california water impact network

California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

January 29, 2010

Rain Healer
South Central California Area Office
U.S. Bureau of Reclamation
1243 N St
Fresno, CA 93721

Subject: Comments on Draft EA/FONSI on San Luis Interim Contract Renewal

Dear Ms. Healer:

The California Water Impact Network and the California Sportfishing Protection Alliance submit these comments on the Draft Environmental Assessment (DEA) and Draft Finding of No Significant Impact (FONSI) on the San Luis Interim Contract Renewal.

We find the environmental documentation to be grossly inadequate, and part of a larger fragmented and failed approach to resolve water quality, water supply and drainage problems associated with the San Luis Unit of the Central Valley Project. The analysis fails to disclose significant impacts and cannot support a FONSI. An Environmental Impact Statement EIS) must be prepared.

The DEA and proposed FONSI do not meet the legal requirements of the National Environmental Policy Act (NEPA) for the following reasons, which are discussed at length in the attached detailed comments:

- The Purpose and Need is unclear and nowhere in the document is there a rationale or schedule for completion of NEPA for long-term contract renewal.
- The No Action Alternative is incorrectly portrayed as renewal of the interim contracts instead of non-renewal of the contracts.
- The Proposed Action to renew the interim contracts at full quantities is the only alternative considered and it is nearly identical to the No Action Alternative; therefore there is no meaningful disclosure of impacts from renewal vs. non-renewal. An adequate range of alternatives must consider reduced contract quantities.
- The Study Area is unlawfully narrowed to exclude analysis of impacts to the sources of water such as the Delta, the Sacramento, Trinity and American rivers.
- The cumulative impacts analysis does not adequately address cumulative effects over time, especially as it relates to selenium bioaccumulation, and the negative economic and environmental impacts of application of water to seleniferous soils of the San Luis Unit of the CVP.

- Despite completion of the Programmatic EIS for the Central Valley Project Improvement Act (CVPIA PEIS), the DEA does not adequately address site specific impacts of the Proposed Action. The DEA did not fill the gaps that the CVPIA PEIS left.
- Biological Opinions from both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service should be included as part of the DEA in order for full disclosure of impacts and mitigation measures.
- Contract terms to include repayment of costs for the Trinity River Restoration Program pursuant to CVPIA Section 3406(b)(23) as well as protections for Trinity River tribal and fishery interests should have been included in the Proposed Action.

We hereby incorporate by reference, the letter by Friends of the River, Planning and Conservation League, the Sierra Club and Friends of Trinity River on this topic.

Thank you for your consideration of our comments. We urge you to reject the proposed Finding of No Significant Impact and instead prepare an Environmental Impact Statement.

Respectfully submitted,

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Attachment: Detailed comments

cc: Ken Salazar Interior Secretary
David Hayes, Deputy Interior Secretary
Don Glaser, Regional Director BOR
Dan Nelson, San Luis Delta-Mendota Water Authority
Alexis Strauss, USEPA

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Charles Hoppin, Chairman SWRCB
Karl Longley, Chairman CVRWQCB
Rod McGinnis, NMFS
Ren Lohoefener, USFWS
Lester Snow, Resources Agency
John McCamman, Department of Fish and Game
Mark Madison, City of Stockton
Rudy Schnagl, CVRWQCB
Hoopa Valley Tribal Council
Yurok Tribal Council
Interested parties

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DETAILED COMMENTS

1. The Purpose and Need is unclear and nowhere in the document is there a rationale or schedule for completion of NEPA for long-term contract renewal.

The project appears to be just an interim renewal of Westlands contracts and Broadview's contracts. Continually renewing interim contracts thwarts CVPIA by obfuscating the changes in the place of use of this federal water--diversions to Kern County, diversions from SWP contractors both into and out of the district, which adds complexity to assessing the full range of impacts both in the short term and cumulatively. For example the long term impact of using the Broadview contract water on drainage problem lands in Westlands was not analyzed in the Broadview EA. Changes in the CVP/SWP places of use, water transfers and the pumping western San Joaquin groundwater for delivery south also have impacts that were not considered nor analyzed. There is no rationale given for the fact that the EIS for San Luis Unit long term contracts has not been completed. There is no schedule given for completion of that NEPA process.

2. The No Action Alternative is incorrectly portrayed as renewal of the interim contracts instead of non-renewal of the contracts.

The No-Action Alternative heading under this DEIS is an inaccuracy, a No Action Alternative is meant to be that no action is taken by the lead agency. A No Action Alternative means exactly that, if there was no action, then the contracts would expire, and thus the No Action Alternative should have been the environmental effects of not continuing delivery of CVP water to the contractors compared to renewing the contracts.

