam.

In River – The risk of harm to lands within the areas served by the Water Agencies members if restoration flows cause seepage.

The Water Agencies hope Reclamation eliminates those risks by adopting the changes proposed in this letter.²

The Settlement And The Law Protect The Water Agencies From Harm

SLDMWA
& SWC-2

The Stipulation of Settlement in *Natural Resources Defense Council, et al. v. Kirk Rogers, et al.* ("Settlement") and the San Joaquin River Restoration Settlement Act, Public Law 146-359 ("Act") require the United States Bureau of Reclamation ("Reclamation") to implement the San Joaquin River Restoration Program without harming third parties, including the Water Agencies' member agencies. (Act, §10004(f), (g).) Reclamation and the California Department of Water Resources ("DWR") have acknowledged the protections the Settlement and the Act afford the Water Agencies.

On July 20, 2009, the Water Agencies submitted to Reclamation and DWR comments on the SJRRP WY 2010 draft environmental assessment, proposed finding of no significant impact, initial study, and draft mitigated negative declaration. The Water Agencies' comments identified deficiencies in the draft environmental assessment. Specifically, the Water Agencies explained: "[N]owhere 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

² The Water Agencies attach to this comment letter and hereby incorporate herein by this reference the comments submitted on the draft environmental assessment and draft finding of no significant impact for the recirculation of recaptured 2010 San Joaquin River Restoration Program Interim Flows and the draft 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.

The Water Agencies also support the comments submitted by the San Joaquin River Exchange Contractor Water Authority and the San Joaquin River Resource Management Coalition on the Proposed Project.

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suggest such impacts are acceptable." We appreciated Reclamation and DWR attempt to address the comment by including additional language in the final EA/FONSI/IS/MND.³

We also appreciate that Reclamation and DWR have employed the appropriate framework for their impact analyses. In the environmental assessment for the SJRRP in Water Year 2010, Reclamation and DWR compared the then existing conditions without and with implementation of the Interim Flow Project to determine if adverse impacts would result. Reclamation employed the same comparison in its Draft Environmental Assessment and Draft Finding of No Significant Impact for the Recirculation of Recaptured 2010 San Joaquin River Restoration Program Interim Flows. A comparison of then-existing conditions "without" versus "with" the SJRRP is the type of comparison needed annually to ensure the Water Agencies are not injured by the Projected Project.

Information Developed In Water Year 2010 Demonstrates Additional Protections Are Needed To Avoid The SJRRP Harming The Water Agencies

The Water Agencies provide 5 examples of potential harm the SJRRP can cause to it members.

SLDMWA
& SWC-3

1. In 2010, implementation of the SJRRP has demonstrated that there are inadequate flow measurements in the system to accurately account for the flows under the SJRRP entering into the Mendota Pool and to determine the amount of those flows available to be recaptured and recirculated. Reclamation has yet to finalize a Recapture and Recirculation Plan. Certain measurement stations provide only stage

³ Reclamation and DWR incorporated into the final EA/FONSI for WY 2010 language it believed addressed the comment of the Water Agencies. Implementation of the SJRRP in WY 2010, however, demonstrated the language had ambiguity. The Water Agencies request the following language replace the definition of Available Capacity that appear on page 2-6 of the Draft EA/FONSI:

Available capacity is the capacity that is available after satisfaction of all statutory and contractual obligations to make deliveries through Delta facilities, 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 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-3

data but no flow data. Other stations require on-going correction factors. Without adequate real-time continuous flow measurement data at strategic locations, the accounting of flows and credits to Friant are only estimates. To properly account for the flow under the SJRRP and determine the effects of water released and recaptured under the SJRRP, Reclamation must install and maintain continuous monitors at Gravelly Ford, below Bifurcation Structure, Sack Dam and Washington Road, and, publish on its website or the website for the SJRRP, no less than daily, data produced by the monitoring equipment. This upgraded monitoring needs to be included as part of the Project Description.

SLDMWA
& SWC-4

2. During 2010 operations, water quality impacts in the Delta-Mendota Canal and Mendota Pool resulted from the SJRRP. Although Reclamation was eventually able to adjust the manner in which it was implementing the SJRRP to prevent the water quality conditions from continuing, the Warren Act and Mendota Pool well pumpers had to curtail pumping during the intervening period of quality impacts. In 2011 and beyond, Reclamation must ensure the SJRRP is implemented in a way that accounts for changes in water quality and avoids adverse water quality conditions. Accordingly, the Water Agencies propose Reclamation develop, with direct involvement by the Water Agencies, a water quality response plan for the Delta-Mendota Canal and Mendota Pool, and include a description of that plan in the Project Description.