As a “status quo” alternative, it is not viable, and must be revised to demonstrate a true “No-Action” alternative under NEPA. A true No-Action alternative provides a baseline for the action to be considered as if nothing happened for the decision-maker. To renew short term contracts is taking an action. This type of No-Action alternative put forth by the DEA does not allow for proper analysis of environmental impacts. Non-renewal of contracts and reduced contract amounts should also be considered feasible and analyzed under NEPA, instead of written off by Reclamation as “Alternatives Considered but Eliminated”, in order to develop a full range of feasible alternatives whether or not an agency can perform them or not.

The DEA No Action Alternative assumes renewal of the interim contracts with the same amount of water and for the same terms and conditions as the status quo. However, the Proposed Action also assumes the same contract quantity and largely the same terms and conditions as the status quo. Therefore, how could it be that the Proposed Action in the DEA is *both* different from the No Action Alternative *and* merely a perpetuation of the status quo? No Action should assume that the contracts are not renewed.

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By making the No Action and Proposed Action the same, it is virtually impossible to evaluate alternatives and disclose impacts to the Proposed Action. This is no accident and is a pattern that Reclamation has used in all of its environmental documents related to CVP contract renewals.

3. The Proposed Action to renew the interim contracts at full quantities is the only alternative considered and therefore there is no meaningful disclosure of impacts from renewal vs. non-renewal. An adequate range of alternatives must consider reduced contract quantities.

No other alternatives were considered other than contract renewal at full amounts and similar contract terms and conditions to No Action. The Water Needs Analysis for Westlands Water District fails to consider reduced contract quantities, despite the retirement of 194,000 acres selected in the Preferred Alternative for the San Luis Drainage Feature Re-evaluation, as well as the additional water supply from the "contract assignment" of 36,688 AF from the drainage impaired lands of Widren, Mercy Springs, Broadview and Centinella water districts.

While NEPA doesn't prescribe a specific number of alternatives, the failure to include a more than one alternative is clearly not in compliance with NEPA. The DEA intentionally fails to disclose impacts and necessary mitigation measures through such a narrow range of alternatives.

The amounts of water presumed under each alternative represent substantially more water than recent San Luis Unit historic average deliveries. Westlands' combined/assigned contracts amount to 1,186,688 AF/year, according to the DEA. In recent years, a sixty percent contract rate of delivery would be considered a good year.

In September 2008, the State Water Resources Control Board reported to the Delta Vision Blue Ribbon Task Force that while the Central Valley watershed of California has an average annual runoff of 29 million acre-feet, the face value of water rights granted by the state to appropriative water right holders amounted to 245 million acre-feet.[1] This means that for every acre-foot of real water in the Central Valley watershed, 8.4 acre-feet of water on paper has been promised by the state where only 1 acre-foot may actually be diverted.

Given the huge discrepancy between water availability and water rights in California, the continuing salinization of farm lands and aquifers in Westlands, and the reliability of land retirement to solve drainage problems, a reasonable alternative would consider a reduction in the contract amounts for Westlands as a result of land retirement.

[1] http://deltavision.ca.gov/BlueRibbonTaskForce/Oct2008/Respnose_from_SWRCB.pdf

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4. The Study Area is unlawfully narrowed to exclude analysis of impacts to the sources of water such as the Delta, the Sacramento, Trinity and American rivers.

The source of water for the San Luis Unit contractors is the Trinity River, Sacramento River, American River and the Delta. By narrowing the study area to just the San Luis Unit, impacts to the areas of origin are not disclosed. Significant impacts occur to the source water bodies as a result of CVP diversions to the San Luis Unit. Reduced and unnatural flow regimes, temperature impacts, entrainment of fish, impaired water quality, damage to Indian Trust Assets and blockage of fish passage are but a few of those impacts.

A true NEPA analysis with an appropriate No Action Alternative and expanded study area would disclose both benefits and impacts from renewal and non-renewal of these interim contracts at full and reduced amounts. However, the DEA is conspicuously silent in regard to such useful analyses.

5. The cumulative impacts analysis does not adequately address cumulative effects over time, especially as it relates to selenium bioaccumulation, and the negative economic and environmental impacts of application of water to seleniferous soils of the San Luis Unit of the CVP.

It is C-WIN's contention that full renewal of CVP water contracts to junior water contractors such as Westlands who are farming drainage-problem lands in the western San Joaquin Valley is a Wasteful and Unreasonable use of water per Article X, Section 2 of the California Constitution and Water Code Section 100.

The DEA, through faulty alternative formulation, completely fails to disclose the ongoing contamination of the aquifers of the Tulare and San Joaquin basins by selenium, salt, boron, molybdenum, mercury and other harmful constituents as a result of irrigation of soils in the San Luis Unit.

The SWRCB, in D-1641, (page 83), found *"… that the actions of the CVP are the principal cause of the salinity concentrations exceeding the objectives at Vernalis. The salinity problem at Vernalis is the result of saline discharges to the river, principally from irrigated agriculture, combined with low flows in the river due to upstream water development. The source of much of the saline discharge to the San Joaquin River is from lands on the west side of the San Joaquin Valley which are irrigated with water provided from the Delta by the CVP, primarily through the Delta-Mendota Canal and the San Luis Unit."*

Based on the estimate on reassigning the Broadview Water Contract Assignment Environmental Assessment[2], the cessation of irrigation for 9,200 acres of drainage problems lands would result in a reduction in 1,500 pounds of selenium,

[2] Table 4-1, page 4-2, Reclamation 2004

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17,000 tons of salt and 52,000 pounds boron loading to the Grasslands Bypass Project annually. It can be inferred that an equivalent amount of water that was formerly provided to Broadview transferred to drainage problem lands in Westlands will create a similar amount of contaminated drainage water created containing selenium, salt, and boron. The only difference is that it likely drains into the semi-confined or confined aquifers underlying Westlands, as well as indirectly to the Grasslands Bypass Project through regional hydraulic pressures.

The DEA fails to disclose that the water assigned from Broadview, Widren, Mercy Springs and Centinella considered for renewal would increase contaminated drainage water originating in Westlands, thereby increasing the need for drainage service. It makes little sense to transfer/assign water from one waterlogged district to another, yet the DEA completely fails to acknowledge this fact.

Since the San Joaquin River is already listed as an impaired water body on the 303(d) list for boron, selenium and electrical conductivity, this should be considered a significant undisclosed impact. While Westlands does not discharge directly to the San Joaquin River, irrigation of drainage problem lands there creates hydraulic pressure downslope, as stated by the State Water Resources Control Board in Water Right Decision 1641[3] (p 82-83):

"The subsurface drainage problem is region-wide. The total acreage of lands impacted by rising water tables and increasing salinity is approximately 1 million acres. (SWRCB 147, p. 21.) The drainage problem may not be caused entirely by the farmer from whose lands the drainage water is discharged. In the western San Joaquin Valley, the salts originate from the application of irrigation water and from soil minerals, which dissolve as water flows through the soil. The salts are stored in groundwater. As more water is applied, hydraulic pressures increase, water moves downgradient, and salt-laden waters are discharged through existing drainage systems and directly to the river as groundwater accretion. (SJREC 5a.) Drainage found in a farmer's field may originate upslope and may not have risen into the tile drains on the downslope farmer's land but for the pressures caused by upslope irrigation. (SJREC 5a, pp. 27-29.)"

Numerous government studies identify the high economic and environmental cost of continuing to irrigate these lands, and that the only reliable solution to reverse the drainage problem is to halt irrigation of these lands. The National Economic Development Benefit/Cost Summary for the San Luis Drainage Feature Re-Evaluation disclosed that the alternative with the least amount of land retirement (In-Valley Groundwater Quality Land Retirement) had a negative benefit/cost summary amounting to $15.603 million/year in 2050 dollars, or a negative $780.15 million over the 50 year

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3 http://waterboards.ca.gov/waterrights/board_decisions/adopted_orders/decisions/d1600_d1649/wrd1641_1999dec29.pdf Accessed January 27, 2010.

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life of the project.[4] Conversely, the alternative with the greatest amount of land retirement (In Valley Drainage Impaired Land Retirement) had a positive benefit/cost summary of $3.643 million/year in 2050 dollars, or a positive $182.15 million over the 50 year life of the project.

The U.S. Geological Survey has been clear that any solution to drainage problems must include land retirement. In relation to the San Luis Feature Re-Evaluation and subsequent settlement negotiations convened by Senator Feinstein, the USGS has stated that "*Land retirement is a key strategy to reduce drainage because it can effectively reduce drainage to zero if all drainage-impaired lands are retired.*"[5] USGS goes on to state that "*The treatment sequence of reverse osmosis, selenium bio-treatment and enhanced solar evaporation is unprecedented and untested at the scale needed to meet plan requirements.*"