SLDMWA
& SWC-5

3. Reclamation must ensure the water supply of the south of the Delta Central Valley Project water service contractors, included many members of the Authority, is not adversely impacted when implementation of the SJRRP reduces flood flows that would have been realized below Friant Dam absent the SJRRP. Historically, flood flows below Friant Dam reaching the Mendota Pool have been delivered to the members of the San Joaquin River Exchange Contractor Water Authority and a like amount of water has been backed up in San Luis Reservoir. That backed up water has been made available to south of the Delta CVP water service contractors. The flood flows historically accounted for as much as 25 percent of the water supply available to south of the Delta CVP water service contractors. The SJRRP could reduce the occurrence of flood flows, and therefore the water supply of the south of the Delta Central Valley Project water service contractors. To ensure those adverse impacts do not occur, Reclamation must evaluate Friant Dam operation under the then-existing conditions (hydrologic, regulatory, etc.) with and without the SJRRP and develop actions to avoid, or at least fully mitigate for all impacts. The evaluation must be based upon a determination of how Friant conveyance and delivery operations would have occurred absent SJRRP (again, under the then-existing conditions, including hydrologic and regulatory) rather than strictly theoretical operations. The accounting must be made a part of the Project Description to assure that the Project will not trigger additional environmental impacts within the service areas of the Water Agencies.

SLDMWA
& SWC-6

4. Reclamation must ensure flows under the SJRRP do not take precedent over historical and permitted flood flow routing: Reclamation must also ensure that during flood operations, the channel capacity to the Mendota Pool provides for the delivery of water to meet the demands of the San Joaquin River Exchange Contractor Water Authority members prior to delivery of flows under the SJRRP. If the SJRRP flows take priority and use the channel capacity for releases past Mendota Dam during a flood flow operations, south of the Delta CVP water service contractors will be deprived of water they would otherwise have received, water that would have been conveyed to the Mendota Pool and beneficially used. An accounting methodology and description of how the channel capacity will be prioritized must be included in the Project Description.

SLDMWA
& SWC-7

5. Current operations for water quality require New Melones Dam releases to meet water quality objectives measured at Vernalis, California. During certain periods, release of that water results in additional water available to be pumped from the Delta by the CVP and State Water Project. As a result of flows under the SJRRP, New Melones Dam releases could be reduced by a like amount of flows under the SJRRP to meet the water quality objectives. The flow under the SJRRP could then be eligible to be recaptured at the CVP and SWP pumping facilities for return back to water users with the CVP Friant Division. If that were the case, the SJRRP would result in a water supply impact to third parties, as absent the SJRRP flows, the New Melones Dam releases would allow additional water to be pumped by the CVP and SWP. An accounting methodology that ensures this potential impact is avoided must be added to the Project Description.

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6. Given the limited capacity of the CVP and SWP to pump water from the Delta, Reclamation must ensure that recapture of flow under the SJRRP by the CVP and SWP pumping facilities is pumped after all water available to the Water Agencies members is pumped (including water available through transfer or exchanges). (See footnote 3.) The pumping prioritization regime needs to be added to the Project Description.

The Risk of Harm Outlined Above. If Not Addressed Will Result In A Final SEA/FONNSI That Violates NEPA

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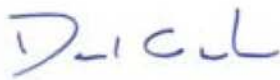
The Draft SEA/FONNSI violates the National Environmental Policy Act ("NEPA"). As outlined above, the Settlement and Act requires Reclamation to develop the Proposed Project in a manner that ensures no harm to third parties. The Proposed Project as described in the Draft SEA/FONNSI has not done that. The consequence is the Draft SEA/FONNSI does not include an adequate description of the "proposed

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action" or a Proposed Project that satisfies the "purpose and need."⁴ And, the SJRRP could harm third parties, including the Water Agencies member – harm not identified or other considered in the draft SEA/FONNSI. To comport with the Settlement, the Act, and NEPA, the Draft SEA/FONNSI must be revised to describe the Proposed Project and the Purpose and Need consistent with these comments.⁵

Very truly yours,



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Executive Director
San Luis & Delta-Mendota Water Authority



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⁴ The Draft SEA/FONNSI suffers from another legal defect. NEPA prohibits "segmentation" of large federal project into segments to avoid full disclosure of adverse environmental and/or socioeconomic impacts. The Draft SEA/FONNSI creates a segmentation problem by characterizing the Proposed Project as mere "continuation" of "temporary" activities. (Draft FONNSI, p. 1; Draft SEA, pp. 1-1 – 1-5, 2-1 – 2-2.) The Draft SEA/FONNSI further defers preparation of the environmental impact statement ("EIS") for the project and instead continues to divide it into segments. By deferring meaningful analysis of the Proposed Project's impacts as a whole, the actual consequences of this series of actions may be overlooked or understated. In this manner, the Draft SEA/FONNSI understates impacts to agricultural resources, hydrology and water quality, as well as socioeconomic impacts, among others, particularly on a cumulative basis. Comprehensive NEPA review is necessary where, as here, Reclamation is undertaking several proposed actions that may have significant cumulative and synergistic environmental impacts on the region.

⁵ The Draft SEA/FONNSI states that it "will be used to support Reclamation's petition to the SWRCB" to allow the release and redirection of WY2011 Interim Flows, and that in evaluating the petition, the SWRCB "must consider potential impacts to other legal users of water." (Draft SEA, p. 1-2.) The information provided in the Draft SEA/FONNSI is inadequate for this purpose because it fails to ensure the Proposed Project will avoid adversely impacts (injury) to the Water Agencies' members.