Reclamation's CVPIA land retirement program has demonstrated that there can be a rapid reduction in shallow groundwater from cessation of irrigation. The Bureau of Reclamation's 2001 Annual Report on CVPIA Land Retirement stated that groundwater elevations declined an average of 4 feet between August 1999 and October 2001. The report stated further that *"The area of the site underlain by a shallow water table within 7 feet of the land surface decreased from 600 acres (30% of the site) to 34 acres (less than 2% of the site) during the time period from October 1999 to October 2001."*[6]

The Feasibility Report for the San Luis Drainage Feature Re-evaluation recommended significant increases in subsidies for San Luis Unit contractors in order to implement the Preferred Alternative, which was not the alternative with maximum land retirement.[7]

USGS identified that the aquifers of the western San Joaquin Valley contain so much selenium that even if the San Luis Drain were built with an annual discharge of 43,500 pounds of selenium/year with no new additions of selenium (cessation of irrigation), it would still take 63 to 304 years to eliminate the accumulated selenium from the aquifers.[8]

The USGS also shows graphically in Professional Paper 1646, the huge salt imbalance in the San Joaquin River which amounts to approximately 2,300 tons of salt per day.[9] Ultimately, many of the lands in Westlands and in the region will become sterile alkali land unless widespread land retirement is implemented. Agriculture will no longer be an option, even dry land farming.

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[4] http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=2240 Table N-10, p N-17
[5] http://pubs.usgs.gov/of/2008/1210/of2008-1210.pdf p 2, accessed 1/27/2010
[6] http://www.usbr.gov/mp/cvpia/3408h/data_rpts_links/index.html accessed 1/27/2010
[7] Feasibility Report for the San Luis Drainage Feature Re-evaluation, p xxvii. http://www.usbr.gov/mp/sccao/sld/docs/sldfr_report/index.html accessed 1/27/2010
[8] USGS Professional Paper 1646, p 1 http://pubs.usgs.gov/pp/p1646/pdf/pp1646.pdf
[9] USGS Professional Paper 1646, p 106, Figure A5 http://pubs.usgs.gov/pp/p1646/pdf/pp1646.pdf

The Pacific Institute's Report on Agricultural Water Conservation[10] (Exhibit 3V) identified that retirement of 1.3 million acres of drainage problem lands in the western San Joaquin Valley would lead to water savings of 3.9 million AF, "*while also reducing cleanup costs and minimizing the social and environmental impacts associated with polluted surface and groundwater.*"

Based on the above information, an alternative which would eliminate drainage problem areas from receiving water transfers in order to minimize the amount of salt, selenium and boron discharged to the underlying aquifers could be considered a benefit to the environment and the economy. The DEA utterly fails to disclose and evaluate such an alternative, nor does it properly evaluate the cumulative impacts of continued irrigation of these toxic soils.

6. Despite completion of the Programmatic EIS for the Central Valley Project Improvement Act (CVPIA PEIS), the DEA does not adequately address site specific impacts of the Proposed Action. The DEA did not fill the gaps that the CVPIA PEIS left.

We do not write to challenge the analysis in the Programmatic Environmental Impact Statement for the Central Valley Project Improvement Act. However, for the reasons stated in this letter, even after layering the DEA on top of the CVPIA PEIS, the Bureau has failed to conduct adequate site specific analyses to determine whether renewal of the San Luis contracts would significantly affect the environment. A programmatic document does not provide a complete basis for site-specific decisions. This document does not either and is grossly deficient for the reasons stated in this letter.

7.Biological Opinions from both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service should be included as part of the DEA in order for full disclosure of impacts and mitigation measures.

The DEA includes deferred mitigation that has yet to be disclosed to the public because the Biological Opinions by the U.S. Fish and Wildlife Service and National Marine Fisheries Service have still not been released. In particular, mitigation measures for impacts to wildlife are not fully disclosed. NEPA requires full disclosure of mitigation measures in the DEA, yet that information is not available. Reclamation appears to be making the same mistake it made in the Trinity River litigation in failing to disclose required mitigation measures contained in Biological Opinions, some of which may have inherent significant impacts.

Additionally, Reclamation appears to be failing to request consultation under the Endangered Species Act from the National Marine Fisheries Service. While Westlands does not drain directly into the San Joaquin River and its tributaries, the massive application of irrigation water, as noted above section 5 above, creates upslope

[10] http://www.pacinst.org/reports/more_with_less_delta/more_with_less.pdf p 7, pp1

hydraulic pressure which ultimately results in discharges to the San Joaquin River through the Grasslands Bypass Project and elsewhere. As noted by the prominent selenium/salmonid scientist, Dennis Lemly, the Grasslands Bypass Project results in a 50% mortality to juvenile steelhead and salmon in the San Joaquin River.[11] A consultation for Central Valley steelhead and salmon should be included as part of this Proposed Action.

8. Contract terms to include repayment of costs for the Trinity River Restoration Program pursuant to CVPIA Section 3406(b)(23) as well as protections for Trinity River tribal and fishery interests should have been included in the Proposed Action.

The contracts should include express text pursuant to the 1955 Trinity River Act, the 1979 Krulitz solicitor's opinion and section 3406(b)(23) and section 3404(c)(2) of the CVPIA requiring the contractors to pay for Trinity restoration as a cost of service in order to protect the Indian Trust Assets of the Hoopa Valley and Yurok tribes. This has repeatedly been requested by the Hoopa Valley Tribe and others, yet it was not even considered as an alternative to be included for analysis.

The relationship between the Trinity River and the irrigation of the San Luis Unit and Delta Mendota Canal Unit is strong, albeit conveniently forgotten by many. The Trinity River Division of the CVP is integrally linked to development of CVP water to contracts south of the Delta, as shown in Trinity County's Exhibit 17[12] to the 1998 Bay-Delta Water Rights Hearings. Trinity County's Exhibit 17 from the 1998 State Water Resources Control Board hearings on D-1641 shows the 1959 expansion of the CVP service area within the San Luis Unit associated with the Bureau of Reclamation's 7 state water permits to store and divert Trinity River water which included most of Westlands and particularly the soils with highest selenium concentrations. The expanded CVP service area also includes many of the areas that Westlands has identified as having high groundwater that are desirable for land retirement, including Broadview Water District.

Both the House (H.R. Rep. No. 602, 84th Cong., 1st sess. 4-5 (1955) and Senate committee reports (S. Rep. No. 1154, 84 Cong., 1st Sess. 5 (1955) for the 1955 Trinity River Act (P.L. 84-386) identify the western San Joaquin Valley as one of the three areas targeted to receive Trinity River water. Westlands signed its contract for CVP water in 1963, the same year that the late President John F. Kennedy dedicated the Trinity River Division (TRD) of the CVP. Westlands actively supported passage of the Trinity River Act of 1955 because it knew that it would receive the lion's share of the TRD's water. Now that it is recognized that these lands should not have been irrigated, the problem areas should be retired with at least consideration that the water to return to the areas of origin and the Delta. A

[11] http://www.c-win.org/webfm_send/9
[12] http://tcrcd.net/exhibita.htm accessed 1/27/2010

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land retirement alternative with at least a portion of the water being returned to the areas of origin such as the Trinity, American and Sacramento rivers only makes sense. This will also help fulfill the Interior Secretary's trust obligations to the Hoopa Valley and Yurok tribes, as well as meet the fishery restoration goals for the Trinity River identified in the Trinity River Basin Fish and Wildlife Management Act of 1984, as amended and the Central Valley Project Improvement Act.

The 1955 Trinity River Act gives legal priority to Trinity River in-basin water needs, including those of the two tribes' fishery, over diversions to the Central Valley. See Memorandum from Assistant Regional Solicitor of the Department of the Interior to Regional Director, Bureau, Sacramento, 1-2 (Dec. 6, 1973) (1973 Sol. Op.). This provision limits Interior's authority to divert water for allocation to Central Valley contractors. Rather, Congress *"specifically limited the Secretary's discretion*" regarding TRD operations by requiring priority for Trinity and Klamath in-basin needs.

We hereby request that the Proposed Action include the following language in all CVP contract renewals:

> *"All water deliveries pursuant to this contract are limited by and subordinate to the Secretary's fiduciary duty, referred to in section 3406(b)(23) of the Central Valley Project Improvement Act, to meet instream fishery flow requirements of the Trinity River as specified in the Trinity River Record of Decision (December 2000).*
>
> *All water deliveries pursuant to this contract are limited by and subordinate to terms and conditions 9 and 10 in the Bureau of Reclamation's Trinity River water permits (Permit No.'s 11967, 11968, 11969, 11970, 11971, 11972, and 11973", which require the following:*
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> *"9. Permittee shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users." And*
>
> *"10. This permit shall be subject to the prior rights of the county in which the water sought to be appropriated originates to use such water as may be necessary for the development of the county, as provided in Section 10505 of the Water Code of California."*

Therefore, the proposed contract between WWD and the United States is illegal, since it does not comply with Trinity River Basin legal mandates, reserve as first priority Area/County of origin needs, as well as Tribal Trust obligations to the Hoopa Valley and Yurok tribes. The contract should be rewritten to explicitly identify those reservations.

An Environmental Impact Statement must be prepared.

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